STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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November 30, 2009

Opinion No. 09-182

Exemption To Metropolitan Nashville-Davidson County's Graduated Storm Water User Fees

QUESTIONS

1. Whether a resident of the Metropolitan Government of Nashville and Davidson County (Nashville), which charges a graduated storm water user's fee pursuant to Tenn. Code Ann. § 68-221-1107, shall be required to pay such fee if the resident's storm water runoff is not discharged into or through storm water or flood control facilities of the municipality?

2. Whether a resident of Nashville, which charges a graduated storm water user's fee pursuant to Tenn. Code Ann. § 68-221-1107, shall be required to pay such fee if the resident's storm water runoff is discharged into agricultural land, whose storm water runoff is discharged solely into a river?

3. What remedies are available to a person who is required to pay the storm water user's fee whose storm water runoff is not discharged into or through storm water or flood control facilities?

OPINIONS

1.&2. Under Tenn. Code Ann. §§ 68-221-1101 to -1113, Nashville is authorized to regulate storm water discharges, operate storm water and flood control facilities, and set a graduated storm water user fee. A statutory exemption "from payment of the graduated storm water user fee" is provided in Tenn. Code Ann. § 68-221-1107(a). If storm water runoff discharged onto agricultural land and into a river "is not discharged into or through the storm water or flood control facilities, or both, of the municipality," then it is the opinion of this Office that this fee exemption would apply. Tenn. Code Ann. § 68-221-1107(a).

3. If a resident thinks that Nashville has erroneously determined that the user fee exemption does not apply, the available remedy to the resident is to appeal that decision to the city's Stormwater Management Committee. As provided in the municipal code, an appeal may be taken to the Committee within sixty days after the Nashville Department of Water and Sewerage Services "issues a bill for storm water fees indicating that an applicable exemption has not been recognized." Metropolitan Gov't of Nashville and Davidson County, Code § 15.64.032(G)(a).

ANALYSIS

1.&2. As this Office discussed in a prior opinion, the General Assembly enacted Tenn. Code Ann. §§ 68-221-1101 to -1113 in response to federal regulation addressing municipal separate storm sewer system discharges. *See* Tenn. Op. Att'y Gen. No. 09-147 (Aug. 4, 2009) (copy attached). This state law authorizes municipalities "to regulate [storm water] discharges," "to construct and operate a system of drainage facilities for storm water management and flood control," and "to fix and require payment of fees for the privilege of discharging storm water." Tenn. Code Ann. § 68-221-1101.[1] Municipalities are empowered to adopt by "ordinance . . . a system of fees for services and permits." Tenn. Code Ann. § 68-221-1105(a)(2). Specifically, municipalities may set a "graduated storm water user's fee . . . based on actual or estimated use of the storm water and/or flood control facilities of the municipality." Tenn. Code Ann. § 68-221-1107(a). Nashville has adopted an ordinance establishing graduated storm water user fees. *See* Metropolitan Gov't of Nashville and Davidson County, Code § 15.64.032(B).

A statutory exemption "from payment of the graduated storm water user fee" is provided in Tenn. Code Ann. § 68-221-1107(a). The fee exemption applies to "[p]ersons, including, but not limited to, owners and operators of agricultural land, whose storm water runoff is not discharged into or through the storm water or flood control facilities, or both, of the municipality." *Id.*[2] If storm water runoff discharged onto agricultural land and into a river is not discharged into or through the storm water or flood control facilities, or both, of Nashville, then it is the opinion of this Office that this fee exemption would apply.

3. If a resident thinks that Nashville has erred in determining the applicability of a user fee exemption, the municipal code provides a remedy to the resident in the form of an administrative appeal. "Appeals relating to exemptions shall be taken to the stormwater management committee within sixty days after the department [of water and sewerage services] issues a bill for stormwater fees indicating that an applicable exemption has not been recognized." Metropolitan Gov't of Nashville and Davidson County, Code § 15.64.032(G)(a).[3] The decision of the Stormwater Management Committee is "final, subject however, to such remedy as any aggrieved party or the metropolitan government may have at law or in equity." Metropolitan Gov't of Nashville and Davidson County, Code § 15.64.100(C).

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[1] A "municipality" is defined in this law as "any incorporated city or town, county, metropolitan or consolidated government, or special district empowered to provide storm water facilities." Tenn. Code Ann. § 68-221-1102(3).

[2] In its storm water fee ordinance, Nashville provides a fee exemption based on Tenn. Code Ann. § 68-221-1107(a) as well as other fee exemptions. *See* Metropolitan Gov't of Nashville and Davidson County, Code § 15.64.032(C).

[3] The Stormwater Management Committee consists of five members and two alternates appointed by the Nashville mayor. Three of the members and one alternate are registered civil engineers; the other two members and alternate are laypersons from the community at large. *See* Metropolitan Gov't of Nashville and Davidson County, Code § 15.64.040.

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