

STATE OF TENNESSEE

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Opinion No. 12-15

Interlocal Agreements to Provide Cable Services

QUESTION

Under Tenn. Code Ann. § 7-52-601(a), each municipality may provide cable and internet service within the service area of its electric plant. Under the Interlocal Cooperation Act, local governments may enter into agreements for the joint exercise of their powers. Does this act authorize local governments to contract with one another to provide cable and internet services outside each local government's service area?

OPINION

Under the Interlocal Cooperation Act, municipal electric boards may contract with one another for the joint exercise of their authority to provide cable, video, and internet services within their service areas under Tenn. Code Ann. §§ 7-52-601 to -611. Each board must first meet the requirements of Tenn. Code Ann. § 7-52-601 with respect to its service area. Joint agreements among municipal electric boards must also be approved by the legislative body of each municipality whose electric board is a party to the agreement.

ANALYSIS

This opinion addresses the authority of municipal electric systems to enter into an agreement under the Interlocal Cooperation Act for the joint exercise of their authority to provide cable and internet service under Tenn. Code Ann. §§ 7-52-601 to -611. The Interlocal Cooperation Act is codified at Tenn. Code Ann. §§ 12-9-101 to -112 (the "Interlocal Act"). Section 12-9-104 provides in part:

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state, including those provided in § 6-54-307 or § 68-221-1107(b), may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority.... The authority for joint or cooperative action of political subdivisions shall apply to powers, privileges or authority vested in, funded by, and/or under the control of their governing bodies and relative to which the governing bodies may make other types of contracts. No joint or cooperative agreement shall be entered into affecting or relating to the constitutional or statutory powers, privileges or

authority of officers of political subdivisions, or of agencies of political subdivisions with a separate governing board and having powers granted by statute independent of the governing body....

(2) Agencies of political subdivisions that have governing boards separate from the governing bodies of the political subdivisions may make agreements for joint or cooperative action with other such agencies and with other public agencies. The power to make joint or cooperative agreements includes any power, privilege or authority exercised or that may be exercised by each of the agencies that is a party to the agreement. Agreements between agencies of political subdivisions that have separate governing boards and other such agencies and agreements between such agencies and public agencies shall substantially conform to the requirements of this chapter. The governing bodies of such political subdivisions shall require agreements made by their agencies pursuant to this chapter to be submitted to the governing body for approval before the agreements take effect.

Tenn. Code Ann. § 12-9-104(a)(1) & (2). The term “public agency” includes “[a]ny political subdivision of this state.” Tenn. Code Ann. § 12-9-103(3)(A). The term “local government entity” means “any city, town, municipality, county, including any county having a metropolitan form of government, local education agency, development district, utility district, human resource agency or *other political subdivision of this state.*” Tenn. Code Ann. § 12-9-103(1) (emphasis added).

A municipality operating an electric plant under Tenn. Code Ann. § 7-52-401 is authorized to provide cable, video, or internet services within its service area. Tenn. Code Ann. § 7-52-601(a). The service must be provided through the board or supervisory body having responsibility for the municipality’s electric plant. *Id.* The municipality may provide the service to its service area within its corporate or county limits and, with the consent of another county or city, to the municipality’s service area within the corporate or county limits of any other municipality. *Id.* The statute does list certain exceptions to this general authority, *see* Tenn. Code Ann. § 7-52-601(b)-(d), and also provides for a pilot project to allow a municipal electric system to provide these services beyond its service area, but not beyond the boundaries in which the system is principally located, *see* Tenn. Code Ann. § 7-52-601(e).

A municipal electric board that wants to provide these services must comply with the procedures described in Tenn. Code Ann. § 7-52-602. These requirements include filing a business plan with the Comptroller, who provides a written analysis of the feasibility of the business plan with the board, and the chief legislative body of the municipality in which the municipal electric system is located. *Id.* The electric board must publish a notice of its intent to proceed to offer the services and hold a public hearing on the issue. *Id.* Provision of the additional services must be approved by two-thirds vote of the legislative body or by a public referendum. *Id.*

The Interlocal Act also authorizes city and county electric boards to contract for the joint exercise of their authority to provide cable, video, and internet services under Tenn. Code Ann.

§§ 7-52-601 to -611. This authority is not negated by Tenn. Code Ann. § 12-9-104(a)(1), which provides in relevant part:

No joint or cooperative agreement shall be entered into affecting or relating to the constitutional or statutory powers, privileges or authority of officers of political subdivisions, or of agencies of political subdivisions with a separate governing board and having powers granted by statute independent of the governing body.

This provision does not prevent municipal electric boards from contracting for the joint exercise of powers that are explicitly conferred by the Interlocal Act. Instead, this language only limits a city or county legislative body from contracting with respect to the powers that a city or county board is statutorily authorized to exercise independently of the legislative body. *See* Op. Tenn. Att’y Gen. 90-96 (October 10, 1990) (city commission may not enter into a joint agreement with another city regarding the provision of police services, because the city charter confers those powers independently on the police department). Indeed, the first sentence of Tenn. Code Ann. § 12-9-104(a)(2) explicitly confirms this interpretation, stating:

Agencies of political subdivisions that have governing boards separate from the governing bodies of the political subdivisions may make agreements for joint or cooperative action with other such agencies and with other public agencies.

Thus, construing these statutes together, it is clear that municipal electric boards may contract with one another for the joint exercise of their authority to provide cable, video, and internet services within their service areas under Tenn. Code Ann. §§ 7-52-601 to -611. *See Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (stating the well established rule that statutes relating to the same subject matter shall be construed together to determine their purpose or intent). Of course, each board must first meet the requirements of Tenn. Code Ann. § 7-52-601 with respect to its service area. Joint agreements among municipal electric boards must also be approved by the legislative body of each municipality whose electric board is a party to the agreement. Tenn. Code Ann. § 12-9-104(a)(2).

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