

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

**October 1, 2015**

**Opinion No. 15-69**

**Conflict Between State and Local Law**

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**Question**

Does Amendment 3 (known as the “local hire amendment”) to the Charter of the Metropolitan Government of Nashville and Davidson County conflict with Tenn. Code Ann. § 62-6-111(i)(2)(c)?

**Opinion**

Yes. Amendment 3 conflicts with the Contractors Licensing Act of 1994 (the “Act”) which prohibits municipalities and counties from imposing on contractors licensed by the State any requirements in addition to those imposed by the Act and which prohibits municipalities and counties from discriminating against contractors licensed by the State “on the basis of the licensee’s nonresidency within the county or municipality.” Tenn. Code Ann. § 62-6-111(i)(2)(c). Amendment 3 is therefore invalid to the extent that it contravenes the general law of the State of Tennessee.

**ANALYSIS**

On August 6, 2015, the voters of the Metropolitan Government of Nashville and Davidson County, Tennessee, (“Metro”) approved Amendment 3 to the Metro Charter. Effective October 1, 2015, Amendment 3 imposes certain “local hire” requirements for contractors and their employees who work on Metro construction projects of \$100,000 or more.<sup>1</sup>

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<sup>1</sup> The full text of Amendment 3 as it appeared on the August 6, 2015, ballot is as follows:

The Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee, is amended by adding a new paragraph at Section 9.109-Function of division of purchases, as follows:

“In order that local taxpayers are protected and local Davidson County residents have opportunity to work on taxpayer-funded projects, the division of purchases, when expending funds or other resources of the metropolitan government in the amount of One Hundred Thousand Dollars (\$100,000.00) or more on a project for the building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, but excluding professional services, shall require that one (1) or more residents of Davidson County perform Forty Percent (40%) of the Total Construction Work Hours worked by construction craft workers on each project whether workers are employed by a contractor or any subcontractor, and shall require that a significant effort be made to ensure that no less than Ten Percent (10%) of the Total Construction Worker Hours are performed by low income residents of Davidson

Amendment 3 requires any contractor working on a Metro public building project on which \$100,000.00 or more is expended to ensure that “one (1) or more residents of Davidson County perform Forty Percent (40%) of the Total Construction Work Hours worked by construction craft workers on each project.”<sup>2</sup> The number of hours of work on a project performed by workers who are not residents of Tennessee are excluded in calculating “Total Construction Work Hours.” Accordingly, for example, a contractor licensed in Tennessee who employs only Kentucky residents is not required to meet the 40% local-hire requirement in order to work on Metro construction projects, but a contractor whose employees are all residents of Montgomery County, Tennessee, located just south of the Kentucky border, must satisfy the 40% Davidson County local-hire rule to be eligible to work on a Metro construction project.

The Contractors Licensing Act of 1994, codified at Tenn. Code Ann. §§ 62-6-101 to -521, requires any person or entity who is engaged in “contracting” to be licensed by the State of Tennessee, with some limited exceptions not applicable here. Tenn. Code Ann. § 62-6-103. The interrelated statutory definitions of “contracting” and “contractor” are very broad. *See* Tenn. Code Ann. § 62-6-102(3) and 102(4). The term “contracting” under the Act encompasses “all stages and activities of a construction project.” *Kyle v. Williams*, 98 S.W.3d 661, 666 (Tenn. 2003). The Act “expressly requires persons engaging in *any* of these activities to be licensed” so as “to ensure that the person is qualified to perform the work required to fulfill the terms of the contract.” *Id.*

The Act further provides that, once a contractor is licensed by the State of Tennessee, then “[n]o county or municipality shall require the state licensee or its employees to pass any county or municipal test or examination; *nor shall a county or municipality impose any additional requirements upon the state licensee or its employees*, nor in any way discriminate against the state licensee or its employees, *nor in any way discriminate against the state licensee or its employees on the basis of the licensee’s nonresidency within the county or municipality.*” Tenn. Code Ann. § 62-6-111(i)(2)(C) (emphasis added).

Amendment 3 directly contravenes Tenn. Code Ann. § 62-6-111(i)(2)(c). Most—if not all—contractors bidding on or procuring public building project work for Metro would be required to be licensed contractors under the Act. Metro is prohibited by the Act from imposing any additional requirements on such state licensees or their employees and Metro is prohibited by the

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County. In determining the Total Construction Worker Hours for each project, there shall be included the number of hours worked on all customary construction activities, but shall exclude the number of hours of work on the project performed by workers who are not residents of Tennessee. A procedure for reporting Total Construction Worker Hours and a penalty for failure to comply with this requirement may be provided by ordinance or by the division of purchases consistent with ordinances, and all reports will be made available to the public.”

Metro Sample Ballot for August 6, 2015 Election, *located at* <http://www.nashville.gov/Election-Commission/Voters/Voting-Information/Sample-Ballots.aspx> (last visited Sept. 22, 2015).

<sup>2</sup> Professional services contracts are excluded from this requirement. Amendment 3 also requires that “a significant effort be made to ensure that no less than Ten Percent (10%) of the Total Construction Worker Hours are performed by low income residents of Davidson County.” And it is interesting to note that Amendment 3 appears to require that exactly 40% of the work hours be performed by Davidson County residents; unlike the 10% low-income requirement, the 40% residency language does not read “at least 40%,” but rather specifies “40%,” not more and not less.

Act from discriminating against licensed contractors because they are not Metro residents. But that is what Amendment 3 does: it imposes additional requirements, namely residency requirements, on licensed contractors and it discriminates against non-resident contractors. Thus, Amendment 3 conflicts with a state statute.

Tennessee law has long held that a municipality may not enact a law or regulation that conflicts with a State statute. *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 426 (Tenn. 2013) (local governments cannot effectively nullify state law by enacting laws that ignore applicable state law, that grant rights that state law denies, or that deny rights that state law grants); *City of Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978); *421 Corp. v. Metropolitan Gov't of Nashville and Davidson Cnty.*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). Amendment 3 is, therefore, invalid to the extent that it conflicts with the Act.

In sum, Amendment 3 to Metro's Charter conflicts with Tennessee's Contractors Licensing Act by imposing on contractors licensed by the State residency requirements in addition to those imposed by the Act and by discriminating against contractors licensed by the State on the basis of the licensee's nonresidency within Metro. Amendment 3 is therefore invalid because it contravenes the general law of the State of Tennessee.

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