

**STATE OF TENNESSEE**  
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July 31, 2009

Opinion No. 09-140

County Emergency Agency Establishing Secondary Emergency Operating Center

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**QUESTION**

May the director of a county emergency management agency formed under Tenn. Code Ann. § 58-2-110 establish a secondary emergency operating center under Tenn. Code Ann. § 58-2-110(3)(A)(iii), if the county mayor has approved the measure but the county commission has not? Assume that the emergency center will be paid for by the city where it is located, and not the county.

**OPINION**

General laws setting forth the respective powers of the county commission and the county mayor do not clearly answer this question. A definitive answer would depend, first, on any applicable private acts or county charter and, second, on facts and circumstances. Where the decision to open a second emergency center would affect the county emergency plan or the emergency agency's general operations, for example, we think a court would conclude that the county commission must approve an emergency management agency's decision to establish a secondary emergency operating center, even if the city where the center is operated will pay for it.

**ANALYSIS**

This opinion concerns the authority of a county emergency management agency to establish a secondary emergency operating center. Tenn. Code Ann. § 58-2-110(1)(A) provides:

In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of this chapter, each county within this state shall be within the jurisdiction of and served by TEMA [the Tennessee Emergency Management Agency]. Except as otherwise provided in this chapter, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to subdivision (3)(b) which is recognized by the governor by executive order or rule, each *county* must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and

consistent with the TEMP [Tennessee Emergency Management Plan] and program.

(Emphasis added). The General Assembly recently amended (1)(B) of the statute to provide:

Each county emergency management agency created and established pursuant to this chapter shall have a director who shall be appointed by the CLEO and, if required, approved by the governing body of the county. The director must meet the minimum training and education qualifications established in a job description developed by the CLEO and approved by the governing body of the county. The director's annual salary shall be fixed by the governing body of the county. Each CLEO shall promptly inform TEMA of the appointment of the director and other personnel. Each director has direct responsibility for the organization, administration, and operation of the county emergency management agency, subject only to the direction and control of the CLEO and shall serve as liaison to TEMA and other local emergency management agencies and organizations.

Tenn. Code Ann. § 58-2-110(1)(B) (as amended by 2009 Tenn. Pub. Acts ch. 110). The term, "CLEO" means the chief local elected official. Tenn. Code Ann. § 58-2-101(2). Tenn. Code Ann. § 58-2-110(3)(A) provides in relevant part:

In carrying out the provisions of this chapter, *each political subdivision* has the power and authority to:

\* \* \* \*

(iii) Establish, as necessary, a primary and one (1) or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations[.]

(Emphasis added). The request asks whether, in light of the recent amendment, a county emergency management agency may establish a secondary emergency operating center with the approval of the county mayor, but not the approval of the county commission. The request specifies that the city where the operating center is located, rather than the county, will pay for the center. The statute, by its terms, authorizes the "political subdivision" to take this action. It does not specify which county agency -- the emergency management agency, the county mayor, or the county commission -- must authorize the action. Many of the other measures included in the statute would, clearly, have to be undertaken by the county commission. For example, Tenn. Code Ann. § 58-2-110(3)(A)(i) includes the power to appropriate and expend funds. The county commission appropriates county funds for use by county agencies. Tenn. Code Ann. § 5-9-401. But neither the general laws governing county commissions, Tenn. Code Ann. §§ 5-5-101, *et seq.*, nor those governing county mayors, at Tenn. Code Ann. §§ 5-6-101, *et seq.*, clearly delineate their respective powers in this situation. The question then becomes whether establishing a secondary emergency operating center is within the authority of the county mayor or is a legislative decision that must be approved by the county commission.

The legislative history of the 2009 amendment indicates that it was not intended to give the county mayor sole authority over all emergency agency decisions. When the House passed

the act, Representative Shipley, who sponsored the bill, had the following conversation with Rep. Maddox.

Maddox: Thank you, Mr. Speaker, can you tell us, would the gentleman yield?

Shipley: I will.

Maddox: Can you tell us what, what does this bill change?

Shipley: I will. Very good. This is a coordinated piece of legislation that was coordinated between the county commissioners' association and county mayors' association. It clarifies the law; there's some ambiguity in the law right now as it's written that suggests it's possible that twenty-seven commissioners could show up on the scene and have command and control authority over the EMA [emergency management agency]. This simply codifies the existing practice of putting the county mayor in charge.

Maddox: So there is, I, from the previous questioner's question, I took it that this had nothing to do with the scene; it had more to do with the administration and the day to day working of the emergency management system. But from what you're telling me, it has more to do with the scene, is that correct?

Shipley: No. I'm just responding to your question in a broad category. *This has nothing to do with them coming to the scene. It has everything to do with administrative control and line of communication, and so on and so forth; it clearly establishes the county mayor as the man in charge.*

Maddox: So right now the law is ambiguous, and you could not tell really whether it would be the county commission that would be over the director or the county mayor would be over your director, *and your bill says the county mayor, and if required, will get the approval of the county commission, but the chain of command is emergency director to county mayor.*

Shipley: *That is exactly correct, sir.*

Maddox: Okay. Thank you.

House Session, April 9, 2009 (remarks of Rep. Shipley and Rep. Maddox) (emphasis added). Thus, the act was not intended to give the county mayor sole authority over all decisions of the emergency management agency.

In this case, whether county commission approval is required before the emergency agency may open a secondary operating center would depend, first, on any applicable private act or county charter and, second, on facts and circumstances. For example, the statutory scheme makes the "county" responsible for developing an emergency plan. We think this statute requires the county commission to develop or approve the emergency plan. Where the decision

to open a second emergency center would affect the county emergency plan or the emergency agency's general operations, we think a court would conclude that the county commission must approve an emergency management agency's decision to establish a secondary emergency operating center, even if the city where the center is operated will pay for it.

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