S T A T E O F T E N N E S S E E
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Opinion No. 07-87

Funding Volunteer Fire Service

QUESTIONS

1. May a county appropriate county general funds to a privately incorporated not-for-profit volunteer fire service under Tenn. Code Ann. § 5-9-101(23), or any other statute, to enable the service to provide county-wide fire service in the unincorporated areas of the county?

2. May a county donate equipment, which was acquired with county general funds or bonds payable from county general funds, to a privately incorporated not-for-profit volunteer fire service that provides fire service in the unincorporated areas of the county?

3. May a city and county enter into an agreement permitting the county to fund fire service in the unincorporated portions of the county in a manner not permitted by Tenn. Code Ann. §§ 5-17-101, *et seq.*?

4. Assuming the answer to question 3 is no, would such an agreement be void or voidable by either of the parties?

OPINIONS

1. Yes, Tenn. Code Ann. § 5-9-101(23) expressly authorizes this appropriation.

2. Under Tenn. Code Ann. § 12-3-1010, a county may transfer fire equipment purchased with county funds to a not-for-profit volunteer fire service that is registered as a non-profit organization with the Secretary of State. No statute, however, authorizes a county to donate property financed with general obligation debt to a privately chartered not-for-profit fire service.

3. Tenn. Code Ann. §§ 5-17-101, *et seq*., is not the exclusive method by which a county may provide for fire service. Both the joint agreement and any funding method by the county would still have to be statutorily authorized. Tenn. Code Ann. §§ 12-9-101, *et seq.*, generally authorize local governments to enter into interlocal agreements.

4. To the extent that Tenn. Code Ann. §§ 5-17-101, *et seq.*, do not apply to the agreement, Question 4 is moot. Any agreement by the county to act beyond its statutory authority

would be void and unenforceable. But whether the invalidity of any particular provision would void the entire agreement with the city would depend on the terms of the contract and the facts and circumstances, including the parties' intentions and the importance of that term to the entire agreement.

ANALYSIS

1. Appropriating County Funds to Privately Chartered Fire Service

This request concerns funding and provision of fire service within unincorporated areas of a county. The first question is whether a county may appropriate county general funds to a privately incorporated not-for-profit fire service under Tenn. Code Ann. § 5-9-101(23), or any other statute, to permit the not-for-profit fire service to provide county-wide fire service in the unincorporated areas of the county. Tenn. Code Ann. § 5-9-101(23) provides:

> The county legislative body may appropriate moneys as follows:
>
> * * * *
>
> (23) To nonprofit volunteer fire departments or to nonprofit county-wide fire departments authorized by § 5-17-101, upon such terms as may be agreed to by the county legislative bodies[.]

Further information from the requestor affirms that the service in question is a privately incorporated not-for-profit fire service, not a county-wide fire department formed as an agency of the county under Tenn. Code Ann. § 5-17-101 for the purpose of providing fire protection services to all of the county. The funding limits placed on funding of county-wide fire departments created under that statutory scheme, therefore, do not apply in this case. Thus, the county commission may appropriate county general funds to a privately incorporated not-for-profit volunteer fire service on such terms as it may specify.

2. Donation of assets

The next question is whether a county may donate equipment that was acquired with county general funds or bonds payable from county general funds, to a privately chartered not-for-profit volunteer fire department that provides county-wide fire service in the unincorporated areas of the county. By its terms, Tenn. Code Ann. § 5-9-101(23) applies to "moneys" and not to property like fire equipment. But Tenn. Code Ann. § 12-3-1010 provides:

> (a) Notwithstanding any other provision of law, a county, municipality and metropolitan government may transfer the ownership of assets for fire protection *purchased through or with the proceeds of federal, state or local grants* to volunteer fire departments within such county, municipality or metropolitan area; provided, that such volunteer fire departments are registered as non-profit organizations with the office of the secretary of state.

> (b) This section shall have no effect in a county, municipality or metropolitan area unless it is approved by the appropriate legislative body.

(Emphasis added). Presumably, the term "local grant" would include a grant from the county itself. Under this section, therefore, a county is authorized to purchase fire equipment with county funds and transfer it to a non-profit volunteer fire service registered as a non-profit organization with the Office of the Secretary of State.

No statute, however, authorizes a county to donate property financed with general obligation debt to a privately chartered not-for-profit fire service. Under Tenn. Code Ann. §§ 9-21-101, *et seq.*, local governments may issue debt to finance a "public works project." The term "public works project" includes "*fire department* equipment and buildings." Tenn. Code Ann. § 9-21-105(21)(A)(emphasis added). The term "fire department" implies a department that is part of the local government. That equipment, therefore, would be owned and operated by the local government. Further, no provision of this statutory scheme authorizes a local government to finance property to be given away to a non-governmental entity like a privately chartered corporation.

3. Joint Agreement with Cities

The next question is whether a city and county may enter into an agreement permitting the county to fund fire service in the unincorporated portions of the county in a manner not permitted by Tenn. Code Ann. §§ 5-17-101, *et seq.* Of course, the legality of any agreement would depend on its particular terms. But Tenn. Code Ann. §§ 5-17-101, *et seq.* is not the exclusive method by which a county may provide for fire service. Tenn. Code Ann. § 5-1-118 confers broad powers on counties. Under subsection (a), counties, by resolution of the county commission, "in addition to other powers authorized by general law or private act," may exercise the powers conferred in several statutory schemes. These powers include powers of cities incorporated under the mayor-aldermanic charter to "[m]ake contracts with any person, firm, association or corporation for public utilities and public services to be furnished the municipality and those in the municipality." Tenn. Code Ann. § 6-2-201(13). Under this provision, a county is expressly authorized to contract with any organization to provide public services in the county. Further, under Tenn. Code Ann. §§ 12-9-101, *et seq.*, local governments are authorized to enter into interlocal agreements to provide public services. Any funding by the county under the agreement would still have to be statutorily authorized.

4. Effect of Invalid Provision

The last question concerns the effect of an invalid provision in an agreement between the city and the county. The question is whether, assuming the county is not authorized to enter into an agreement with a city to fund fire service in a manner not authorized under Tenn. Code Ann. §§ 5-17-101, *et seq.*, the agreement would be void or voidable. As discussed above, this statutory scheme would not apply so long as the county has not formed a county-wide fire department. To that extent, therefore, this question is moot. Any agreement by the county to act beyond its statutory authority would be void and unenforceable. *Crocker v. Manchester,* 179 Tenn. 67, 156 S.W.2d 383 (1941);

Gray v. City of East Ridge, 641 S.W.2d 204 (Tenn. Ct. App. 1982), *p.t.a. denied* (1982). But whether the invalidity of any particular provision would void the entire agreement with the city would depend on the terms of the contract and the facts and circumstances, including the parties' intentions and the importance of that term to the entire agreement.

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