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Opinion No. 06-077

Robertson County Highway Department Employee Wages

QUESTIONS

1. Under the Tennessee County Uniform Highway Law and Chapter 380 of the Private Acts of 1947, do the Robertson County Highway Commission and the highway superintendent of Robertson County have the authority to establish pay classifications, set wages within those classifications, and determine pay increases for the Robertson County Highway Department?

2. Does the county commission or the county budget committee of Robertson County have the authority to reduce or change line items from the budget of the Robertson County Highway Department without the consent of the highway commission or the highway superintendent?

OPINIONS

1. Under Chapter 380 of the Private Acts of 1947, the Robertson County Highway Commission has the power to set wage schedules for highway department personnel. Under the Tennessee County Uniform Highway Law enacted in 1974, and as specifically provided by Tenn. Code Ann. § 54-7-109(c), the highway superintendent of Robertson County (as the chief administrative officer) is authorized to establish job classifications and to establish policies and wages within those classifications. The only limitation imposed by these statutes is that the wages to be paid shall be reasonable and not greater than wages being paid for similar services in the locality where such services are performed. Unless a reasonable basis exists for a departure from the Tennessee County Uniform Highway Law, the highway superintendent has the authority to establish job classifications for Robertson County Highway Department employees, to set wages within those classifications, and to determine pay increases for those employees, provided that the wages to be paid shall be consistent with wages being paid for similar services in Robertson County and surrounding counties. Tenn. Code Ann. § 54-7-109(c).

2. Neither the county commission nor the county budget committee of Robertson County has the authority to reduce or change budget line items involving wages or salaries of Robertson County Highway Department employees without the consent of the highway superintendent.

ANALYSIS

1. In 1947 the General Assembly enacted Chapter 380 of the Private Acts of 1947. That private act grants the Robertson County Highway Commission the power to set wage schedules for highway department personnel. The only limitation imposed by that act is that the salaries must be reasonable and not greater than wages being paid for similar services in the local community. 1947 Tenn. Priv. Acts Ch. 380, § 11 (4). The county road supervisor, whose position was also created by that private act, has the authority to make all employment decisions, but the wages were to be consistent with the wage schedule set up by the highway commission. 1947 Tenn. Priv. Acts Ch. 380, § 17 (4).

In 1974 the General Assembly enacted the Tennessee County Uniform Highway Law, a statute of general application which governs the administration of county roadway systems. It is codified as Tenn. Code. Ann. §§ 54-7-101 *et. seq*. and 54-7-201 *et. seq*. The statute is applicable to all counties having a population of less than 200,000, which includes Robertson County. The statute provides that the chief administrative officer of a county highway department has the authority to hire employees and set employee job classifications and wages.

Tenn. Code Ann. § 54-7-109(c) states in part: "The chief administrative officer is authorized to determine the total number of employees of the county highway department . . . , to establish job classifications, and to establish polices and wages within the classifications. The compensation established by the chief administrative officer should be in keeping with that paid for similar services in the county and surrounding areas."

Under Tennessee law, unless a reasonable basis exists for a departure from a general statute, a private act which contravenes or is inconsistent with a general law is invalid. See *Shelby County Service Merit Board v. Lively*, 692 S.W.2d 15, 18 (Tenn. 1985), and *Rector v. Griffith*, 563 S.W.2d 899, 904 (Tenn. 1978). Therefore, unless such a basis exists, the chief administrative officer would have the authority to set wages for the Robertson County Highway Department, with the only limitation being that the schedule of wages should be consistent with the surrounding communities.

2. The second question asks whether the county commission or county budget committee may reduce or change line items in the highway department's budget without the consent of the highway commission or superintendent. The answer to this question in part rests on which line items are being modified or reduced. For example, if the county commission or budget committee proposed to reduce from the budget amounts allocated to a particular highway project, such a change would improperly infringe on the highway commission and highway superintendent's general authority over county roads. *See* Op. Tenn. Att'y Gen. 97-100 (July 17, 1997).

Based on the first question asked, it appears the focus of this second inquiry is whether these entities could reduce the wages of highway department personnel. The remainder of this opinion will address this issue.

Several general statutes have been enacted regarding the handling of county budgets. According to the finance director of Robertson County, the only budgeting act adopted by the county is the County Financial Management System of 1981. The 1981 Act provides for the submission of

a budget to the county legislative body by a budget committee. This statute does not specifically provide for reductions by the committee. However, the legislative body has the authority to alter or revise a department's budget. Tenn. Code Ann. § 5-21-111(e)(1). Most notably however, the power to set salaries of employees of individual departments is specifically delegated to the department heads. Tenn. Code Ann. § 5-21-123(a) states in part: " notwithstanding any provision of this chapter, each department, agency or official shall have the authority to hire personnel and set salaries and to determine the needs for its use, all subject to budget limitations and the availability of funds." Therefore, if this is in fact the only budgeting statute adopted by Robertson County, the authority to set salaries within the highway department would rest with the highway superintendent as indicated above.

Chapter 380 contains language suggesting that others within county government might have authority over the salaries of highway department personnel. That act provides that the schedule of wages established by the highway commission would be approved by the county purchasing agent. 1947 Tenn. Priv. Acts Ch. 380, § 17(4). However, the purchasing agent would not have any authority to review the wage schedule under the 1981 Act. Tenn. Code Ann.§ 5-21-123(b). As indicated above, when a private act conflicts with a general statute, the provisions of the general statute will normally apply.

Therefore, it is the opinion of this office that neither the county commission, budget committee nor purchasing agent could reduce the wages of highway department personnel in Robertson County without the consent of the highway superintendent. The county commission could affect the wages of county highway department personnel by limiting the overall budget to the highway department. The commission could reduce the department's overall budget below the level of the department's current salaries and remove all other expenditures from the department's budget. This would require either the elimination of some personnel or the reduction of some employee's salary. However, even under such a limited budget, the highway superintendent would still have the authority to set the salaries of the department's employees within the budget without the consent of the commission, budget committee or purchasing agent.

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