S T A T E O F T E N N E S S E E
OFFICE OF THE
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March 24, 2008

Opinion No. 08-64

Application of Public Records Act to Municipal Airport Authority

QUESTIONS

1. Whether records of the Sumner County Regional Airport Authority are subject to public inspection under the Tennessee Public Records Act?

2. If so, may the Authority meet its responsibilities under the Act by directing a citizen requesting copies of minutes of the Authority to the County Clerk's office where such minutes are on file?

3. If the Authority partially responds to a request made in November and December of 2007, but declines to fully respond prior to a March 24, 2008 meeting, are such actions appropriate under the Public Records Act?

4. If requested, is the Authority required to provide copies of records under the Act?

OPINIONS

1. Yes.

2. To the extent that requested public records are in the custody or control of the Sumner County Airport Authority, it is required to make those records available for inspection during normal business hours and cannot avoid its obligations under the Public Records Act by directing a citizen to another governmental agency that may also have copies of the requested records.

3. Based upon the facts and circumstances presented to us, we think that a court could find the Authority's refusal to respond to the November and December 2007 public records requests to constitute a denial of those requests in an action brought pursuant to Tenn. Code Ann. § 10-7-505.

4. Yes.

ANALYSIS

1. The Office of Open Records Ombudsman has received a complaint from a citizen concerning several public records requests made to the Sumner County Regional Airport Authority ("Authority"). The records that have been requested are: charter/certificate of incorporation; by-laws; minutes from meetings from October 1999 through November 2007, and audio tapes of meetings in 2006 (October, November and December) and in 2007 (January, February, March, April, August and September). According to the information provided, the Authority has taken the position that, to the extent it is subject to the Public Records Act, it has provided all the information requested by directing the citizen to the Sumner County Clerk.

Your first question asks whether the records of the Authority are subject to public inspection under the Public Records Act. Tennessee's Public Records Act provides in pertinent part as follows:

> Except as provided in § 10-7-504(f), all state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Tenn. Code Ann. § 10-7-503(a). The Act provides that it is to be broadly construed in favor of public access. *See* Tenn. Code Ann. § 10-7-505(d). While the Act does not define what constitutes a public record, the Tennessee Supreme Court has held that the proper test is "whether [the record] was made or received pursuant to law or ordinance or in connection with the transaction of official business by *any governmental agency*." *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991) (emphasis added). Moreover, while the language of Tenn. Code Ann. § 10-7-503(a) states that "all state, county and municipal records" shall be open for inspection, Tennessee courts have broadly construed this provision to include any governmental department, board, or agency. *Id*. For example, in *Cleveland Newspapers, Inc. v. Bradley County Memorial Hospital Board of Directors*, 621 S.W.2d 763 (Tenn. Ct. App. 1981), *p.t.a. denied* (1981), the Tennessee Court of Appeals addressed the issue of whether the records of a county hospital were subject to the Public Records Act. The Court noted that the hospital had its genesis in the state legislature, is financed by public funds, is governed by a board whose members are appointed by the municipality and serve without pay, is entitled to governmental immunity in tort actions, and administers to the sick in the community which is a governmental function. The Court held that since the hospital met all of the criteria necessary to be considered an arm of the state carrying on a governmental function, its records were encompassed within the provisions of Tenn. Code Ann. § 10-7-503 and subject to public inspection. *Id*. at 766-767. In addition, the Tennessee Supreme Court has held that records in the hands of a private entity that operates as the functional equivalent of a governmental agency are public records for purposes of the Act. *See Memphis Publishing Company v. Cherokee Children & Family Services, Inc.*, 87 S.W.3d 67 (Tenn. 2002).

Accordingly, if the Sumner County Regional Airport Authority is either a governmental agency of Sumner County, or a private entity operating as the functional equivalent of a

governmental agency, then all records made or received by the Authority pursuant to law or ordinance or in connection with the transaction of official business are public records that are subject to inspection under the Public Records Act. According to the information provided, the Authority was established in 1981 pursuant to Resolution No. 1181-102 of the Sumner County Commission in accordance with the provisions of Section 42-3-103 of the Airport Authorities Act. Subsection (a) of the statute provides as follows:

> Any municipality may, by ordinance if a city or town, or by resolution if a county, create a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners of the authority, and the issuance of a certificate of incorporation by the secretary of state. Upon adoption of an ordinance or resolution, whichever is applicable, creating a municipal airport authority, the governing body of the municipality shall, pursuant to the ordinance or resolution, appoint at least five (5) and no more than eleven (11) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, but thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by the expiration of terms shall be filled for the unexpired term, in the same manner as the original appointments.

The Airport Authorities Act provides that the commissioners of an airport authority are to serve without compensation. Tenn. Code Ann. § 42-3-107(a).

The Act further provides that an authority shall have immunity in tort cases as do municipalities under the Municipal Airport Act (Tenn. Code Ann. § 42-5-122(c)). Tenn. Code Ann. § 42-3-108(a)(1)(D). *See also* Tenn. Code Ann. § 42-2-103(a). An airport authority is specifically given the ability to acquire property, or any interest in property, as well as any existing airports and air navigation facilities, by eminent domain proceedings. *See* Tenn. Code Ann. § 42-3-108(a)(3). All land and other property and privileges acquired and used by or on behalf of an authority are declared to be acquired and used for public and governmental purposes and as a matter of public necessity. Tenn. Code Ann. § 42-3-115. Accordingly, any property in this state acquired by an authority for airport purposes and any income derived by the authority from the ownership, operation or control of that property, is exempt from taxation to the same extent as other property used for public purposes. Tenn. Code Ann. § 42-3-116. An authority is also given the authority to issue bonds, which the Act declares "to be issued for an essential public and governmental purpose, and together with interest on the bonds and income from the bonds, shall be exempt from all taxes." Tenn. Code Ann. § 42-3-111.

Finally, the Airport Authorities Act specifically provides:

> The acquisition of any land, or interest in land, pursuant to this

> chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation and protection of airports, air navigation facilities and navigation easements, including the acquisition or elimination of airport hazards and the exercise of any other powers granted in this chapter to authorities and other public agencies, to be severally or jointly exercised, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

Tenn. Code Ann. § 42-3-115.

Based upon the holding in *Cleveland Newspapers, Inc. v. Bradley County Memorial Hospital, supra*, the Sumner County Regional Airport Authority is clearly a governmental agency for purposes of the Public Records Act. It was created in accordance with the provisions of the Airport Authorities Act, its governing body is appointed by the Sumner County Commission and serves without pay, it is entitled to governmental immunity in tort actions and, by statute, it exercises public and governmental functions. Accordingly, it is our opinion that the records of the Sumner County Airport Authority are public records subject to inspection under Tennessee's Public Records Act.[1]

2. Having determined that the records of the Authority are subject to inspection under the Public Records Act, your next question asks whether the Authority can meet its obligations under that Act simply by directing a citizen, who has requested copies of the minutes of the Authority, to the County Clerk's office where such minutes are on file. This Office has previously opined that Tennessee's Public Records Act requires that a records custodian make any public records in his or her custody or control available for inspection during normal business hours, unless a state law provides otherwise with respect to the openness of such records. *See* Op. Tenn. Att'y. Gen. 06-069 (April 12, 2006). Thus, to the extent that requested public records are in the custody or control of the Sumner County Airport Authority, it is required to make those records available for inspection during normal business hours and may not avoid its obligations under the Public Records Act by directing a citizen to another governmental agency that may also have copies of the requested records.

3. According to the information provided, public records requests were made in November and December of 2007. The Authority has partially responded to those requests by directing the citizen to the County Clerk's office to obtain copies of the Authority's minutes. The

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[1] We note that the records of the Authority would also be subject to public inspection under the Act under the "functional equivalent" standard enunciated by the Tennessee Supreme Court in *Memphis Publishing Co. v. Cherokee Children & Family Services*, 87 S.W.3d 67 (Tenn. 2002) ("[t]he cornerstone of this analysis, of course, is whether and to what extent the entity performs a governmental or public function"). Section 42-3-115 of the Airport Authorities Act specifically declares the functions exercised by an airport authority to be public and governmental functions. *See Allen v. Day*, 213 S.W.3d 244 (Tenn. Ct. App. 2006), *p.t.a. denied* (2006).

Authority has declined to respond to the rest of the public records request until after its meeting on March 24, 2008. You have asked whether these actions are appropriate under the Public Records Act. As discussed in the previous section, with respect to the minutes of the Authority, the Authority may not avoid its duties and obligations under the Public Records Act by directing a citizen to another governmental agency that may also have copies of the requested records.

With respect to the remainder of the records requested, to the extent that those records are in the custody or control of the Authority, the Public Records Act requires that it make those records available for inspection during normal business hours. *See* Tenn. Code Ann. § 10-7-503(a). A literal construction of this statute would require the Authority, or any other records custodian, to make any requested records immediately available for inspection during normal business hours, regardless of the age, size, and nature of the records requested. While courts are to construe the Public Records Act broadly so as to give the fullest possible public access to public records, they are also bound to interpret statutes so as not to lead to absurd results in specific factual situations. *Business Brokerage Ctr. v. Dixon*, 874 S.W.2d 1, 5 (Tenn. 1994). For example, where a request requires a review of records for confidential and privileged information, it would be absurd to require the governmental agency to make such records immediately available for inspection. A similar absurd result would follow from a request for immediate inspection of electronic records that would require the records custodian to write a new computer program to extract the requested records. *See Tennessean v. Electric Power Board of Nashville*, 979 S.W.2d 297 (Tenn. 1998). Thus, depending upon the specific facts and circumstances, a court could find an agency's failure to immediately make records available for public inspection not to be a denial in whole or in part of the public records request.

Here, the Authority has apparently declined to even respond to the public records request until after its meeting on March 24, 2008, although the requests were apparently made in November and December of 2007. The only basis for the Authority's refusal to respond to date appears to be a belief that its records are not subject to inspection under the Public Records Act. We would note that the Office of Open Records Ombudsman, which serves as an intermediary between citizens and local governmental entities with respect to access to public records, informed the Authority of its position that the Authority was subject to the Act in February 2008. Based upon these facts and circumstances, we think that a court could find the Authority's refusal to respond to the November and December 2007 public records requests to constitute a denial of those requests in an action brought pursuant to Tenn. Code Ann. § 10-7-505.

4. Your last question asks whether the Authority is required to provide copies of its records under the Public Records Act. Tenn. Code Ann. § 10-7-506(a) provides:

> In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of
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> the lawful custodian thereof or such custodian's authorized deputy;

> provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

Based upon the language of this provision, this Office has previously opined that, if requested, copies of any public records must be provided; however, the records custodian may require a charge or fee per copy that will cover the costs of producing such copies. *See* Op. Tenn. Att'y. Gen. 06-069; *see also Waller v. Bryan*, 16 S.W.3d 770 (Tenn. Ct. App. 1999), *p.t.a. denied* (2000).

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