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Opinion No. 12-105

Authority of Carter County Planning Commission to Require Testimony Under Oath

QUESTION

Is the Carter County Planning Commission authorized to require citizens to be under oath when they wish to address the Commission?

OPINION

No.

ANALYSIS

This opinion addresses whether the Carter County Planning Commission (the "Planning Commission") is authorized to require citizens to be under oath when they wish to speak at Commission meetings. As discussed in Tenn. Att'y Gen. Op. 11-15 at 2-3 (Feb. 9, 2011), the Planning Commission is a county planning commission created under 1972 Tenn. Priv. Acts ch. 360, as subsequently amended (hereinafter collectively referenced as the "1972 Act").[1]

The 1972 Act authorizes the Carter County Commission to create the Planning Commission. The Planning Commission may have no less than seven and no more than twelve members. 1972 Tenn. Priv. Acts ch. 360, § 1.[2] One member of the Planning Commission is the chair of the county commission, and another member must be a member of the county commission selected by the county commission. *Id*. The county commission appoints the remaining members so that each school district has equal representation. *Id*. The county commission is authorized to specify terms of the appointive members up to six years and may

[1] Ordinarily, regional planning commissions are governed by Tenn. Code Ann. §§ 13-3-101 to -105. Under that statutory scheme, the Department of Economic and Community Development creates and establishes regional planning commissions with planning authority over a defined geographic area. Where the boundaries of a planning region determined by the Department follow the existing boundaries of a single county, the county mayor appoints the members of the planning commission, subject to the confirmation by the county legislative body. Tenn. Code Ann. § 13-3-101(i)(1). But only a few provisions of the general statutes governing regional planning commissions expressly apply to a county planning commission created by private act, and nothing in these statutes applies to the Planning Commission's authority in this instance.

[2] The 1972 Act references the appointing body as the "quarterly county court" of Carter County. That body was abolished effective September 1, 1978, and replaced with the county commission. *See* Tenn. Code Ann. § 5-5-101; Tenn. Code Ann. §§ 5-5-102 to -127.

stagger the terms. *Id*. The Planning Commission is authorized to "adopt rules for the transactions, findings, and determinations, which record shall be a public record." *Id*., § 2.

The Planning Commission is charged with adopting an official general plan for the physical development of the county outside of municipal limits. *Id*. § 3. The plan, including any maps, plats, charts, and descriptive and explanatory matter, shall show the Planning Commission's recommendations for development. *Id*. The Planning Commission may from time to time amend, extend or add to the plan, or carry any part of subject matter into greater detail. *Id.* The Planning Commission must certify its adopted plan to the county commission. *Id.*, § 4. Section 6 of the 1972 Act further provides:

> The commission may make reports and recommendations relating to the plan and development of the county to public officials and agencies, public utility companies, to civic, educational, professional and other organizations and to citizens. It may recommend to the executive or legislative officials of the county programs for public improvements and the financing thereof. All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members and employees, in the performance of its work, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon. In general, the commission shall have powers as may be necessary to enable it to perform its purposes and promote county planning.

Id., § 6. Once the Planning Commission has filed a certified copy of the master plan in the office of the county register, every plat of a subdivision of land within the county and outside city boundaries must be submitted to and approved by the Planning Commission before it can be recorded in that office. *Id.*, § 9. The Planning Commission must adopt subdivision regulations. *Id.*, § 10. Before it adopts subdivision regulations or amendments, the Planning Commission is required to hold a public hearing. *Id.* The Planning Commission must afford an opportunity for a hearing before acting on any plat. *Id.*, § 11. The Planning Commission is authorized to develop a zoning plan for the county commission's approval. *Id.*, § 17. The Planning Commission is also responsible for administering land use planning under 1990 Tenn. Priv. Acts ch. 182 (mobile home parks), 1990 Tenn. Priv. Acts ch. 187 (mobile homes and structures in the flood hazard area), and 1992 Tenn. Priv. Acts ch. 198 (mobile homes).

A thorough review of the Planning Commission's authority under the 1972 Act evidences no explicit provision allowing the Planning Commission to require that individuals appearing before the Commission must present their statements under oath, although the Commission is generally provided such "powers as may be necessary to enable it to perform its purposes and promote county planning." 1972 Tenn. Priv. Acts ch. 360, § 6. Furthermore, a review of the general law of Tennessee evidences that the Tennessee General Assembly has only given the power to "administer an oath or affirmation" to a county legislative body or one of its committees, and did not extend this authority to any other locally created public body. This statute specifically provides:

> Power is given to members of the county legislative body to administer an oath or affirmation as provided by law for witnesses appearing in a court of

> record of this state to give testimony in such court, when a witness is called to give testimony before the county legislative body *or any committee of the county legislative body that has been created by a duly adopted resolution of the county legislative body.*

Tenn. Code Ann. § 5-5-126 (emphasis added).

The Planning Commission is not a "committee of the county legislative body" within the meaning of this statute. *Black's Law Dictionary* defines the term "committee" as:

> A subordinate group to which a deliberative assembly or other organization refers business for consideration, investigation, oversight, or action.

Black's Law Dictionary, 289 (8th ed. 2004). *See also State v. Edmondson*, 231 S.W.3d 925, 928 (Tenn. 2007) (stating that, when the General Assembly fails to provide a specific definition for a statutory term, courts may "look to other sources, including Black's Law Dictionary, for guidance"). The status and function of the Planning Commission was created by a private act of the Tennessee General Assembly, and thus the Planning Commission is not a committee "created by a duly adopted resolution" of the county commission as referenced in Tenn. Code Ann. § 5-5-126. For these reasons, Tenn. Code Ann. § 5-5-126 does not authorize the Planning Commission to administer oaths to citizens appearing before it.

In sum, although arguably a close question, the failure of the Planning Commission's enabling statute to specifically allow the Planning Commission the discretion to require those appearing before it to take an oath, coupled with the exclusion of the Planning Commission from Tennessee's general law allowing the administration of oaths by certain public local entities, leads to the conclusion that the Planning Commission lacks the authority to require those appearing before it to take an oath. *See Mosier v. Thompson*, 216 Tenn. 655, 658-59, 393 S.W.2d 734, 735 (1965) (stating that the enabling statutes establishing the power and jurisdiction of a quarterly court, the predecessor to the county commission, must be strictly construed); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. Ct. App. 1994) (recognizing that counties and county legislative bodies "possess only the powers vested in them by the Tennessee Constitution or by state law"); Tenn. Att'y Gen. Op. 83-462 at 2-3 (Oct. 26, 1983) (quoting *Shelby County v. Exposition Co.*, 96 Tenn. 653, 657, 36 S.W. 694 (1896)) (opining that no statutory authority existed to convey subpoena power on county commissioners, relying on the long enunciated principle established by Tennessee courts that local legislative bodies are merely creatures of statute "possessed of statutory jurisdiction alone, and wholly wanting in common law powers"). *See also Wlodarz v. State*, 361 S.W.3d 490, 496 (Tenn. 2012) (stating general rule of statutory construction that a court's primary objective is to carry out legislative intent "without broadening or restricting the statute beyond its intended scope").

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