

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

March 7, 2014

Opinion No. 14-28

Authority of County Mayors

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**QUESTION**

Is a county mayor authorized to terminate employees hired by the county commission or to defund or abolish departments created by the county commission?

**OPINION**

Where a county commission has hired an employee in the valid exercise of its authority, a county mayor may not unilaterally terminate that employee unless expressly authorized. Nor may a county mayor defund or abolish an entire county department without the approval of the county commission.

**ANALYSIS**

A county commission's statutory authority to hire employees is limited.<sup>1</sup> The statutes establishing county legislative bodies, Tenn. Code Ann. §§ 5-5-101 to -127, do not provide general authority to hire employees. Under Tenn. Code Ann. § 5-23-103(d), county commissions are involved in providing for the adoption of base personnel policies for county employees, but these base policies address only general employment matters such as vacation and compensatory time, *see* Tenn. Code Ann. § 5-23-104, and county officials may adopt their own personnel policies in any event, *see* Tenn. Code Ann. § 5-23-103(a)-(c). Local-option acts assume that county agency directors, not the county commission, generally hire and fire their employees, *see, e.g.*, Tenn. Code Ann. § 5-21-123, and the county mayor, as the "chief executive officer of the county," generally appoints members of county boards and commissions and county department heads, subject to confirmation by the county legislative body, Tenn. Code Ann. § 5-6-106(a), (c).

Nevertheless, county legislative bodies do have hiring authority under certain public or private acts, local-option laws, or local charters. *See, e.g.*, Tenn. Code Ann. § 5-7-107 (authorizing county legislative body to employ construction

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<sup>1</sup> We assume that the question presented is not directed at a county commission's exercise of its authority to elect or appoint a county official to a specific term, *see, e.g.*, Tenn. Code Ann. § 5-8-602 (requiring county legislative body to elect revenue commissioners to a term of two years), or of its authority to fill vacancies in county offices, *see* Tenn. Code Ann. § 5-5-111.

superintendent); Tenn. Att’y Gen. Op. 97-068 (May 12, 1997) (opining that county service director must be chosen by the county commission, in accordance with Tenn. Code Ann. § 58-3-111(a)). Where a county commission has hired an employee pursuant to lawful authority, the county commission is alone authorized to terminate that employee. *See Gillespie v. Rhea Cnty.*, 191 Tenn. 487, 493, 235 S.W.2d 4 (Tenn. 1950) (right to fire follows from the right to hire); *see also* Tenn. Att’y Gen. Op. 81-73 (Feb. 2, 1981) (opining that county executive has sole authority to remove department head appointed by him, even though county commission must approve the initial appointment). In the absence of any express provision to the contrary, a county mayor may not unilaterally terminate an employee hired by the county commission in the valid exercise of its hiring authority.

Nor may a county mayor defund or abolish a department created by the county commission. Absent statutory authority, a county executive cannot impound funds previously appropriated by the county commission under its budget. Tenn. Att’y Gen. Op. 84-011 (Jan. 19, 1984). We have found no general or local-option act conferring this authority. Ordinarily, the county commission adopts the county budget for county departments and agencies. Tenn. Code Ann. § 5-9-404(a). Budget amendments to “major categories” must generally be approved by the county commission. Tenn. Code Ann. § 5-9-407(b). The term “major categories of the budget” means “major categories or summary accounts in the latest uniform chart of accounts as prescribed by the comptroller of the treasury.” Tenn. Code Ann. § 5-9-407(f). Assuming that a department’s entire budget is a “major category of the budget” within the meaning of this provision, any amendment defunding the department must be approved by the county commission in any county subject to this statute. Any line-item amendment that affects amounts budgeted for personnel costs must be approved by a budget committee created by law or a budget committee of the county commission appointed by the county commission to approve budget amendments. Tenn. Code Ann. § 5-9-407(c)(2)(A).

Some local-option county budgeting laws give the county mayor limited impoundment authority when it appears that county revenues will not cover county appropriations. Under the County Budgeting Law of 1957, however, such impoundments are subject to the written approval of the budget committee. Tenn. Code Ann. § 5-12-110(c). Under the County Budgeting Law of 1993, a county mayor may impound appropriations necessary to prevent deficit operation. But the county mayor must certify the appropriation to the county commission, and the commission may override the impoundment by a two-thirds vote. Tenn. Code Ann. § 5-12-215(a).

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