

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 09-128

Donation of Real Property by Emergency Communications District

QUESTIONS

1. May an Emergency Communications District (“ECD”) created pursuant to Title 7, Chapter 86, of the Tennessee Code donate real property to a county government?
2. If not, must the real property be sold or transferred for fair market value?

OPINIONS

1. No. Because the assets of an ECD are devoted solely to providing emergency communications, it may not donate its real property to a county for use for other purposes.
2. Yes. If an ECD desires to dispose of real property, that property must be transferred for fair market value.

ANALYSIS

1 The powers of an Emergency Communications District are set forth in various provisions in Title 7, Chapter 86, Part 1, of the Tennessee Code. Tenn. Code Ann. § 7-86-106 provides, in part:

The emergency communications district so created shall be a “municipality” or public corporation in perpetuity under its corporate name, and the district shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes.

An ECD, therefore, is comparable to other entities that are municipalities or public corporations, such as a metropolitan government. Tenn. Code Ann. § 7-2-108. Unlike a metropolitan government, however, an ECD is not expressly granted the power “of selling, leasing or disposing of property, real and personal, to the same extent as other governmental entities.” Tenn. Code Ann. § 7-2-108. Unlike a sports authority created under Title 7, Chapter 67, an ECD lacks the express authority to “[s]ell, exchange, donate, and convey any or all of its properties” provided by Tenn. Code Ann. § 7-67-109(12), or the similar authority granted to public building authorities under Tenn. Code Ann. § 12-10-109(10).

The authority of an ECD to own property arises by implication in provisions other than the one establishing an ECD as a municipality and public corporation. Tenn. Code Ann. § 7-86-114(a) refers to the ECD's use of bonds "for the purpose of constructing, acquiring, reconstructing, improving, bettering or expanding any facility or service authorized by this part." Tenn. Code Ann. § 7-86-117 provides that an ECD "and all properties at any time owned by it . . . shall be exempt from all taxation in the state of Tennessee." Tenn. Code Ann. § 7-86-120(6) requires from an ECD a "statement of pending capital projects and proposed new capital projects." These provisions contemplate the ECD's use of the funds it receives to purchase, among other things, real property. Given the general mandate to the ECD to provide emergency communications service in the area in which it is located, it can be inferred that such purchases of real property are intended to be for the purpose of providing emergency communications service, namely, through the purchase of land and erection of buildings for emergency communications facilities.

Accordingly, an ECD has the implied authority to purchase and own real property. Although the ECD lacks express authority to sell real property, such authority can be inferred to the extent necessary for the ECD to carry out its duties. The law restricts an ECD's use of its funds, however. Tenn. Code Ann. § 7-86-102(d) provides:

It is the intent that all funds received by the district are public funds and are limited to purposes for the furtherance of this part. The funds received by the district are to be used to obtain emergency services for law enforcement and other public service efforts requiring emergency notification of public service personnel, and the funds received from all sources shall be used exclusively in the operation of the emergency communications district.

In addition, Tenn. Code Ann. § 7-86-108(e) provides that "revenues from the tariffs authorized in this section shall be used for the operation of the district and for the purchases of necessary equipment for the district."

This Office has stated that funds received by an ECD are not to be used for purposes other than those authorized by Title 7, Chapter 86. *See* Op. Tenn. Att'y Gen. No. 94-007 (Jan. 13, 1994); Op. Tenn. Att'y Gen. No. 95-064 (June 19, 1995). In Op. Tenn. Att'y Gen. No. 95-064, this Office opined that an ECD "may only dispose of surplus equipment by selling it for fair market value." In Op. Tenn. Att'y Gen. No. 08-193 (Dec. 29, 2008), this Office stated that the Tennessee Emergency Communications Board "may reasonably consider a county's commitment to maintain funding for an emergency communications district under Tenn. Code Ann. § 7-86-306(12)." This Office explained that "[m]aintenance of county support ensures that the increased rates will fund improvements in district service, rather than replace county funding."

The provisions governing ECDs make no distinction between an ECD's powers related to personal property and those related to real property. For the reasons stated above and in Op. Tenn. Att'y Gen. No. 95-064, an ECD may dispose of real property only by selling it for fair market value. Outright donation or sale for less than fair market value would amount to

diverting the ECD's funds to uses other than those for which the ECD was created and would violate Tenn. Code Ann. §§ 7-86-102(d) and 7-86-108(e).

2. As stated above, an ECD may dispose of real property only by selling it for fair market value.

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