

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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January 30, 2001

Opinion No. 01-014

Public records - Tennessee Municipal League Risk Management Pool

QUESTION

Are the records of expenses and names of cases defended by the Tennessee Municipal League Risk Management Pool “public records” under Tenn. Code Ann. § 10-7-503?

OPINION

No. The records of the TML Risk Management Pool would be subject to the Public Records Act under Tenn. Code Ann. § 10-7-503(d)(1), but the Pool appears to have excepted itself under a proviso in the statute.

ANALYSIS

The Public Records Act, Tenn. Code Ann. § 10-7-503(a), provides that “[a]ll state, county and municipal records” are open for personal inspection by any citizen of Tennessee unless otherwise provided by state law. The Tennessee Municipal League Risk Management Pool is a Tennessee nonprofit corporation whose charter was filed with the Secretary of State’s Office October 29, 1979. The Tennessee Municipal League established the risk pool when a few municipalities pooled their risks and resources because they were unable to obtain insurance coverage from commercial insurers. Gael Stahl, *TML Risk Management Pool Turns 21*, Tennessee Town & City, Sept. 25, 2000. Governed by a board of directors consisting of city officials, the TML Risk Management Pool now has more than 400 members and provides risk management products and services for cities and their agencies. *Id.* This Office has previously opined that Tenn. Code Ann. § 10-7-503 did not apply to the records of the TML. Op. Tenn. Atty. Gen. U86-46 (March 11, 1986).

Since that opinion, however, the Public Records Act has been amended and now provides that “[a]ll records of any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i) shall be open for inspection as provided in subsection (a) . . .” Tenn. Code Ann. § 10-7-503(d)(1). Section 8-44-102 is part of the Open Meetings Act, which makes all meetings of any governing body open to the public.

Subsection (b)(1)(E)(i) of § 8-44-102 defines the term “governing body” to include:

The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

- (a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;
- (b) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and
- (c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

In our opinion, the TML Risk Management Pool falls within this statute. It is a nonprofit corporation that was established to benefit local governments needing insurance and risk management services. According to an audit by Deloitte & Touche, the TML Risk Management Pool had premium income from the local governments that exceeded 30 per cent of total revenues for the years ended June 30, 2000 and 1999. Finally, it was authorized as of January 1, 1998, to obtain coverage for its employees in the state retirement system. Tenn. Code Ann. § 8-35-240.

In the first instance, therefore, the records of the TML Risk Management Pool are subject to the Public Records Act because the Pool is a nonprofit corporation described in § 8-44-102(b)(1)(E)(i). But the analysis does not end there because of a proviso in Tenn. Code Ann. § 10-7-503(d)(1):

All records of any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i) shall be open for inspection as provided in subsection (a); **provided, that any such organization shall not be subject to the requirements of this subsection so long as it complies with the following requirements:**

(A) The board of directors of the organization shall cause an annual audit to be made of the financial affairs of the organization, including all receipts from every source and every expenditure or disbursement of the money of the organization, made by a disinterested person skilled in such work. Each audit shall cover the period extending back to the date of the last preceding audit and it shall be paid out of the funds of the organization;

(B) Each audit shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9) for local governments;

(C) The comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards, and determining whether the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be

accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury;

(D) The audits may be prepared by a certified public accountant, a public accountant or by the department of audit. If the governing body of the municipality fails or refuses to have the audit prepared, the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department to prepare the audit. The cost of such audit shall be paid by the organization;

(E) Each such audit shall be completed as soon as practicable after the end of the fiscal year of the organization. One (1) copy of each audit shall be furnished to the organization and one (1) copy shall be filed with the comptroller of the treasury. The copy of the comptroller of the treasury shall be available for public inspection. Copies of each audit shall also be made available to the press; and

(F) In addition to any other information required by the comptroller of the treasury, each audit shall also contain:

(i) A listing, by name of the recipient, of all compensation, fees or other remuneration paid by the organization during the audit year to, or accrued on behalf of, the organization's directors and officers;

(ii) A listing, by name of recipient, of all compensation and any other remuneration paid by the organization during the audit year to, or accrued on behalf of, any employee of the organization who receives more than twenty-five thousand dollars (\$25,000) in remuneration for such year;

(iii) A listing, by name of beneficiary, of any deferred compensation, salary continuation, retirement or other fringe benefit plan or program (excluding qualified health and life insurance plans available to all employees of the organization on a nondiscriminatory basis) established or maintained by the organization for the benefit of any of the organization's directors, officers or employees, and the amount of any funds paid or accrued to such plan or program during the audit year; and

(iv) A listing, by name of recipient, of all fees paid by the organization during the audit year to any contractor, professional advisor or other personal services provider, which exceeds two thousand five hundred dollars (\$2,500) for such year. Such listing shall also include a statement as to the general effect of each contract, but not the amount paid or payable thereunder.

The provisions of this subsection shall not apply to any association or nonprofit corporation

described in § 8-44-102(b)(1)(E)(i), that employs no more than two (2) full-time staff members.

Tenn. Code Ann. § 10-7-503(d)(1) (emphasis added).

As previously indicated, Deloitte & Touche has prepared an independent auditor's report concerning the TML Risk Management Pool as of June 30, 2000 and 1999. This report is on file with the State Comptroller's Office. Assuming that the report complies with the requirements of § 10-7-503(d)(1), it appears that the Pool has excepted its records from application of the Public Records Act. Accordingly, it is our opinion that the records of expenses and names of cases defended by the TML Risk Management Pool are not public records under Tenn. Code Ann. § 10-7-503.

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