**S T A T E O F T E N N E S S E E**
OFFICE OF THE
**ATTORNEY GENERAL**
**PO BOX 20207**
**NASHVILLE, TENNESSEE 37202**

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Opinion No. 12-53

Authority of the Tennessee Historical Commission

## QUESTION

Does Tenn. Code Ann. §§ 4-11-101 to -111 permit the Tennessee Historical Commission to contract with private organizations to pay for the publication of those organizations' magazines or journals related to Tennessee history, which circulate exclusively to the members of those organizations?

## OPINION

Tenn. Code Ann. § 4-11-103(b)(2) is sufficiently broad to authorize the Tennessee Historical Commission to pay for the publication of magazines or journals of private organizations related to Tennessee history, which circulate exclusively to the members of those organizations, given such publications concern "historical purposes."

## ANALYSIS

Tenn. Code Ann. §§ 4-11-101 to -111 create the Tennessee Historical Commission ("the Commission"). The Commission is granted various responsibilities regarding the evaluation, acquisition, preservation and operation of Tennessee historic property. Tenn. Code Ann. §§ 4-11-104, -107, -108 & -111. The Commission is also authorized to "[a]dminister funds made available from public sources for historical purposes." Tenn. Code Ann. § 4-11-103(b)(2).

The question posed is whether Tenn. Code Ann. § 4-11-103(b)(2), or any other statutory provision governing the Commission, permits the Commission to contract with private organizations to pay for the publication of these organizations' magazines or journals related to Tennessee history, which circulate exclusively to their members. The request states the Commission currently hires, or retains, an editor, and pays the printing and mailing costs for three historical journals published by the East Tennessee Historical Society, the Tennessee Historical Society, and the West Tennessee Historical Society. Per the request, each of those groups is a private organization, and the receipt of the groups' journals is the largest incentive for their members to pay dues.

Initially the Commission must have the requisite statutory authority to contract to pay for these publications. Tennessee law is well established that "the departments, agencies, and commissions of government have no inherent or common-law power of their own." *State ex rel.*

*Comm'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 768-69 (Tenn. Ct. App. 2001) (citing *General Portland Inc. v. Chattanooga Hamilton County Air Pollution Control Bd.*, 560 S.W.2d 910, 914 (Tenn. Ct. App. 1976)). Governmental agencies have only the powers expressly granted to them by statute and those powers "required by necessary implication to enable them to fulfill their statutory mandate." *Id.* at 769 (citing *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995)).

The Commission's enabling statutes include the power to "create such positions and employ such personnel as are deemed necessary to conduct its affairs" and to "[a]dminister funds made available from public sources for historical purposes." *See* Tenn. Code Ann. §§ 4-11-105 & -103(b)(2). In construing these statutes, the primary goal is to give effect to the purpose of the legislature without exceeding these statutes' intended scope. *Hayes v. Gibson County*, 288 S.W.3d 334, 337 (Tenn. 2009). When a statute is unambiguous, its meaning should be construed from the natural and ordinary meaning of the words chosen. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000).

By its plain language, Tenn. Code Ann. § 4-11-103(b)(2) broadly empowers the Commission to administer its funds with the sole restriction that the funds are used for a "historical purpose." Tennessee statutes and case law have not defined what constitutes a "historical purpose" in the context of Tenn. Code Ann. § 4-11-103(b)(2). In such cases, it is appropriate to refer to dictionary definitions to ascertain the natural meaning of the term "historical purpose." *See State v. Majors*, 318 S.W.3d 850, 859 (Tenn. 2010); *English Mountain Spring Water Co. v. Chumley*, 196 S.W.3d 144, 148 (Tenn. Ct. App. 2005). The term "historical" is commonly defined as "[o]f or relating to history; concerned with past events" and "[u]sed in or providing evidence of the past." *The American Heritage Dictionary*, 5th ed., located at http://ahdictionary.com/word/search.html?q=historical (last visited April 24, 2012).

The Commission's funding of journals of the West Tennessee Historical Society, East Tennessee Historical Society, and Tennessee Historical Society would serve a "historical purpose." Each of these journals identifies its mission as discussing and preserving Tennessee's state history.[1]

Accordingly, the Commission is statutorily authorized to administer funds available from public sources for the publication and distribution of these journals.[2]

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[1] *See* The East Tennessee Historical Society, www.easttnhistory.org/content.aspx?article=1220&parent=1219 (last visited April 20, 2012) (the Journal of East Tennessee History is a publication of the East Tennessee Historical Society that promotes an interest in an appreciation of the history of Tennessee and the Appalachian South); The West Tennessee Historical Society, http://wths-tn.org/publications-and-papers (last visited April 20, 2012) (the West Tennessee Historical Society accepts and publishes in its papers articles pertaining to historical events in West Tennessee and the Mid-South); The Tennessee Historical Society, www.tennesseehistory.org/publications.htm (last visited April 20, 2012) (the Tennessee Historical Society publishes the Tennessee Historical Quarterly which chronicles the history of the state).

[2] This opinion need not address whether Tenn. Code Ann. § 4-11-103(b)(2) requires that the "historical purpose" relate solely to Tennessee history, given the three journals in question all concern Tennessee history.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

MARTHA A. CAMPBELL
Deputy Attorney General

Requested by:

Honorable Jim Summerville
State Senator
301 Sixth Avenue North
Nashville, TN 37243