

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
**PO BOX 20207**  
**NASHVILLE, TENNESSEE 37202**

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Opinion No. 08-193

Maintenance of Effort: State Grants for Libraries and Emergency Communications Boards

**QUESTIONS**

1. Is the Tennessee 911 Communications Board authorized to impose a “maintenance of effort” condition on financial aid and other benefits conferred on local 911 emergency communications boards?

2. Is the Secretary of State authorized to impose a “maintenance of effort” condition on a county participating in the State’s multi-county regional library program under Tenn. Code Ann. §§ 10-5-101, *et seq.*?

**OPINIONS**

1. We think a court would conclude that the Board may consider the county’s commitment to maintain support of a district when considering the district’s application for financial aid under Tenn. Code Ann. § 7-86-306(a)(11). Similarly, we think a court would conclude that the Board may reasonably consider a county’s commitment to maintain funding for an emergency communications district when considering whether to approve higher rates for that district under Tenn. Code Ann. § 7-86-306(a)(12).

2. The Secretary of State is authorized to impose this requirement as a condition for local libraries to remain part of the state regional library system. The Secretary is generally authorized to set minimum appropriation requirements for counties electing to be part of the regional library system under Tenn. Code Ann. § 10-5-101. The requirement ensures that local funds will “supplement” the funds the library will receive from state and federal resources as contemplated under Tenn. Code Ann. § 10-5-104(a).

**ANALYSIS**

1. Maintenance of Effort Requirement for Emergency Communications Boards

This opinion addresses the authority of two different state agencies to impose a “maintenance of effort” condition on the availability of state aid to local governments. The request does not define the term “maintenance of effort.” This opinion will assume the term

means that a local legislative body must provide local funding for an activity at the same level as the previous fiscal year as a condition for further state grants or other aid supporting that activity. This requirement ensures that state aid will supplement funding for the activity, rather than simply replace local funding.

The first question concerns the authority of the Tennessee Emergency Communications Board (the “Board”). The Board is established and operates under Tenn. Code Ann. §§ 7-86-301, *et seq.* The Board was established for the purpose of assisting emergency communications district boards of directors in the area of management, operations, and accountability. Tenn. Code Ann. § 7-86-302(a). The Board is authorized to exercise its powers and duties relative to all local emergency communications districts established pursuant to Tenn. Code Ann. §§ 7-86-101, *et seq.*, as well as those created under private acts. *Id.* This statutory scheme authorizes a city council or county commission to create an emergency communications district within all or part of the boundaries of the city or county. Voters within the boundaries of the proposed district must approve its creation. Tenn. Code Ann. § 7-86-104. A local emergency communications district may charge for services as authorized by the statute, but it may not levy or collect taxes. Tenn. Code Ann. § 7-86-106. Tenn. Code Ann. § 7-86-109 provides:

In order to provide additional funding for the district and the service, the governing body of the district may receive funds from federal, state and local government sources, as well as funds from private sources, including funds from the issuance of bonds, and may expend such funds for the purposes of this part. Any legislative body of a municipality or county creating a district under the terms of this chapter may appropriate funds to the district to assist in the establishment, operations and maintenance of such district.

Under Tenn. Code Ann. § 7-86-306(a)(11), the state Board has authority to:

Respond to requests from emergency communications districts, commercial mobile radio service (CMRS) providers or other parties and subject to availability of funds, review and approve requests for reimbursements for expenditures or payment of obligations incurred to implement, operate, maintain, or enhance statewide wireless enhanced 911 service in conformance with any rules or orders of the FCC, and other federal and state requirements that pertain to wireless enhanced 911 service.

We think a court would conclude that the Board may consider the county’s commitment to maintain support of a district when considering the district’s application for financial aid under this statute. The “maintenance of effort” requirement ensures that the aid will fund improved service, rather than replace county funding.

The Board is also authorized to raise emergency telephone service charges of a local emergency communications district. Tenn. Code Ann. § 7-86-306(a)(12). This statute provides:

In order to effectuate the purposes of this part, the board has the power and authority to:

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Raise the emergency telephone service charge rates of an individual emergency communications district up to the maximum established in § 7-86-108(a)(2)(A); *provided, that the district meets financial and operational criteria established by the board in consultation with the comptroller of the treasury[.]*

(Emphasis added). The Board addresses rate increases under this statute in its amended Policy 14. Under this Policy, an emergency communications district requesting an initial increase must submit an application to the Board. Paragraph 7 of Policy 14 provides:

7. In the application packet, the ECD [emergency communications district] shall include an interlocal agreement with each local governmental entity that contributes facilities, resources and/or income of any kind to the ECD or receives such from the ECD, ***in which such entity agrees that in exchange for the added or continued service that will be facilitated by the Emergency Communications Board's approval of an increase to the emergency telephone service charge within the ECD, the local governmental entity will not decrease its contribution to the ECD below the maximum amount it contributed during the prior fiscal year;***

(Emphasis added). This provision is footnoted as follows:

This requirement is evidentiary. The fact that a district is unable to obtain such an agreement will be considered as part of the rate increase information, but will not, in and of itself, preclude a district from receiving a rate increase, so long as the district provides evidence of its attempt to comply with this requirement.

Every three years following the Board's decision to increase rates, the emergency communications district must file a report that includes a current copy of applicable interlocal agreements. Policy 14, Paragraph 16.6. We think a court would conclude that the Board may reasonably consider a county's commitment to maintain funding for an emergency communications district when considering whether to approve higher rates for that district under Tenn. Code Ann. § 7-86-306(a)(12). Maintenance of county support ensures that the increased rates will fund improvements in district service, rather than replace county funding.

## 2. Maintenance of Effort by County in Regional Library Program

The second question is whether a county may be required to support its library at a minimal level as a condition for receiving state library grants. Tenn. Code Ann. §§ 10-1-101, *et seq.*, authorize the Secretary of State, acting through the Division of Public Libraries and Archives, to collect library materials, distribute state publications, and encourage library

development throughout the state. Tenn. Code Ann. § 10-1-104. Tenn. Code Ann. §§ 10-5-101, *et seq.*, govern the creation of regional library boards. Tenn. Code Ann. § 10-5-101 provides in relevant part:

Two (2) or more counties that have qualified for participation in the state's multi-county regional library program and that have been recognized as a region by the secretary of state ***and have made the minimum local appropriation of funds that may now or hereafter be required by the secretary of state***, are empowered and authorized to execute contracts with each other to create a regional library board to assist the secretary of state, acting through the division of public libraries and archives, in administering and controlling the regional library services within the region.

(Emphasis added). Cities within the county may participate in the regional library services after the governing body of a county authorizes participation, and so long as the county participates. *Id.* Tenn. Code Ann. § 10-5-104(a) provides:

The county legislative bodies and municipal governing bodies of counties and cities which have signed agreements for regional library services are authorized to make available to the secretary of state, acting through the division of public libraries and archives, such funds as may be deemed necessary to ***supplement the funds received by the regional library through state and federal resources***. Such funds shall be expended only for the library service for which the county or city agreed in writing and for no other purpose.

(Emphasis added). Thus, local libraries that are part of the regional library system receive funds from state and federal sources. The Secretary of State, acting through the Division of the Tennessee State Library and Archives, requires local governments where local libraries are part of the regional library system to sign an annual Public Library Maintenance of Effort Agreement. The first paragraph of an example agreement states:

The Office of the Secretary of State, Tennessee State Library and Archives, Regional Office is hereby notified that public funds were appropriated and expended in the fiscal year just completed. This amount will be matched or exceeded during the current fiscal year.

The Secretary of State is authorized to impose this requirement as a condition for local libraries to remain part of the state regional library system. The Secretary is generally authorized to set minimum appropriation requirements for counties electing to be part of the regional library system under Tenn. Code Ann. § 10-5-101. The requirement ensures that local funds will “supplement” the funds the library will receive from state and federal resources as contemplated under Tenn. Code Ann. § 10-5-104(a).

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ROBERT E. COOPER, JR.  
Attorney General and Reporter

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MICHAEL E. MOORE  
Solicitor General

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ANN LOUISE VIX  
Senior Counsel

Requested by:  
Honorable Mike Harrison  
State Representative  
206-A War Memorial Building  
Nashville, Tennessee 37243-0109