

STATE OF TENNESSEE

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Opinion No. 01-098

Extraterritorial Power of Eminent Domain for Municipal Utilities

QUESTIONS

1. Do Tenn. Code Ann. §§ 7-35-101 and 29-17-201 presently authorize a municipality to lay a sewer line through another municipality?
2. If the answer to question 1 is yes, would the municipality's approval have to be obtained to lay the sewer line?
3. If the answer to question 1 is no, is the enclosed amendment drafted in such a manner to constitutionally accomplish its desired result?
4. If the sewage line is laid entirely in the State right-of-way with the approval of the Department of Transportation, would the approval of the municipal through which the state route runs be necessary in any instance?

OPINIONS

1. Yes, Tenn. Code Ann. §§ 7-35-101 and 29-17-201 authorize one municipality to take and condemn lands to lay a sewer line through another municipality.
2. As a general proposition, if the utility is financed under the Revenue Bond Law or the Local Government Public Obligations Act of 1986, the municipality building the utility through the territory of another municipality must obtain the consent of the latter's governing body.
3. Since the answer to question 1 is yes, it is not necessary to address this question.
4. Yes, if the project is financed under the Revenue Bond Law or the Local Government Public Obligations Act of 1986.

ANALYSIS

This office has previously opined that municipalities have extraterritorial power of eminent domain. *See* Tenn. Op. Atty. Gen. 97-027 (March 31, 1997). As stated in the opinion, the general statutory authority for a municipality's condemnation of extraterritorial land is found at Tenn. Code Ann. § 6-2-201(9) (Powers of Municipalities with Mayor-Aldermanic Charter) and Tenn. Code Ann. § 6-19-101(9) (Powers Under City Manager-Commission Charter). In Tenn. Code Ann. § 7-35-101 the legislature specifically authorizes municipalities to condemn property beyond their corporate boundaries for the purpose of constructing sewers. It states that:

(a)ll municipal corporations are empowered to take and condemn lands, property, property rights, privileges and easements of others for the purpose of constructing, laying, repairing or extending sewers ... *both within and beyond the corporate limits.*

Tenn. Code Ann. § 7-35-101 (1998 & Supp. 2000). (Emphasis added). Tenn. Code Ann. § 29-17-201, contains similar language, declaring that “municipal corporations are empowered to take and condemn lands both within and beyond the corporate limits of such cities.” Municipalities may exercise those express or necessarily implied powers delegated to them by the Legislature in their charters or under statutes. *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988); *City of Chattanooga v. Tennessee Electric Power Co.*, 172 Tenn. 524, 533, 112 S.W.2d 385, 388 (1938).

In Tenn. Code Ann. § 7-35-303, the legislature addresses the ability of a municipality that is in close proximity with, but does not adjoin, another municipality to contract with the municipality and build sewer lines over intermediate territory. A municipality can “us(e) any streets, road, or public ways . . . that may be necessary” to join or consolidate the sewage system in the municipalities. *Id.* This includes the ability to “build such lines of main sewer and/or water pipes over the intermediate territory.” *Id.*

Although the statute does not expressly provide for condemnation of property by one municipality in such intermediate territory, that power is necessarily implied when the statute is read with the municipality's extraterritorial powers of eminent domain. Tenn. Code Ann. § 7-35-101 (1998). As a general matter, the meaning of a statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W. 2d 297, 299 (Tenn. 1978). Clearly, pursuant to the provisions of Tenn. Code Ann. § 7-35-101, *et seq.*, municipalities have the power to condemn land beyond their corporate boundaries to extend or build sewer lines to join or connect with another municipality's sewer system. The ability to condemn property beyond the municipality's corporate boundaries is in furtherance of the legislature's strongly stated public policy that

“utilities are vital to the health, safety and welfare of the citizens of this state.” Tenn. Code Ann. § 54-5-801(b)(3) (1998).

While the power of eminent domain expressly granted in these statutory provisions does not require a municipality (condemner) to obtain the consent of the municipality (condemned) located “*beyond the corporate limits,*” other statutes require such consent. For example, the Revenue Bond Law authorizes municipalities to issue revenue bonds for financing public works, including sewerage and sewage treatment and disposal works. Tenn. Code Ann. § 7-34-101 (1998). If a municipality chooses to finance its sewerage system under this Act and construction is wholly or partly within the corporate limits of another municipality, consent of the other municipality is required. Tenn. Code Ann. § 7-34-105 (1998).

In Tenn. Op. Atty. Gen. 96-005 (January 16, 1996), this office explained the requirements of the Local Government Public Obligations Act of 1986. Tenn. Code Ann. § 9-21-101, *et seq.* (2000). That statute imposes consent requirements with respect to projects financed with bonds issued under the Act. As noted, it provides that “the provisions of this chapter shall prevail with respect to all bonds and notes issued under this chapter.” One of its provisions states as follows:

No local government shall engage in the construction of a public works wholly or partly within the legal boundaries of another local government except with the consent of the governing body of the other local government; provided, that any county or metropolitan government may construct a public works project within a municipality within the county or metropolitan government without the permission of the governing body of the municipality

Tenn. Code Ann. § 9-21-107(1) (2000). The definition of public works projects includes “sewers, sewage and waste water systems, including, but not limited to, collection, drainage, treatment and disposal systems.” Tenn. Code Ann. § 9-21-105(21)(A) (2000). Therefore, if a municipality chooses to finance the cost of a sewer or sewage system outside its corporate limits through the issuance of bonds under the Local Government Public Obligations Act of 1986, the provisions of that law bind it with respect to the bonds. *See* Tenn. Op. Atty. Gen. 96-005. One of those requirements is the consent of the governing body of the county in whose territory the project is proposed to be located. *Id.*

These revenue statutes are examples of legislative constraints on the use of a municipality’s power to condemn property outside its corporate boundaries. In summary, while municipalities have the express power of condemnation outside their corporate boundaries, the use of the power may be limited in some instances by other statutory provisions.

“Utilities have been authorized by statute or charter provisions for many years to locate their facilities within the boundaries of public roads and streets in this state.” Tenn. Code Ann. § 54-5-801(b) (1998). A municipality can use the state’s right-of-way, easement or other similar property within the

boundaries of public roads in this state for the operation of public works. Tenn. Code Ann. § 7-34-104(a)(8) (1998). The definition of public works in this Act includes sewerage, sewage treatment and disposal works. Tenn. Code Ann. § 7-34-102(3)(1998). With the permission of the State, a municipality, may thus place sewer lines within the state's "right-of-way, easement or other similar property right."

The legislature repeats the authority to place utilities within the state's right-of-way in Tenn. Code Ann. § § 54-5-801, *et seq.*. In this section of the Code, the Legislature expresses public policy, explaining the importance of extending utilities along public highways and streets for the benefit of "development, growth, and expansion of the general welfare, business and industry of this state." Tenn. Code Ann. § 54-5-801(b)(3) (1998). "Public highways and streets are intended . . . for proper utility uses in serving the public . . . and such utility uses are for the benefit of the public served." Tenn. Code Ann. § 54-5-801(b)(4) (1998). There is however a caveat within the statute. It asserts that charter provisions or other applicable laws of this state must authorize the use of the public highways and streets by municipalities for utility uses. *Id.* Thus, as previously stated, if the State's right-of-way sought to be used by one municipality lies within the legal boundaries of another, the consent of the latter's governing body must also be obtained for those projects financed under the Revenue Bond Law or the Local Government Public Obligations Act of 1986. Tenn. Code Ann. § § 7-34-105 (1998) and 9-21-107(1) (2000).

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