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Opinion No. 06-027

Tullahoma Airport Authority Commissioners

QUESTIONS

1. The Tullahoma Municipal Airport Authority (the "Authority") was created by a city ordinance enacted in 1978. Its charter was filed with the Tennessee Secretary of State as that of an independent, not-for-profit corporation. Is the Tullahoma Board of Mayor and Aldermen authorized to amend the charter and bylaws of the Authority to increase the Authority's membership from five commissioners to seven commissioners?

2. If the City is not authorized to amend the charter, who is?

3. If the City and the directors of the authority both have this power, then which entity prevails between them?

OPINIONS

1. Yes, the Board of Mayor and Aldermen may increase the Authority's membership from five commissioners to seven commissioners by amending the ordinance that created the Authority.

2. Because of the answer to Question 1, Question 2 is moot.

3. The commissioners of the Authority do not have the power to change the number of commissioners. Question 3, therefore, is also moot.

ANALYSIS

1. Changing Number of Commissioners by Ordinance

This opinion concerns a change to the number of commissioners on the Tullahoma Municipal Airport Authority (the "Authority"). The request states that the Authority was created by a Tullahoma city ordinance in 1978. The charter was filed with the Tennessee Secretary of State as that of an "independent, not-for-profit corporation." The request also refers to Authority by-laws. But, based on our review of the relevant statutes, the Authority was created under Tenn. Code Ann. §§ 42-3-101, *et seq.*, and is governed by that statutory scheme. It is not a nonprofit corporation

governed by the state incorporation laws applicable to privately chartered nonprofit corporations.

A city may create a municipal airport authority under Tenn. Code Ann. § 42-3-103. The statute provides that, "[u]pon adoption of an ordinance or resolution, whichever is applicable, creating a municipal airport authority, the governing body of the municipality shall, *pursuant to the ordinance or resolution*, appoint at least five (5) and no more than eleven (11) persons as commissioners of the authority." Tenn. Code Ann. § 42-3-103(a) (emphasis added). The city ordinance creating a municipal airport authority, therefore, governs the number of commissioners who will serve the authority. Logically, therefore, the city may, by amending the ordinance creating the authority, increase the number of commissioners from five to seven.

The statutes authorizing the creation of a municipal airport authority require the commissioners of the authority to present an application for incorporation to the Secretary of State. Tenn. Code Ann. § 42-3-103(b). The statute provides:

> When the application has been made, filed and recorded as herein provided, the authority shall constitute a public body corporate and politic under the name proposed in the application. The secretary of state shall make and issue to the commissioners a certificate of incorporation *pursuant to this chapter*, under the seal of the state and shall record the same with the application.

Tenn. Code Ann. § 42-3-103(b)(2) (emphasis added). The commissioners must have the certificate recorded in the register's office in the county in which the airport authority has its principal office. Tenn. Code Ann. § 42-3-103(b)(3). The Authority, therefore, while a corporate entity, was incorporated under Tenn. Code Ann. §§ 42-3-101, *et seq.* Powers of each authority are vested in the commissioners. Tenn. Code Ann. § 42-3-107. The powers of a municipal airport authority are set forth in Tenn. Code Ann. § 42-3-108. Because the Authority was created by a city ordinance, however, that ordinance governs the number of commissioners and may be amended by the city legislative body.

2. and 3. Authority of Other Entity to Change the Number of Commissioners

The next question is which entity has the authority to change the number of commissioners on the Authority if the city legislative body does not. Because we have concluded that the city legislative body does have this authority, the question is moot. Finally, the request asks whether, if both the commissioners and the city legislative body have the authority to change the number of commissioners, which power prevails. As discussed above, the Authority is created by city ordinance and the commissioners do not have the authority to amend this ordinance by changing the number of directors. This question, therefore, is also moot.

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