

**STATE OF TENNESSEE**

OFFICE OF THE  
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Opinion No. 12-70

Municipal Electric System Providing Internet and Video Programming

**QUESTION**

May the governing board of a municipal electric system that has been authorized to provide Internet and video programming services, pursuant to Tenn. Code Ann. §§ 7-52-601 to -611, enter into contracts with financial institutions to borrow money to acquire, construct, and provide working capital for Internet and video programming systems and services and to pledge non-electric assets to secure such loans, as is done by private entities providing such services?

**OPINION**

Yes. Once the municipal legislative body has authorized its municipal electric system to provide Internet and video programming services under Tenn. Code Ann. §§ 7-52-601 to -611, the governing board of the system may exercise “all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States, the state of Tennessee or applicable municipal ordinances” as provided in Tenn. Code Ann. § 7-52-605. These powers include entering into contracts with financial institutions to borrow money to acquire, construct, and provide working capital for Internet and video programming systems and services and pledging non-electric assets to secure such loans.

**ANALYSIS**

This opinion concerns the scope of authority of the governing board of a municipal electric system that has been authorized to provide Internet and video programming systems and services under Tenn. Code Ann. §§ 7-52-601 to -611. Tenn. Code Ann. § 7-52-601(a) permits each municipality operating an electric plant described in § 7-52-401 to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, Internet services, or any other like system, plant, or equipment within or without the corporate or county limits of such municipality and, with the consent of such other municipality, within the corporate or county limits of any other municipality.

The municipality may only provide these services through its board or supervisory body having responsibility for the municipality’s electric plant. Tenn. Code Ann. § 7-52-601(a).

Subsections (c) and (d) restrict this power in certain municipalities where particular entities are already providing this service. Tenn. Code Ann. § 7-52-601(c) & (d).

The statute grants the following powers to municipal electric systems providing such services:

To the extent that it provides any of the services authorized by this part, *a municipal electric system* shall have all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States, the state of Tennessee or applicable municipal ordinances.

Tenn. Code Ann. § 7-52-605 (emphasis added).

The question posed is whether the governing board of the municipal electric system may, independently of the municipal governing body, enter into contracts with financial institutions to borrow money to acquire, construct and provide working capital for Internet and video programming systems and services and to pledge non-electric assets to secure such loans, as may be done by private entities providing such services. This Office recently addressed a similar question regarding the provision of telecommunication services under Tenn. Code Ann. §§ 7-52-401 to -410. Op. Tenn. Att’y Gen. 12-34 (March 12, 2012). That opinion concludes that the governing body of the city, county, or metropolitan government must authorize the governing body with responsibility for the municipal electric plant to exercise any authority with regard to those services. *Id.*

Under Tenn. Code Ann. § 7-52-602, the governing body of a municipal electric system must obtain the approval of the chief legislative body in which the municipal electric system is located before the system may provide Internet and video programming services.<sup>1</sup> Under Tenn. Code Ann. § 7-52-602(4), “[a] municipal electric system may provide additional services only after approval by a two-thirds (2/3) majority vote of the chief legislative body of the municipality in which the municipal electric system is located, or by a public referendum held pursuant to subdivision (5).” Under subsection (5), the chief legislative body of the municipality in which the municipal electric system is located may, by a majority vote, authorize a public referendum on whether the electric system may provide the additional services. Tenn. Code Ann. § 7-52-602(5).

Once the legislative body approves the additional services, the municipal electric system may, independently, exercise “all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States, the state of Tennessee or

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<sup>1</sup> Tenn. Code Ann. § 7-52-602(1) and (2) require the board, initially, to submit a detailed business plan regarding such services to the Comptroller of the Treasury. The Comptroller has sixty days to provide a written analysis of the plan. Under 2005 Tenn. Pub. Acts, ch. 362, the General Assembly placed a moratorium on further authorization by the Comptroller until February 1, 2006, “at which time the general assembly shall receive and consider the comptroller’s report described in subsection (c).” Tenn. Code Ann. § 7-52-605(d). Subsection (c) required the Comptroller to submit a report evaluating operations of systems providing these services on or before June 30, 2005. Tenn. Code Ann. § 7-52-605(c). The Comptroller’s report recommended that the statutory authority continue, and thus the moratorium expired and has not been renewed. *See* Report on Tennessee Municipal Electric Systems, located at <http://www.iconbroadband.net/IconTennCompRpt6%2030%2005.pdf>.

applicable municipal ordinances” as provided in Tenn. Code Ann. § 7-52-605. By its terms, this statute refers to the “municipal electric system” and not specifically to the governing board of the system. But, in the context of the statutory scheme, the term “municipal electrical system” refers to and includes the governing board of the system. *See* Tenn. Code Ann. § 7-52-601 (granting the authority to operate these services to a municipality operating an electric plant, including the “governing board” having responsibility for the municipal electric plant). Thus, once the municipal legislative body has authorized its municipal electric system to provide Internet and video programming services under Tenn. Code Ann. §§ 7-52-601 to -611 the governing board of the system may exercise “all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States, the state of Tennessee or applicable municipal ordinances” as provided in Tenn. Code Ann. § 7-52-605. These powers include entering into contracts with financial institutions to borrow money to acquire, construct, and provide working capital for Internet and video programming systems and services and pledging non-electric assets to secure such loans, as may be done by private entities providing such services.

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