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Opinion No. 11-63

Changes to the Tennessee Corrections Institute's Minimum Standards for Local Correctional Facilities

QUESTIONS

1. Does the board of control of the Tennessee Corrections Institute ("TCI") have the authority, by majority vote, to replace the current minimum standards for local correctional facilities with the American Correctional Association's core jail standards?

2. Can the TCI revise, change, delete or adopt new minimum standards for local correctional facilities without complying with the Uniform Administrative Procedures Act (UAPA)?

OPINIONS

1. Yes, the board of control of the TCI has the authority to replace the current TCI minimum standards for local correctional facilities with the American Correctional Association's core jail standards. However, in so doing, the board must adopt, pursuant to Tennessee Code Annotated § 41-4-140(f), the minimum standards required by the American Correctional Association's performance-based standards for adult local detention facilities, as amended by the 2008 standards supplement, with regard to the standards for the square footage of cells in new and existing local correctional facilities.

2. Changes to the TCI minimum standards for local correctional facilities must comply with the rule-making provisions of the UAPA.

ANALYSIS

1. The TCI is governed by a board of control consisting of the governor or the governor's designee, the commissioner of correction, the chairs of the departments of criminal justice at Tennessee State University and Middle Tennessee State University, an employee of the department of correction, and two sheriffs appointed by the governor. Tenn. Code Ann. § 41-7-105.

The TCI has the power and duty to establish minimum standards for local jails, lock-ups, and workhouses, including but not limited to standards for physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates, and standards for the

safekeeping, health and welfare of inmates. Tenn. Code Ann. § 41-4-140(a). The standards "shall approximate, insofar as possible, those standards established by the inspector of jails, federal bureau of prisons, and by the American Correctional Association's manual of correctional standards, or such other similar publications as the institute deems necessary[.]" *Id.* In 2009 this statute was amended to provide specifically which standard must be adopted with regard to the square footage of cells. 2009 Tenn. Pub. Acts 242; Tenn. Code Ann. § 41-4-140(f).

The American Correctional Association (ACA) is a resource upon which TCI may rely in establishing jail standards. ACA currently publishes numerous manuals of standards covering a variety of types of adult and juvenile facilities and programs. *See ACA Agency Manual of Accreditation Policy and Procedure* (rev. Sept. 2007), p. 9, *available at* https://www.aca.org/standards/pdfs/accreditationpolicyprocedure.pdf. The manual of core jail standards was recently developed by the ACA in conjunction with several organizations including the American Jail Association and the National Sheriffs' Association, and is intended to be a national set of minimum jail standards. *See* Core Jails Standard Presentation, *available at* https://www.aca.org/standards/updates.asp; Core Jail Mandatory Standards, *available at* https://www.aca.org/standards/pdfs/corejailmandatorystandards.pdf. These standards cover areas of safety, security, administration, and care including health care, programs and activities. *Id.*

Accordingly pursuant to Tennessee Code Annotated § 41-4-140(a) the TCI board of control has the authority to replace the current TCI minimum standards for local correctional facilities with the American Correctional Association's core jail standards. The board however must adopt the minimum standards required by the American Correctional Association's performance-based standards for adult local detention facilities, as amended by the 2008 standards supplement, with regard to the standards for the square footage of cells in new and existing local correctional facilities. Tenn. Code Ann. § 41-4-140(f).

2. Any changes to the TCI minimum standards for local correctional facilities would be new "rules" under the UAPA and thus must comply with the rule-making provisions of the UAPA. A rule, by definition, includes the amendment or repeal of a prior rule. Tenn. Code Ann. § 4-5-102(12). The UAPA defines a "rule" as

> [E]ach agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:
>
> (A) Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;
>
> (B) Declaratory orders issued pursuant to § 4-5-223;
>
> (C) Intra-agency memoranda;
>
> (D) General policy statements that are substantially repetitious of existing law;
>
> (E) Agency statements that:

> (i) Relate to the use of the highways and are made known to the public by means of signs or signals; or
>
> (ii) Relate to the curriculum of individual state supported institutions of postsecondary education or to the admission or graduation of students of such individual institutions but not to the discipline or housing of students;
>
> (F) Rate filings pursuant to title 56, chapters 5 and 6; or
>
> (G) Statements concerning inmates of a correctional or detention facility[.]

Tenn. Code Ann. § 4-5-102(12).

The UAPA provides that rules must be promulgated by public notice. In addition, the Act requires a public hearing in certain circumstances, approval by the Attorney General, and filing with the Secretary of State. Tenn. Code Ann. §§ 4-5-202, -203, -206, -211. Failure to promulgate a rule in compliance with the UAPA renders the rule void. Tenn. Code Ann. § 4-5-216.

The TCI's establishment of minimum standards for local correctional facilities implements or prescribes law, and thus triggers the UAPA due process requirements of notice and hearing to those whose relationships with the government will be impacted by the adoption of such standards. Such persons or entities would include, but not be limited to, local officials responsible for the building and maintenance of these facilities, contractors charged with meeting these standards and the general public. The TCI's establishment of minimum jail standards does not fit within any of the exceptions of Tennessee Code Annotated § 4-5-102(12). Establishing jail standards does "impact private rights, privileges or procedures available to the public", Tenn. Code Ann. § 4-5-102(12)(A), and is more than a mere statement "concerning inmates of a correctional or detention facility", Tenn. Code Ann. § 4-5-102(12)(G). *See, e.g., Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 311-12 (Tenn. 2005); *Heritage Early Childhood Development Center, Inc. v. Tennessee Department of Human Services*, No. M2008-02134-COA-R3-CV, 2009 WL 3029595, at 5-7 (Tenn.Ct.App. 2009).

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