

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

September 23, 2015

Opinion No. 15-68

Authority of TWRA Officers to Enforce Local Noise Ordinances on Waters by Agreement with Local Law Enforcement Agency

Question

May the Tennessee Wildlife Resources Agency (“TWRA”) enter into an agreement with a local law enforcement agency whereby the TWRA, secondary to carrying out TWRA’s duty to enforce boating regulations under Tenn. Code Ann. Title 69, Chapter 9, would enforce a local noise ordinance on waters that are within the territorial jurisdiction of the local government entity that is served by the local law enforcement agency?

Opinion

No. The TWRA lacks authority under state law to enforce a local noise ordinance. Although the Interlocal Cooperation Act (the “Act”) allows a state agency to enter into an agreement with a local government agency to jointly pursue common goals, the Act does not allow a public agency to exceed the authority otherwise vested in it under state law.

ANALYSIS

The TWRA has the authority to enforce state laws and regulations governing boating safety. *See* Tenn. Code Ann. § 69-9-220(a); Tenn. Comp. R. & Regs. 1660-02-05-.01. One such law prohibits persons from “operat[ing] any vessel in or upon the waters of Tennessee in such a manner as to exceed 86 [dBA] measured at a distance of fifty feet . . . from the vessel.” Tenn. Code Ann. § 69-9-302; *see also* Tenn. Comp. R. & Regs. 1660-02-09-.01 (providing that noise restriction applies “whether or not said vessel is in motion”).

The director of the TWRA and others whom he designates also have the authority to “arrest . . . any person committing or attempting to commit a criminal offense in violation of any of the laws of this state if the offense is committed on public . . . waters.” Tenn. Code Ann. § 70-1-305(6)(B); *see also id.* § 70-1-305(7). One of those offenses is disorderly conduct, which includes “unreasonable noise that prevents others from carrying on lawful activities.” *Id.* § 39-17-305(b).

Although the TWRA has authority to enforce these *state* laws and regulations relating to noise, the agency lacks statutory or regulatory authority to enforce *local* noise ordinances. The Interlocal Cooperation Act allows public agencies to “enter into agreements with one another for joint or cooperative action.” Tenn. Code Ann. § 12-9-104(b). The Act makes clear, however, that such cooperative action is limited to “power or powers, privileges or authority exercised or capable of exercise” by the public agency. *Id.* § 12-9-104(a)(1); *see also Foster Wheeler Energy Corp. v.*

Metro. Knox Solid Waste Auth., Inc., 970 F.2d 199, 203 (6th Cir. 1992) (“Section 12-9-104(a) states that a political subdivision may only exercise those rights under the Act which they are privileged or capable of exercising under state law or which are otherwise vested in their governing bodies.”). In other words, the Act “is a procedural statute which enables political subdivisions to jointly undertake the exercise of powers and privileges with which they are vested.” *Foster Wheeler*, 970 F.2d at 204. The Act “does not purport to relieve public agencies of the limits under which they act individually.” Tenn. Att’y. Gen. Op. 06-081 (May 1, 2006).

Pursuant to the Act, the TWRA may enter into an agreement with a local law enforcement agency to cooperate toward the common goal of reducing noise on public waters, but, in doing so, the TWRA may not take any actions that would exceed the authority otherwise vested in it under state law. Thus, the TWRA may agree to cooperate to the extent of carrying out its lawful authority to enforce Tenn. Code Ann. § 69-9-302 and Tenn. Comp. R. & Regs. 1660-02-09-.01, or to enforce the state ban on disorderly conduct when that offense is committed on public waters. However, the TWRA may not agree to enforce a local noise ordinance because the TWRA is not vested with that enforcement authority under state law.

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