

STATE OF TENNESSEE

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Opinion No. 01-123

Public Building Authority Subject to 2001 Tenn. Pub. Acts Ch. 364

QUESTIONS

1. Under Tenn. Code Ann. §§ 12-10-101, *et seq.*, a city or county, or one or more cities and counties, acting jointly, may authorize the incorporation of a public building authority. Tenn. Code Ann. § 12-10-108 specifies the membership of the board of directors of a public building authority. Under 2001 Tenn. Pub. Acts Ch. 364, the board of directors of a public building authority that contracts for the modification, construction, or management of an arena facility for a National Basketball Association member professional team must include as two additional directors one state senator and one state representative whose legislative districts lie, in whole or in part, within the boundaries of the creating municipality. Does this provision create a new board, commission, or authority?

2. If the answer to Question 1 is yes, would the public building authority be subject to the House Government Operations Committee review process?

OPINIONS

1. 2001 Tenn. Pub. Acts Ch. 364 does not create a new board, commission, or authority.

2. 2001 Tenn. Pub. Acts Ch. 364 was not subject to review by the government operations committee of each house under Tenn. Code Ann. § 4-5-108(a). Public building authorities created by municipalities under Tenn. Code Ann. §§ 12-10-101, *et seq.*, are not subject to legislative review under Tenn. Code Ann. §§ 4-29-101, *et seq.*

ANALYSIS

This opinion concerns the effect of 2001 Tenn. Pub. Acts Ch. 364. This act amends Tenn. Code Ann. § 12-10-108 regarding the membership of the board of directors of a public building authority. Under Tenn. Code Ann. § 12-10-104, a municipality, including a city, county, or town, may approve the incorporation of a public building authority with the powers described in the act. One or more municipalities, acting jointly, may incorporate a public building authority. Tenn. Code Ann. § 12-10-120.

A public building authority is a public nonprofit corporation and a public instrumentality of the municipality with respect to which the authority is organized. Tenn. Code Ann. § 12-10-109(a). All the corporate powers of the authority are vested in the board of directors. Tenn. Code Ann. § 12-10-108. Directors of a public building authority are appointed by the chief executive officer of the municipality with respect to which the authority was created, subject to confirmation by the municipal legislative body. *Id.* In the case of an authority created pursuant to the approval of two or more municipalities acting jointly, the number of directors appointed by the chief executive officer of each municipality must be as nearly equal as practicable. *Id.*

Public Chapter 364 amends Tenn. Code Ann. § 12-10-108(a) by designating the current language as subdivision (a)(1) and by adding a new subdivision (a)(2). Under the new subdivision (a)(2), if a public building authority engages in or contracts for the modification, construction, operation, maintenance, or management of an arena facility for a National Basketball Association member professional team, the board of directors must include two additional directors: one state senator and one state representative, each of whose district lies, in whole or in part, within the boundaries of the municipality. The new subdivision (a)(2) further provides:

... Notwithstanding the fact that two (2) or more municipalities *may have approved incorporation of the public building authority pursuant to § 12-10-104*, the provisions of this subdivision shall not be construed to require appointment of more than one state senator and one state representative to serve as directors; and, under such circumstances, the chief executive officers of the municipalities shall jointly make such appointments, subject to confirmation of the governing bodies of the municipalities.

2001 Tenn. Pub. Acts Ch. 364, § 1 (emphasis added).

The first question is whether this public act creates a new board, commission, or authority. A public building authority is created through the process set forth in Tenn. Code Ann. §§ 12-10-101, *et seq.* Chapter 364 does not, by itself, purport to create a new entity; instead, it specifies the membership requirements for the board of directors of a public building authority involved in a particular type of project. As cited above, Chapter 364 reflects this assumption by stating “[n]otwithstanding the fact that two (2) or more municipalities *may have approved incorporation of the public building authority pursuant to § 12-10-104 . . .*” (Emphasis added). For this reason, we conclude that 2001 Tenn. Pub. Acts Ch. 364 does not create a new board, commission, or authority.

The second question is, assuming the answer to Question 1 is yes, whether the new board is subject to the House Government Operations Committee review process. In light of our answer to Question 1, Question 2 is moot. But we will review the statutes to which we think the question refers in order to clarify our response.

The request does not specify the statute under which the House Government Operations Committee might review a governmental entity. Our research indicates that the request may refer to review under Tenn. Code Ann. § 4-5-108(a). That statute provides:

Any legislation which, in whole or in part, amends or repeals *any provision of this chapter*; and any legislation which reestablishes, restructures or otherwise delegates any type of rulemaking authority to any new or pre-existing governmental entity *to which this chapter applies*, shall be referred to the government operations committee by the speaker of each house prior to its referral to the appropriate standing committee. The government operations committee of each house shall review the legislation and shall recommend that the legislation be considered for passage or shall recommend against passage to the appropriate standing committee.

Tenn. Code Ann. § 4-5-108(a) (emphasis added). While 2001 Tenn. Pub. Acts Ch. 364 does not purport to create an entity, it could be argued that, by specifying the membership of the board of directors of a particular category of public building authority, it does restructure a public building authority. But Tenn. Code Ann. § 4-5-108(a), by its terms, refers to legislation affecting a governmental entity to which Tenn. Code Ann. §§ 4-5-101, *et seq.*, apply. This statutory scheme applies generally to “each *state* board, commission, committee, department, officer, or any other unit of *state* government authorized or required by any statute or constitutional provision to make rules or to determine contested cases.” Tenn. Code Ann. § 4-5-102 (2) (emphasis added). We do not think this statutory scheme was intended to apply to public building authorities created by municipalities under Tenn. Code Ann. §§ 12-10-101, *et seq.* For this reason, 2001 Tenn. Pub. Acts Ch. 364 was not subject to review by the government operations committee of each house under Tenn. Code Ann. § 4-5-108(a).

It is also possible the question refers to review of governmental entities by a legislative evaluation committee under Tenn. Code Ann. §§ 4-29-101, *et seq.* This statutory scheme refers to *state* governmental entities, and does not include public building authorities created by municipalities under Tenn. Code Ann. §§ 12-10-101, *et seq.* *See, e.g.*, Tenn. Code Ann. § 4-29-102; Tenn. Code Ann. § 4-29-118(a). For this reason, public building authorities created by municipalities under Tenn. Code Ann. §§ 12-10-101, *et seq.*, are not subject to legislative review under Tenn. Code Ann. §§ 4-29-101, *et seq.*

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