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Opinion No. 06-160

Utility District Selling Infrastructure

QUESTION

May a utility district sell existing infrastructure without the approval of its membership and/or the county commission?

OPINION

No statute within Tenn. Code Ann. §§ 7-82-101, *et seq.*, requires a board of commissioners of a utility district to obtain the approval of its customers or the county commission of a county within which it operates before selling existing infrastructure. Such a restriction could appear in an applicable private act. Depending on specific facts and circumstances of the sale, the sale could be outside the board's authority. For example, the Tennessee Supreme Court has concluded that a utility district is not authorized to sell its system and terminate its corporate existence. *United Cities Gas Co. v. Wigington,* 815 S.W.2d 506, 508 (Tenn. 1991).

ANALYSIS

This opinion addresses whether a utility district is authorized to sell existing infrastructure without the approval of its membership or the county commission. We assume your question refers to utility districts created under Tenn. Code Ann. §§ 7-82-101, *et seq.* Under that statutory scheme, a utility district is created by a petition to the Utility Management Review Board and the county mayor of any county in which the proposed district is situated. Tenn. Code Ann. § 7-82-201. A utility district has the power to:

> Acquire by purchase, gift, devise, lease or exercise of the power of eminent domain or other mode of acquisition, hold and *dispose* of real and personal property of every kind within or without the district, whether or not subject to mortgage or any other liens[.]

Tenn. Code Ann. § 7-82-304(a)(3) (emphasis added). The board of commissioners of any utility district has the power and authority to exercise by vote, ordinance, or resolution all of the general and specific powers of the district. Tenn. Code Ann. § 7-82-309(a)(1). In addition, the board has power and authority to:

> Lease, purchase, *sell*, convey and mortgage the property of the district and to execute all instruments, contracts, mortgages, deeds or bonds on behalf of the district in such manner as the board shall direct[.]

Tenn. Code Ann. § 7-82-309(a)(4) (emphasis added). We have found no statute that requires a board of commissioners of a utility district to obtain the approval of the county commission where the utility district operates before it may sell existing infrastructure. The request also asks about "members" of the utility district. We assume this expression refers to utility district customers. No statute in Tenn. Code Ann. §§ 7-82-101, *et seq.*, requires a board of commissioners of a utility district to obtain the approval of its customers before it may sell existing infrastructure. Such a restriction could appear in a private act that applies to a particular utility district. Depending on specific facts and circumstances of the sale, the sale could be outside the board's authority. For example, the Tennessee Supreme Court has concluded that a utility district is not authorized to sell its system and terminate its corporate existence. *United Cities Gas Co. v. Wigington*, 815 S.W.2d 506, 508 (Tenn. 1991).

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