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Opinion No. 11-77

Coordinating Committee under Local Planning Law

QUESTIONS

Tennessee Code Annotated § 6-58-104 generally requires counties to develop and submit a growth plan for the county. The statute creates a coordinating committee made up of members selected by various interests to develop the growth plan. In the alternative, where the local legislative bodies agree, a different entity may develop the plan.

1. Are members of a coordinating committee required to be residents of the county or municipality that is subject to the growth plan proposed by the committee?

2. Is the coordinating committee authorized to reject appointments to its membership?

3. Does any other official, board, or committee have the authority to reject appointments to the coordinating committee?

OPINIONS

1. A city or county mayor or member of the county legislative body that serves on a coordinating committee must be a resident of the city or county as a qualification for that local office. Otherwise a coordinating committee member is not required to be a resident of the county or city subject to the growth plan proposed by the committee.

2. The coordinating committee is not authorized to reject members appointed to the committee under Tennessee Code Annotated § 6-58-104(a). If the legislative bodies choose a different entity to develop the plan under Tennessee Code Annotated § 6-58-104(a)(9)(B), membership of that entity would be governed by the charter or agreement that created it.

3. The designee of the county or city mayor under Tennessee Code Annotated § 6-58-104(a)(1)(A) and (B) must be confirmed by the legislative body, although a member of the county legislative body may serve as the county mayor's designee subject to confirmation. The legislative body of the county or any municipality, therefore, may reject the designee of the county or municipality's mayor. No statute, however, authorizes any other official, board, or committee to reject an individual who has been appointed to the committee. If the legislative bodies choose a different entity under Tennessee Code Annotated § 6-58-104(a)(9)(B), membership of that entity would be governed by the charter or agreement that created it.

ANALYSIS

This opinion addresses several questions about membership in a coordinating committee created by Tennessee Code Annotated § 6-58-104. That statute creates within each county a coordinating committee charged with developing a countywide growth plan or amending an existing plan. The committee is composed of the following members:

> (A) The county mayor or the county mayor's designee, to be confirmed by the county legislative body; provided, that a member of the county legislative body may serve as such designee subject to such confirmation;
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> (B) The mayor of each municipality or the mayor's designee, to be confirmed by the municipal governing body;
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> (C) One (1) member appointed by the governing board of the municipally owned utility system serving the largest number of customers in the county;
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> (D) One (1) member appointed by the governing board of the utility system, not municipally owned, serving the largest number of customers in the county;
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> (E) One (1) member appointed by the board of directors of the county's soil conservation district, who shall represent agricultural interests;
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> (F) One (1) member appointed by the board of the local education agency having the largest student enrollment in the county;
>
> (G) One (1) member appointed by the largest chamber of commerce, to be appointed after consultation with any other chamber of commerce within the county; and
>
> (H) Two (2) members appointed by the county mayor and two (2) members appointed by the mayor of the largest municipality, to assure broad representation of environmental, construction and homeowner interests.

Tenn. Code Ann. § 6-58-104(a)(1).

Subsection (a)(9)(A) of the same statute provides for a different membership of the coordinating committee in a county that meets certain population qualifications. Subsection (a)(9)(B) also allows the county and all impacted municipalities to create an entity other than the coordinating committee to perform the duties of the committee, stating:

> Instead of the coordinating committee created pursuant to subdivision (a)(1), if the county legislative body and the governing body of each municipality located therein all agree that another entity shall perform the duties assigned by this chapter to the coordinating committee, then *such other entity shall perform such*

> *duties of the coordinating committee,* and such coordinating committee shall not be created or continued, as the case may be.

Tenn. Code Ann. § 6-58-104(a)(9)(B). (Emphasis added).

The coordinating committee is an important component of the process whereby local governments establish their comprehensive growth plans. The coordinating committee was originally required to submit a recommended growth plan for ratification to the county legislative body and the governing body of each municipality within the county by no later than January 1, 2000. Tenn. Code Ann. § 6-58-104(2)(4). The respective county or municipalities were then required to ratify or reject the recommended growth plan by a date certain. Tenn. Code Ann. § 6-58-104(4)-(5).

If the plan was rejected by the county or any municipality, then the coordinating committee was required to reconsider its action and submit a revised growth plan. If a consensus could not be obtained between all involved parties on a revised growth plan, the county or any municipality could declare an impasse, thereby triggering a dispute resolution process through the Tennessee Secretary of State. Tenn. Code Ann. § 6-58-104(b).

The growth plan ultimately adopted through this process was required to be submitted for consideration and approval (or revision) to the local government planning advisory committee established by Tennessee Code Annotated § 4-3-727, by no later than July 1, 2001. Tenn. Code Ann. § 6-58-104(c). Absent extraordinary circumstances the plan ultimately approved would remain in effect for not less than three years. Tenn. Code Ann. § 6-58-104(d)(1).

At any time after the expiration of this three-year period, the growth plan could be amended as often as deemed necessary by the impacted county and cities. As part of the amendment process, the county mayor or county executive is required to reconvene or reestablish the coordinating committee to consider any proposed amendment. Tenn. Code Ann. § 6-58-104(d)(1). Thus coordinating committees play a continuing role in adjusting the growth plans of local governments.

1. The initial question raised is whether members of a committee created under the statute are required to be residents of the county or municipality that will be subject to the growth plan. The statute itself does not require any of the members of the committee to be a resident of a county or a city within the county for which the committee is to develop a growth plan.

However, the failure of this statute to require residency does not end the inquiry under Tennessee law. Tennessee statutes provide that a person holding a "public office" will vacate that office once the person ceases to be a resident of the state, or of the district, circuit, or county for which the office holder was elected or appointed. Tenn. Code Ann. § 8-48-101(3). Thus a city or county mayor or member of the county legislative body that serves on the coordinating committee must be a resident of the city or county as a continuing qualification to serve in the public offices of mayor or county commissioner.

The determination of any residency requirement for the remaining members of the coordinating committee depends on whether mere service as a member of the committee rises to the level of a "public office", thus triggering the residency requirement of Section 8-48-101(3). Tennessee law would not view such service as a "public office" under this statute for a number of reasons. The term "public officer" generally requires a set salary for a defined term of office, definite emoluments and defined duties fixed by statute. *Wise v. City of Knoxville*, 194 Tenn. 90, 93-94, 250 S.W.2d 29, 31 (1952). An office thus "embraces the ideas of tenure, duration, emolument, and duties." *State ex rel. Thompson v. Crump*, 134 Tenn. 121, 130-131, 183 S.W. 505, 507 (1916) (quoting *United States v. Hartwell*, 73 U.S. 385, 393 (1867)). To create a public office, the office must have some permanency and continuity and not be only temporary or occasional. *State ex rel. Lawson v. Farmer*, 189 Tenn. 276, 279, 225 S.W.2d 60, 61 (1949).

Utilizing these criteria, membership on a coordinating committee would not constitute an "office" within the meaning of Tennessee Code Annotated § 8-48-101. Members are not appointed to a specific term of office, nor do they receive any compensation for their services. The absence of both of these characteristics is indicative that a coordinating committee member does not hold a public office. Furthermore these members do not have broad defined duties, but instead are charged with carrying out a particular task over an indeterminate period of time. Thus, the county mayor or executive is required to "reconvene or reestablish" the coordinating committee after an amendment to an existing growth plan is proposed under Tennessee Code Annotated § 6-58-104(d)(1). Further, the county commission and city legislative bodies within the county may agree to choose a different entity from the coordinating committee described in subsection (a)(1) of Tennessee Code Annotated § 6-58-104 to develop the growth plan. The statute contains no membership requirements for this different entity. Finally, the coordinating committee simply adopts and submits a plan to the local governing bodies within the county. The plan is not effective until it is ratified by the local governing bodies within the county. For these reasons, membership on a coordinating committee is not an "office" within the meaning of Tenn. Code Ann. § 8-48-101. A committee member, therefore, need not be a resident of the city or county subject to the growth plan the committee proposes.

2. The second question is whether the coordinating committee is authorized to reject appointments to the committee. No statute confers such authority on the committee, and indeed the statute explicitly states the committee "shall" be composed of the members selected by various groups. Tenn. Code Ann. § 6-58-104(a)(1). *See also* Op. Tenn. Att'y Gen. No. 10-83 (June 21, 2010) (county mayor may not veto soil conservation district board's appointment to the coordinating committee). If the legislative bodies choose a different entity under Tennessee Code Annotated § 6-58-104(a)(9)(B), membership of that entity would be governed by the charter or agreement that created it.

3. The third question is whether any other official, board, or committee has the authority to reject appointments to the coordinating committee. The designee of the county or city mayor under Tennessee Code Annotated § 6-58-104(a)(1)(A) and (B) must be confirmed by the legislative body. The legislative body, therefore, may reject the mayor's designee appointed under the statute. No statute, however, authorizes any other official, board, or committee to reject an individual who has been appointed to the coordinating committee under Tennessee Code Annotated § 6-58-104(a). *See* Op. Tenn. Att'y Gen. No. 10-83 (June 21, 2010). If the

legislative bodies choose a different entity under Tennessee Code Annotated § 6-58-104(a)(9)(B), membership of that entity would be governed by the charter or agreement that created it.

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