

STATE OF TENNESSEE

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Opinion No. 07-163

Personnel Transfers in Sheriff's Office — Follow-up to Op. Tenn. Att'y Gen. 07-106

QUESTIONS

1. Until recently, Blount County operated under the Local Option Budgeting Law of 1993, Tenn. Code Ann. §§ 5-12-201, *et seq.*, and the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.* The Sheriff's Office operates under the County Sheriff's Civil Service Law of 1974, Tenn. Code Ann. §§ 8-8-401, *et seq.* Under Tenn. Code Ann. § 8-8-412, the Civil Service Board in the Sheriff's Office may, upon the request and advice of the Sheriff, "create new positions or combine, alter or abolish existing positions in such manner as the board acting under the advice of the sheriff deems necessary for the effective operation of the office of sheriff. No position in the classified service shall be abolished except upon approval of the board acting in good faith upon the advice of the sheriff." When the Sheriff transferred the school resource officers from the school resource office division to other divisions within the Sheriff's Office, should the Sheriff have requested budget transfers from the Budget Committee, set up under the Financial Management Act of 1981, in order for the employees' pay to have been directed out of the school resource office cost center to the new divisions in which they were working?

2. Blount County no longer operates under the Local Option Budgeting Law of 1993 and now operates under the County Budgeting Law of 1957, Tenn. Code Ann. §§ 5-12-101, *et seq.* What steps must the Sheriff take to have such transfers approved under this law?

OPINIONS

1. Assuming that the separate divisions within the Sheriff's Office represent major appropriation categories, then the Sheriff should have requested approval for the transfers from the Budget Committee for its recommendation to the County Mayor or county legislative body, or both, for approval. If the divisions were not major appropriation categories, the Sheriff should have requested approval for the transfers from the Budget Committee. The Budget Committee could approve the transfers or, if it failed to approve them, they could have been approved by a majority vote of the County Commission.

2. Assuming that the separate divisions within the Sheriff's Office represent major appropriation categories, then the Sheriff should request approval for such transfers from the Budget Committee for its recommendation to the County Mayor or county legislative body, or both, for approval. The requested amendment is not effective unless approved by the Blount County

Commission. If the divisions are not major appropriation categories, the Sheriff should request approval for the transfers from the Budget Committee. The Budget Committee may approve the transfers or, if it fails to approve them, they may be approved by a majority vote of the County Commission.

ANALYSIS

1. Personnel Transfers between Divisions

This opinion concerns matters originally discussed in Op. Tenn. Att’y Gen. 07-106 (July 12, 2007). That opinion addresses transfer of county funds between major appropriation categories as a result of personnel adjustments in the Sheriff’s civil service system. That opinion concerned a county operating under the Local Option Budgeting Law of 1993, Tenn. Code Ann. §§ 5-12-201, *et seq.*; the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.*; and the County Sheriff’s Civil Service Law of 1974, Tenn. Code Ann. §§ 8-8-401, *et seq.* In Opinion 07-106, we concluded that, under the applicable statutes, such transfers must be submitted to the committee exercising the functions of the Budget Committee, set up under the Financial Management Act of 1981, for its recommendation to the County Mayor and the county legislative body. The amendment must be approved by the county legislative body.

This request addresses a specific factual situation. This opinion relies on the facts as presented in the request. The request indicates that the Sheriff transferred school resource officers from the school resource office division to work in other divisions within the Sheriff’s Office. The request asks whether the Sheriff should have requested approval from the Budget Committee in order for the transferred officers’ pay to be directed out of the school resource office cost center to the new divisions where they were working.

As discussed in Opinion 07-106, under Tenn. Code Ann. § 5-21-113, or Tenn. Code Ann. § 5-9-407, as modified by subsection (e)(2)(B), the Sheriff must submit a request for transfers of county funds between major appropriation categories as a result of personnel adjustments in the Sheriff’s civil service system to the Budget Committee for its recommendation to the County Mayor or county legislative body, or both, for approval. The County Mayor may also make a recommendation to the county legislative body with respect to the amendment. The requested amendment is not effective unless approved by the County Commission. Assuming that the separate divisions within the Sheriff’s Office represent major appropriation categories, then the Sheriff should have requested approval for the transfers from the Budget Committee for its recommendation to the County Mayor or county legislative body, or both, for approval.

If the divisions were not major appropriation categories, the Sheriff should have requested approval for the transfers from the Budget Committee. The Budget Committee could approve the transfers or, if it failed to approve them, they could have been approved by a majority vote of the County Commission. Tenn. Code Ann. § 5-21-113, within the County Financial Management Act of 1981, provides in relevant part:

(a) The appropriations made by the county legislative body shall constitute authorization for the expenditures contained therein unless otherwise limited by the county legislative body.

* * * *

(d) No expenditures made or obligations created in any manner shall be valid or binding against the county except as provided by the provisions of this chapter.

(e)(1) The budget committee, with the consent of any official, head of any department or division that may be affected, may make transfers and adjustments within the smallest budgetary itemization of any subdivision.

(2) Any other transfers or adjustments shall be submitted to the budget committee for its recommendation to the county legislative body.

(Emphasis added). The County Financial Management Act of 1981 must also be read in conjunction with Tenn. Code Ann. § 5-9-407. This statute sets forth procedures for amending a county budget and applies in most counties, except those counties that exempted themselves from its provisions by the adoption of a resolution by December 31, 1991. Tenn. Code Ann. § 5-9-407(e)(1). The statute includes alternative methods for adopting budget amendments to line items within a major category of the budget. The first does not apply to amounts budgeted for personnel costs. Tenn. Code Ann. § 5-9-407(c)(1)(A). Under Tenn. Code Ann. § 5-9-407(c)(2):

(A) The second alternative method of approval of any line item amendment, including, but not limited to, any line item amendment that in any way affects amounts budgeted for personnel costs, is by approval by a budget committee created by law or a budget committee of the county legislative body appointed by the county legislative body to approve budget amendments.

(B) Prior to any budget committee's approval, the official or department head of the affected office or department shall make a written amendment request specified by the committee to include the information outlined in subdivisions (b)(1)-(3). If the budget committee fails to approve such an amendment request, the amendment request may be approved by a majority vote of the county legislative body, but may not be approved by the county mayor pursuant to subdivision (c)(1).

Subsection (e)(2)(B) of the statute provides:

In any county subject to the provisions of this section that is under the provisions of chapter 21 of this title, in addition to the requirement of this section, an official or department head shall submit a budget request to the budget committee for its

recommendations to the county mayor or county legislative body, or both, for approval.¹

2. Budget Revisions under the County Budgeting Law of 1957

The request states that Blount County no longer operates under the Local Option Budgeting Law of 1993. Instead, Blount County now operates under the County Budgeting Law of 1957, Tenn. Code Ann. §§ 5-12-101, *et seq.* The second question is what steps the Sheriff must take to accomplish the same budget transfers now that Blount County operates under Tenn. Code Ann. §§ 5-12-101, *et seq.*

The County Budgeting Law of 1957 applies in counties that have adopted it. Tenn. Code Ann. § 5-12-103. Tenn. Code Ann. § 5-12-104 establishes a budget committee. Under Tenn. Code Ann. § 5-12-106(d), each county agency must file a detailed estimate of its requirements from county funds for the next fiscal year with the director of accounts and budgets. Under Tenn. Code Ann. § 5-12-107, the Budget Committee reviews and adopts the annual budget. The budget must conform to the uniform classification of accounts established by the director of accounts and budgets. This law, however, does not address changes to a budget once it has been adopted.

The Blount County Commission has also adopted the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.* Once this law is ratified, all conflicting private or local acts relative to county finances, budgeting, and purchasing are suspended. Tenn. Code Ann. § 5-21-128. As we discussed in Opinion 07-106, this law must be read in conjunction with Tenn. Code Ann. § 5-9-407. Under these laws, the Sheriff must submit a request for transfers of county funds between major appropriation categories to the Budget Committee for its recommendation to the County Mayor or county legislative body, or both, for approval. The County Mayor may also make a recommendation to the county legislative body with respect to the amendment. The requested amendment is not effective unless approved by the County Commission. Thus, assuming that the separate divisions within the Sheriff's Office represent major appropriation categories, the Sheriff must request approval for the transfers from the Budget Committee, set up under the Financial Management Act of 1981, for its recommendation to the County Mayor or county legislative body, or both, for approval. As discussed above in the answer to Question 2, if the divisions are not major appropriation categories, the Sheriff should request approval for the transfers from the Budget Committee. The Budget Committee may approve the transfers or, if it fails to approve them, they may be approved by a majority vote of the County Commission.

¹Subparagraph (e)(2)(A) states that, “[i]n any county that has a private act *or has adopted chapter 12 of this title*, this section is *supplemental authority* for an amendment to the budget.” (Emphasis added). While Blount County has adopted chapter 12, it is now operating under Chapter 21. Subparagraph 5-9-407(e)(2)(B), therefore, governs the effect of the statute in Blount County.

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