

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

February 9, 2011

Opinion No. 11-15

Appointment of Planning Director

QUESTIONS

Chapter 701 of the Public Acts of 2010 (“Public Chapter 701”) rewrote Tenn. Code Ann. § 13-3-103 governing regional planning commissions. As amended, the statute provides in part:

Any provision relating to the appointment of a planning director contained in any metropolitan or county charter or private act or interlocal agreement must be used in appointing a planning director. In the absence of such a provision, the county mayor, county executive or metropolitan mayor or executive shall, in accordance with § 5-6-106(c), have the authority to appoint a planning director

Chapter 360 of the Private Acts of 1972 (“Private Chapter 360”) creates a county planning commission in Carter County, and Section 2 of this act states in part:

The commission may appoint such employees and staff as it may deem necessary for its work, and may contract with county planners and other consultants for such services as it may require.

1. Is this sentence in Private Chapter 360 a “provision relating to the appointment of a planning director” within the meaning of Tenn. Code Ann. § 13-3-103?
2. If the answer to Question 1 is no, is the county mayor or executive authorized to appoint a planning director?
3. Under either the private act or Tenn. Code Ann. § 13-3-103, is the planning director of a regional planning commission an employee-at-will subject to removal by the appointing authority?

OPINIONS

1. It is the opinion of this Office that the sentence quoted above from Private Chapter 360 is a “provision relating to the appointment of a planning director” within the meaning of Tenn. Code Ann. § 13-3-103.
2. Because of our answer to Question 1, Question 2 is moot.

3. Yes. Neither the private act nor the general law provides for a term of office for the planning director. In the absence of such a provision, the planning director of a regional planning commission is an employee-at-will subject to removal by the appointing authority.

ANALYSIS

1. This opinion concerns application of recent amendments to Tenn. Code Ann. § 13-3-103 to the planning commission created in Carter County by Chapter 360 of the Private Acts of 1972 (“Private Chapter 360”). Tenn. Code Ann. §§ 13-3-101, *et seq.*, govern regional planning commissions. Chapter 701 of the Public Acts of 2010 (“Public Chapter 701”) rewrote Tenn. Code Ann. § 13-3-103. The new statute provides in part:

Any provision relating to the appointment of a planning director contained in any metropolitan or county charter or private act or interlocal agreement must be used in appointing a planning director. In the absence of such a provision, the county mayor, county executive or metropolitan mayor or executive shall, in accordance with § 5-6-106(c), have the authority to appoint a planning director[.]

Tenn. Code Ann. § 13-3-103 (emphasis added). Private Chapter 360 created a county planning commission in Carter County. Although the act was amended in 1975 by Private Chapter 46 and in 1993 by Private Chapter 47, Section 2 of Private Chapter 360 is still in effect, and it provides:

The commission shall elect its chairman from among the appointive members. The term of chairman shall be one (1) year with eligibility for reelection. The commission shall adopt rules for the transactions, findings and determinations, which record shall be a public record. ***The commission may appoint such employees and staff as it may deem necessary for its work, and may contract with county planners and other consultants for such services as it may require.*** The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the quarterly county court.

(emphasis added). The first question is whether Private Chapter 360 contains a “provision relating to the appointment of a planning director” within the meaning of Tenn. Code Ann. § 13-3-103, as amended by Public Chapter 701.

As an initial matter, it is not clear whether Tenn. Code Ann. §§ 13-3-101, *et seq.*, were intended to apply to county planning commissions created by private act. Tenn. Code Ann. § 13-3-101(a) authorizes the Department of Economic and Community Development to create and establish regional planning commissions. The members of a regional planning commission for a single-county regional planning commission are appointed by the county mayor, subject to confirmation by the county commission. Tenn. Code Ann. § 13-3-101(i)(1). The statutory scheme nowhere directly addresses how it applies to a county planning commission formed by a private act. Public Chapter 701 also amended Tenn. Code Ann. § 13-4-102 regarding municipal planning commissions. That statutory scheme appears to apply only to planning commissions established by a city. In 1983, the Tennessee Court of Appeals found unconstitutional a private act creating a county planning commission in Blount County. *Alcoa v. Blount County*, 658 S.W.

2d 116 (Tenn. Ct. App. 1983), *p.t.a.* denied (1983). The Court concluded that the private act conflicted with Tenn. Code Ann. §§ 13-3-101, *et seq.*, (then codified at Tenn. Code Ann. §§ 13-101, *et seq.*) The Court found that this act was a mandatory general law, and that there was no rational basis to suspend it in Blount County. Under this case, Private Chapter 360 could well be found unconstitutional for the same reasons. At the same time, however, the General Assembly expressly acknowledges and maintains private acts in its 2010 amendment by Public Chapter 701 to Tenn. Code Ann. § 13-3-103. Thus it appears that the General Assembly has recognized the continuing validity of private acts governing planning commissions.

The legislative history of Public Chapter 701 does not address the scope of the sentence concerning appointment of a planning director. Representative Turner sponsored the bill in the House of Representatives. He explained it as follows:

Currently under law, the state law, this deals with planning commissions and appointment of the planning director. Under current law, it gives the planning commission the authority to do that. In actuality, it's the chief executive officer of the county who's been doing it. What this does is simply reverses that, puts it in law, that the county executive or the county mayor can make those hires and oversee the function of the county planning commission. That's what the bill does. Mr. Speaker, pending any further questions, I move passage.

House Session March 15, 2010 (remarks of Representative Turner). Thus, Public Chapter 701 amended the general law to reflect what had become a common practice among planning commissions. But, to the extent that Tenn. Code Ann. § 13-3-103 applies to a county planning commission created by private act, then Private Chapter 360 contains a provision “relating to the appointment of a planning director” within the meaning of the statute. The term “relate” means “[t]o have connection, relation, or reference.” *American Heritage Dictionary* (2d Coll. Ed. 1985); *Friedman v. Hannan*, 412 Md. 328, 987 A.2d 60, 66 (Md. Ct. App. 2010) (the ordinary meaning of “relate” is the existence of a connection between two subjects, not that the two subjects need be the same). While Section 2 of Private Chapter 360 does not expressly provide for the appointment of a planning director, it does authorize the county planning commission to appoint “such employees and staff as it may deem necessary for its work.” The term “employees and staff” would include a planning director if the commission deems a director to be necessary for its work. For this reason, Section 2 of Private Chapter 360 is a “provision relating to the appointment of a planning director” within the meaning of Tenn. Code Ann. § 13-3-103.

2. Question 2 asks whether the county mayor or executive is authorized to appoint a planning director under Tenn. Code Ann. § 13-3-103, assuming that the answer to Question 1 is no. Because our answer to Question 1 is yes, then question 2 is moot.

3. The last question is whether, under either the private act or Tenn. Code Ann. § 13-3-103, the planning director of a regional planning commission is an employee-at-will subject to removal by the appointing authority. Neither the private act nor the general law provides for a term of office for the planning director. In the absence of such a provision, the planning director

of a regional planning commission is an employee-at-will subject to removal by the appointing authority.

ROBERT E. COOPER, JR.
Attorney General and Reporter

CHARLES L. LEWIS
Deputy Attorney General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Kent Williams
State Representative
Suite G-4 Legislative Plaza
Nashville, Tennessee 37243