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Opinion No. 09-125

County Commission Authority over Equipment and Personnel in Elected Officials' Offices

QUESTIONS

1. Does a county commission in a non-charter county have the authority to set policy regarding:

a. the assignment and use of any equipment of an independently elected county-wide official, or

b. any policy affecting personnel of an independently elected county-wide official?

2. Does a county commission in a charter county have the authority to set policy regarding:

a. the assignment and use of any equipment of an independently elected county-wide official, or

b. any policy affecting personnel of an independently elected county-wide official?

OPINIONS

1. A definitive answer to this question depends on the facts and circumstances, including the specific official, the policy involved, and any applicable private acts.

a. In general, statutes governing the following county officers do not expressly authorize the county commission to set policy regarding the assignment and use of any equipment in the offices of these officers: county mayor, assessor, clerk, sheriff, trustee, and register. Of course, the county commission must appropriate funds for the use and operation of any of these officials' offices. Tenn. Code Ann. § 5-9-401. The extent to which the commission may directly or indirectly regulate the use of equipment in individual officers' offices through its budgeting authority would depend on the facts and circumstances and the applicable budget process within the county.

b. Under Tenn. Code Ann. § 5-23-103(a), county officials, including the county trustee, register of deeds, clerk, sheriff, and assessor, are required to adopt base personnel policies as defined in the statute. If the county official fails to adopt base personnel policies, or discontinues them, employees of the county official are governed by the base personnel policies adopted by the county mayor and the county legislative body under Tenn. Code Ann. § 5-23-103(d). The county mayor may adopt separate base personnel policies applicable to the employees of the county mayor's individual office. Tenn. Code Ann. § 5-23-103(e). Otherwise, the statutes governing these county officials do not appear to authorize the county commission to set policy affecting personnel in the office of an independently elected county official. Depending on the facts and circumstances, personnel in these offices could be subject to general county policies governing the retirement system and other employee benefits the county finances.

2. a. and b. The authority of the county legislative body in a charter county to supervise an independently elected county-wide official would be governed by the county charter.

ANALYSIS

1. Authority of County Commission over Independently Elected Officers in Non-charter Counties

This opinion concerns the authority of a county commission with regard to independently elected county-wide officers in non-charter counties and in counties chartered under Tenn. Code Ann. §§ 5-1-201, *et seq.* The request asks about the authority of the county commission to set policy regarding, first, the assignment and use of any equipment of an independently elected county-wide official, or, second, any policy affecting personnel of an independently elected county-wide official. Of course, a definitive answer to this question depends on the facts and circumstances, including the specific official, the policy involved, and any applicable private acts. For the purposes of answering the request, we assume that the term "independently elected county-wide official" refers to the individual officers listed in Article VII, Section 1, of the Tennessee Constitution. These officers are the county mayor, assessor, clerk, sheriff, trustee, and register.

We have reviewed the statutes governing county commissions, Tenn. Code Ann. §§ 5-5-101, *et seq.*; the county mayor, Tenn. Code Ann. §§ 5-6-101, *et seq.*; the sheriff, Tenn. Code Ann. §§ 8-8-101, *et seq.*; the county trustee, Tenn. Code Ann. §§ 8-11-101, *et seq.*; the county register, Tenn. Code Ann. §§ 8-13-101, *et seq.*; the county clerk, Tenn. Code Ann. §§ 18-6-101, *et seq.*; and the county assessor, Tenn. Code Ann. §§ 67-1-501, *et seq.* None of these statutes expressly authorizes a county commission to set policy regarding the assignment and use of any equipment in the offices of these independently elected county officials. Of course, the county commission must appropriate funds for the use and operation of any of these officials' offices. Tenn. Code Ann. § 5-9-401. The extent to which the commission may directly or indirectly regulate the use of equipment in individual officers' offices through its budgeting authority would depend on the facts and circumstances and the applicable budget process within the county.

The second question concerns the authority of a county commission to set policy affecting the personnel of an independently elected county officer. Tenn. Code Ann. §§ 5-23-101, *et seq.*, govern adoption of personnel policies in most counties. Under Tenn. Code Ann. § 5-23-103(a) county officials, including the county trustee, register of deeds, clerk, sheriff, and assessor, are required to adopt base personnel policies as defined in the statute. If the county official fails to adopt base personnel policies, or discontinues them, employees of the county official are governed by the base personnel policies adopted by the county mayor and the county legislative body under § 5-23-103(d). The county mayor may adopt separate base personnel policies applicable to the employees of the county mayor's individual office. Tenn. Code Ann. § 5-23-103(e). Further, the statute explicitly provides that elected officials retain their authority to make decisions and adopt policies that are not in conflict with the statutory scheme. Tenn. Code Ann. § 5-23-108.

Otherwise, the statutes governing these county officials do not appear to authorize the county commission to set policy affecting personnel in the office of an independently elected county official. Depending on the facts and circumstances, personnel in these offices could be subject to general county policies governing the retirement system and other employee benefits that the county finances.

2. County Legislative Body Authority in Charter Counties

The second question is whether the county commission in a charter county is authorized to set policy regarding, first, the assignment and use of any equipment of an independently elected county-wide official, or, second, any policy affecting the personnel of an elected county official. Under Article VII, Section 1, Paragraph 3, of the Tennessee Constitution, the General Assembly may provide alternate forms of county government. The new form of government, if approved by a majority of the voters in a referendum, replaces the existing form. Counties are authorized to adopt a charter form of government under Tenn. Code Ann. §§ 5-1-201, *et seq.* Tenn. Code Ann. § 5-1-202(a) provides:

> After adoption of a charter pursuant to this part, no right, power, duty, obligation or function of any officer, agency or office of such county shall be retained and continued unless this part or the charter of such county expressly so provides, or unless such retention and continuation be required by the Constitution of Tennessee.

Tenn. Code Ann. § 5-1-203(a) and (b) provide:

> (a) Each county in this state may adopt a charter form of government as provided in this part.
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> (b) Such charter when complete shall result in the creation and establishment of an alternate form of county government *to perform all the governmental and corporate functions previously performed by the county.*

(Emphasis added). Tenn. Code Ann. § 5-1-210 describes the required contents of a county charter. Under this statute, the charter must provide:

> (3) For a county legislative body, which shall be the legislative body of the county and shall be given all the authority and functions of the legislative body of the county being chartered, with such exceptions and with such additional authority as may be specified elsewhere in this part;
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> (5) For the assignment of administrative and executive functions to officers of the county government, which officers may be given, subject to such limitations as may be deemed appropriate or necessary, all or any part of the administrative and executive functions possessed by the county being chartered and such additional powers and duties, not inconsistent with general law or the Constitution of Tennessee;
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> (12) That the duties of the constitutional county officers as prescribed by the general assembly shall not be diminished under a county charter form of government; provided, that such officers may be given additional duties under such charters.

The Tennessee Supreme Court has concluded that a charter adopted under this statutory scheme must either retain the constitutional county officers listed in the first paragraph of Article VII, Section 1, or otherwise assign their duties to another office, agency, or official. *Jordan v. Knox County*, 213 S.W.3d 751, 774 (Tenn. 2007). We think a court would conclude that, under Tenn. Code Ann. §§ 5-1-201, *et seq.*, a county charter may authorize the county legislative body to supervise or control county officers without regard to the general statutes governing the county commission and independently elected county officers in counties that have not adopted a charter form of government, so long as it provides for the services and functions those officers provide under general law. For this reason, the authority of the county legislative body in a charter county to supervise an independently elected county-wide official would be governed by the county charter.

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