STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 13-67

Use of Funds by County Records Commission

QUESTIONS

1. Could the fees collected under Tenn. Code Ann. § 10-7-408 in a county that has established a county records commission be used for any of the following purposes:

   a. The purchase or construction of a building to be used for archiving and management of county records?

   b. The purchase or construction of a building that would be used partially for the archiving and management of county records and partially for other county business or activities?

   c. For the lease of a portion of a building for the archiving and management of county records, with the remaining part of the building used for other county business or activities?

   d. To lease a facility for the archiving and management of county records, with portions of the facility that are not being used for the archiving and management of county records being subleased to other tenants?

2. If the county's records preservation budget contains funds that were not collected as fees under Tenn. Code Ann. § 10-7-408, may the commission use such funds to pay for a feasibility study for a facility that would be shared with another county division but would be purchased or built using the fees collected under Tenn. Code Ann. § 10-7-408?

OPINIONS

1. The fees collected under Tenn. Code Ann. § 10-7-408(b)(2) may be used only for "duplicating, storing, and maintaining any records required by law to be permanently kept." Thus, these fees may not be used to purchase, build, lease, or reimburse the county for providing any part of a facility if such part will not be used for the purposes described in Tenn. Code Ann. § 10-7-408(b)(2). Nor may the fees be used to lease an entire facility for duplicating, storing, or maintaining records if others are allowed to sublease parts of the facility that are not being used for those purposes.

2. The fees collected under Tenn. Code Ann. § 10-7-408(b)(2) may not be used to purchase or build any portion of a county building that will not be used to store public records. The authority of the records commission to use fees appropriated to it from other sources for a feasibility study or otherwise would depend on the terms of the budget provision appropriating the funds to the commission.

ANALYSIS

A county public records commission is created by the county commission under Tenn. Code Ann. § 10-7-401. The commission must meet not less than twice annually. Tenn. Code Ann. § 10-7-402. A county public records commission has the right to authorize the destruction of county public records once they have been preserved by reproducing them in a different form such as microfilm or CD-ROM disk. Tenn. Code Ann. § 10-7-404. *See* Tenn. Att'y Gen. Op. 13-48 at 3 (July 1, 2013). One copy of this reproduction must be stored for safekeeping in a place selected by the commission and concurred in by the county legislative body. Tenn. Code Ann. § 10-7-406(a)(1). The statute further provides:

> (2) Such place shall be in the state if proper facilities are available, but, if not, then in a place outside the state.
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> (3) Such location shall be selected with a view of protection of the records from fire and all other hazards. The other copy of each document shall be kept in an office in the county accessible to the public and to the several county officers and the county clerks, together with the proper equipment for using, examining, exhibiting, projecting and enlarging the same wherever required and requested by the public during reasonable office hours. The records of each office may be kept in that office, or, if the commission so determines, all the reproduced records may be kept in one (1) central records office.

Tenn. Code Ann. § 10-7-406(a)(2) and (3).

Funding for a county records commission may be established in the following manner:

> (a) The county legislative body of any county which creates a county records commission has the power to appropriate such funds as may be required for the carrying out of the purposes of this chapter including, but not limited to, the purchase or leasing of equipment, the equipping of an office and the payment of the expenses thereof, the furnishing of secretaries and clerical help and the employment of expert advice and assistance.
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> (b) (1) In any county, if the county legislative body creates a county records commission, then the county legislative body is authorized to:
>
> (A) Appropriate such funds as may be required for carrying out of the purposes of this chapter, including, but not limited to, the purchase or leasing of

> equipment, the equipping of an office and the payment of the expenses of the office, the furnishing of secretaries and clerical help, and the employment of expert advice and assistance;
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> (B) Establish and collect, through all entities creating public records as defined in § 10-7-403(1) and (3), except for the office of the county register, an archives and record management fee not to exceed five dollars ($5.00) per each record filed by the entities creating the public records; and
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> (C) Establish and collect, through the clerks of court, an archives and record management fee not to exceed five dollars ($5.00) per public record, as defined in § 10-7-403(2), filed with the clerks of court for the purpose of initiating a legal proceeding.
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> ***(2) Funds collected through these fees must be designated exclusively for duplicating, storing, and maintaining any records required by law to be permanently kept.***

Tenn. Code Ann. § 10-7-408 (emphasis added).

Under Tenn. Code Ann. § 10-7-408(b)(2), the archive and record management fees may be used only for "duplicating, storing, and maintaining any records required by law to be permanently kept." Therefore, the fees may be used to purchase, build, lease or reimburse the county for providing a facility for those purposes. However, the fees may not be used to purchase, build, lease, or reimburse the county for providing any part of a facility that will not be used for duplicating, storing, or maintaining records. Nor may the fees be used to lease an entire facility if other tenants are allowed to sublease parts of the facility that are not being used for duplicating, storing or maintaining records. *See, e.g., Keen v. State,* 398 S.W.3d 594, 600 (Tenn. 2012) (*quoting State v Strode*, 232 S.W.3d 1, 9 (Tenn. 2007)) (stating that a court will construe a statute to "ascertain and give effect to the legislative intent without unduly . . . expanding a statute's coverage beyond its intended scope"). In the event that the fees initially are used to lease the entire building for the purposes authorized by Tenn. Code Ann. § 10-7-408(b)(2), and subsequently parts of the facility cease to be used for those purposes and are subleased to other tenants, the pro rata amount of the original lease payment representing the value of these subleases muse be recovered from the proceeds of the subleases and used as permitted by Tenn. Code Ann. § 10-7-408(b)(2).

Whether the county public records commission would be authorized to disburse funds from the county's records preservation budget that were not collected as archive and management fees under Tenn. Code Ann. § 10-7-408 for the entire cost of a feasibility study for a facility, to be shared with another division but purchased or built using archive and management fees, would depend on the terms of the budget provision appropriating the funds to the commission. However, as discussed above, the fees collected under Tenn. Code Ann. § 10-7-408 cannot be used to purchase or build a part of a county building that will not be used to duplicate, store or maintain records.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Rusty Crowe
State Senator
Suite 8, Legislative Plaza
Nashville, Tennessee 37243-0203