

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

April 22, 2015

Opinion No. 15-38

Authority of City to Require Vehicles Registered in Other Counties to Pass Emissions Tests

Question 1

Can the Chattanooga City Council pass a regulation requiring taxicabs to pass Hamilton County emissions tests, if the vehicles are lawfully registered outside of Hamilton County?

Opinion 1

No. Because the Chattanooga City Council cannot require motor vehicles that are lawfully registered in another Tennessee county to be registered in Hamilton County, the Council cannot require motor vehicles lawfully registered in another county to pass Hamilton County emissions tests.

Question 2

Would such an ordinance violate State law?

Opinion 2

Yes. State law provides that motor vehicles shall be registered in the county of the owner's residence or in a county in which the vehicle is based or is to be operated. *See* Tenn. Code Ann. § 55-4-101(c). Commercial motor vehicle registrations may be renewed in the county of the owner's principal place of business, the county of incorporation in the case of a corporate owner, or any other county in which the owner or corporate owner maintains an office or place of business. *See* Tenn. Code Ann. § 55-4-105(e)(1). The proposed ordinance would violate these State laws by requiring motor vehicles lawfully registered in another Tennessee county to pass Hamilton County emissions tests even though those emissions tests are not required for registration of those vehicles.

Question 3

Would such an ordinance be enforceable?

Opinion 3

No. Such an ordinance would not be enforceable because it would be contrary to State law.

ANALYSIS

A motor vehicle may not be operated on the streets or highways of this State unless it is properly registered. *See* Tenn. Code Ann. § 55-4-101(a)(1). “Application for registration shall be made . . . to the county clerk of the county of the owner’s residence or of a county wherein the vehicle is based or is to be operated, except that a nonresident may apply directly to the department [of Revenue] for registration.” Tenn. Code Ann. § 55-4-101(c).

With regard to emissions testing, State law mandates that

[t]he commissioner [of Revenue] shall not issue a registration for a vehicle based in a county that has been designated by the Tennessee air pollution control board to have a motor vehicle inspection and maintenance program in order to attain or maintain compliance with national ambient air quality standards, except in accordance with terms and conditions as are established in rules of the board.

Tenn. Code Ann. § 55-4-101(d)(2).

“The office of county clerk may make inquiry into an owner, including, but not limited to, review of driver records for the purpose of establishing an owner’s residence or address, before issuing a renewal of registration.” Tenn. Code Ann. § 55-4-105(a)(2). “The registration issued for a commercial vehicle may be renewed through the office of the clerk of the county of the owner’s principal place of business within the state, or of the county of incorporation in the case of a corporate owner or of any other county in which the owner or corporate owner maintains an office or place of business.” Tenn. Code Ann. § 55-4-105(e)(1).

Tennessee Code Annotated § 68-201-104 establishes the Tennessee Air Pollution Control Board. The Board must promulgate rules that “(1) [s]pecify the type of vehicle inspection and maintenance program to be established and implemented; and (2) [e]stablish that the inspection associated with the vehicle inspection and maintenance program will occur on an annual basis in connection with the vehicle registration renewal.” Tenn. Code Ann. § 68-201-119. One such rule, Tenn. Comp. R. & Regs. 1200-03-29-.03, requires light-duty motor vehicles registered in designated counties to be inspected annually for compliance with emissions performance and anti-tampering test criteria set forth in Tenn. Comp. R. & Regs. 1200-03-29-.05 and 1200-03-29-.06. Currently, the designated counties are Hamilton, Davidson, Rutherford, Sumner, Williamson, and Wilson. *See Vehicle Inspection Program*, Tennessee Department of Environment and Conservation, available at http://www.tn.gov/environment/air/air_emissions-testing.shtml.

Pursuant to Tenn. Comp. R. & Regs. 1200-03-29-.09(1), “[t]he motor vehicle inspection program shall be operated by the Tennessee Department of Environment and Conservation, Division of Air Pollution Control, the State approved local government and/or the State approved contractor.” “All motor vehicle inspections shall be conducted at official or mobile inspection stations operated by the Department, local government and/or contractor except those fleet inspections provided for in Paragraph 1200-03-29-.09(3) of this regulation.” Tenn. Comp. R. & Regs. 1200-03-29-.09(2).

As the foregoing statutes and regulations indicate, motor vehicle registration and emissions testing in designated counties are inextricably linked. Because Hamilton County is a designated county, its existing emissions tests are mandated by the State as a condition precedent to motor vehicle registration and renewal.

The statutes specify that motor vehicles shall be registered in the county of the owner's residence or the county in which the vehicle is based or is to be operated, *see* Tenn. Code Ann. § 55-4-101(c), and commercial vehicle registrations may be renewed in the county of the owner's principal place of business, the county of incorporation in the case of a corporate owner, or any county in which the owner or corporate owner maintains an office or place of business, *see* Tenn. Code Ann. § 55-4-105(e)(1). Thus, provided that the taxicabs in question are lawfully registered in another county, Chattanooga cannot require those taxicabs to be registered in Hamilton County. For the same reason, Chattanooga cannot require taxicabs that are lawfully registered in another county to pass emissions tests required for registration in Hamilton County.

On the other hand, taxicab owners in Chattanooga cannot avoid Hamilton County emissions tests by registering their motor vehicles in another county in which they are ineligible to be registered under these statutes. Motor vehicle owners may not register their vehicles in just any county in this State. The county of registration is limited to the county of the owner's residence or a county in which the vehicle is based or is to be operated. *See* Tenn. Code Ann. § 55-4-101(c). Commercial motor vehicle registrations may be renewed in the county of the owner's principal place of business, the county of incorporation in the case of a corporate owner, or any other county in which the owner or corporate owner maintains an office or place of business. *See* Tenn. Code Ann. § 55-4-105(e)(1). To enforce these requirements, county clerks are authorized to make inquiry regarding the motor vehicle owner's eligibility for registration in the county before issuing the registration. *See* Tenn. Code Ann. § 55-4-105(a)(2).

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