

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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September 11, 2007

Opinion No. 07-134

Funding Volunteer Fire Service: Clarification

QUESTION

Does Tenn. Code Ann. § 5-9-101(23) authorize a county to appropriate funds to a privately incorporated, independently operated not-for-profit volunteer fire department that provides county-wide fire service in the unincorporated areas of the county?

OPINION

Yes. To the extent earlier opinions of this Office, including Op. Tenn. Att’y Gen. 97-141 (October 14, 1997) and Op. Tenn. Att’y Gen. 93-53 (August 9, 1993) conflict with this conclusion, they are withdrawn. On the other hand, a county may not avoid the limits of Tenn. Code Ann. §§ 5-17-101, *et seq.*, by providing service through a privately chartered not-for-profit corporation that it controls. Whether a county actually controls a volunteer fire service would depend on specific facts and circumstances, including the county’s authority to appoint the head of the service and otherwise supervise the organization.

ANALYSIS

This opinion is a clarification of Op. Tenn. Att’y Gen. 07-087 (June 5, 2007). That opinion states, in part, that Tenn. Code Ann. § 5-9-101(23) expressly authorizes a county to appropriate county general funds to a privately incorporated not-for-profit volunteer fire service. The request cites several previous opinions of this Office for the proposition that, under Tenn. Code Ann. § 5-9-101(23), a county may only appropriate county general funds to a not-for-profit fire department that is not operated on a county-wide basis. Op. Tenn. Att’y Gen. 97-141 (October 14, 1997); Op. Tenn. Att’y Gen. 93-53 (August 9, 1993); Op. Tenn. Att’y Gen. U92-127 (October 30, 1992). These opinions note that Tenn. Code Ann. §§ 5-17-101, *et seq.*, provide the only authority for a county to directly supply county-wide fire service.

These opinions, however, do not clearly distinguish between a county fire department organized and operated by the county under Tenn. Code Ann. §§ 5-17-101, *et seq.*, and an independently chartered and operated not-for-profit fire service that provides service county-wide. Tenn. Code Ann. §§ 5-17-101, *et seq.*, refer to a county-wide fire department operated directly by the county. These statutes do not refer to an independently chartered and operated volunteer fire service. On the other hand, a county may not avoid the limits of Tenn. Code Ann. §§ 5-17-101, *et*

seq., by providing county-wide fire service through a privately chartered not-for-profit corporation that it controls. Whether a county actually controls a volunteer fire service would depend on specific facts and circumstances, including the county's authority to appoint the head of the service and otherwise supervise the organization.

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