STATE OF TENNESSEE
# OFFICE OF THE ATTORNEY GENERAL

April 5, 2016

Opinion No. 16-14

Dissolution of a Municipal Airport Authority Created Under the Airport Authorities Act

Question 1

Is a municipality organized by private act authorized to pass an ordinance to dissolve an airport authority that it created under the Airport Authorities Act?

Opinion 1

No.

Question 2

If such a municipality is not authorized to pass an ordinance to dissolve an airport authority that it created under the Airport Authorities Act, could the General Assembly confer the necessary legal authority upon the municipality by private act or must the Airport Authority Act be amended to confer the necessary legal authority?

Opinion 2

The General Assembly could pass a private act allowing the municipality to dissolve the airport authority; however, the act must have a rational basis for suspending the general law in order to comport with article XI, section 8 of the Tennessee Constitution. Accordingly, a private act permitting the municipality to dissolve an airport authority that it created under the Airport Authorities Act must articulate the reasons that the dissolution is necessary.

## ANALYSIS

In 1957, the General Assembly enacted sweeping legislation to allow municipalities to establish, operate, regulate, and maintain airports. Under the Municipal Airport Act, municipalities were allowed to perform these functions themselves. See 1957 Tenn. Pub. Acts, ch. 375 (codified as amended at Tenn. Code Ann. §§ 42-5-101 to -205). Alternatively, under the Airport Authorities Act, the General Assembly gave municipalities permission to create municipal and regional airport authorities to perform these functions. See 1957 Tenn. Pub. Acts, ch. 376 (codified as amended at Tenn. Code Ann. §§ 42-3-101 to -205).[1]

[1] Under each of these acts, a "municipality" is defined as "any county, incorporated city or incorporated town of this state." Tenn. Code Ann. §§ 42-3-102(10); 42-5-102(8).

In 1969, the General Assembly enacted the Metropolitan Airport Authority Act to provide an additional option to "any city or metropolitan government having a population of not less than one hundred thousand (100,000), or any county including such city" that desired to create an airport authority. *See* 1969 Tenn. Pub. Acts, ch. 174 (codified as amended at Tenn. Code Ann. §§ 42-4-101 to -117). While there are many similarities between this Act and the Airport Authorities Act, there are differences that bear on the questions that you have raised.

Under the Airport Authorities Act, a municipality desiring to create an airport authority proceeds as follows:

> Any municipality may, by ordinance if a city or town, or by resolution if a county, create a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners of the authority, and the issuance of a certificate of incorporation by the secretary of state. Upon adoption of an ordinance or resolution, whichever is applicable, creating a municipal airport authority, the governing body of the municipality shall, pursuant to the ordinance or resolution, appoint at least five (5) and no more than eleven (11) persons as commissioners of the authority. . . .

Tenn. Code Ann. § 42-3-103(a)(1).

Once incorporated, the airport authority is "a public body corporate and politic," *see* Tenn. Code Ann. § 42-3-105(a)(2), and the authority's powers are vested in a board of a commissioners. *See* Tenn. Code Ann. § 42-3-107(c).

An airport authority's powers include the ability to sue and be sued, Tenn. Code Ann. § 42-3-108(a)(1)(A); enter contracts and other instruments, Tenn. Code Ann. § 42-3-108(a)(2), -117(7); acquire property by purchase, gift, devise, lease, or eminent domain proceedings, Tenn. Code Ann. § 42-3-108(a)(3); borrow money for any of its corporate purposes and issue bonds, Tenn. Code Ann. § 42-3-111; dispose of its property, Tenn. Code Ann. § 42-3-110; and seek federal or state aid, Tenn. Code Ann. § 42-3-114.

The powers of the municipality, following the creation of an airport authority, are contained in Tenn. Code Ann. § 42-3-117, which provides:

> For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of airports and air navigation facilities, and acquiring avigation easements pursuant to this chapter, any municipality for which an authority has been created may, upon such terms, with or without consideration as it may determine:
>
> (1) Lend or donate money to the authority;
>
> (2) Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as the funds become available to the municipality;

(3) Cause water, sewer or drainage facilities, or any other facilities that it is empowered to provide, to be furnished adjacent to or in connection with airports or air navigation facilities;

(4) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges in property to the authority;

(5) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways and walks from established streets or roads to airports or air navigation facilities;

(6) Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, constructing or operating of airports and air navigation facilities; and

(7) Enter into agreements with the authority respecting action to be taken by the municipality pursuant to this section.

Notably, none of these provisions provides that a municipality may dissolve an airport authority that it has created. While Tenn. Code Ann. § 42-3-117(6) does provide that a municipality may "[d]o any and all things, whether or not specifically authorized in this section," this authority is limited to those things "that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, constructing or operating of airports and air navigation facilities."

In contrast, the General Assembly did address the dissolution of an airport authority when it enacted the Metropolitan Airport Authority Act. After providing for the creation of an airport authority in a similar manner as one under the Airport Authorities Act and bestowing comparable powers upon the airport authority,[2] the General Assembly gave municipalities not only substantially the same powers as it gave to ones under the Airport Authorities Act,[3] but it also granted the governing body of the creating municipality and any "participating municipality"[4] the power to dissolve an airport authority and dispose of its property. *See* 1969 Tenn. Pub. Acts, ch. 174, § 13.

The Metropolitan Airport Authority Act specifically provides:

(a) Whenever the governing bodies of the creating municipality and the participating municipalities shall each by resolution determine that the purposes for

[2] *See* Tenn. Code Ann. §§ 42-4-104(c), -105, -107, -108, -109(a)(1).

[3] *See* Tenn. Code Ann. § 42-4-111.

[4] A "participating municipality" is "any city, town or county; which city, town or county, pursuant to a resolution of its governing body and an agreement with the creating municipality, has sold, leased, dedicated, donated or otherwise conveyed its airport to the authority for operation by the authority in order to make the airport an operational part of its airport system." Tenn. Code Ann. § 42-4-103(9).

> which the authority was created have been substantially accomplished, that all of the bonds and other obligations of the authority have been fully paid, and that the municipalities have agreed on the distribution of the funds and other properties of the authority, then the executive officers of the municipalities shall execute and file for record with the secretary of state a joint certificate of dissolution reciting those facts and declaring the authority to be dissolved.
>
> (b) Upon filing the certificate, the authority shall be dissolved, and title to all funds and other properties of the authority at the time of the dissolution shall vest in and be delivered to such municipalities in accordance with the terms of their agreement relating thereto.

Tenn. Code Ann. § 42-4-113.

As set forth above, the General Assembly did not address the dissolution of a municipal airport authority when it enacted the Airport Authorities Act. Moreover, the power to dispose of airport authority property, which the General Assembly did address in the Airport Authorities Act, was given to the airport authority, not the municipality. Unlike the property disposition provision in the Metropolitan Airport Authority Act, which addresses a municipality's disposition of property incidental to the dissolution of an airport authority, the property disposition provision in the Airport Authorities Act merely addresses an authority's disposition of property incidental to the purposes for which it was created. *See* Tenn. Code Ann. § 42-3-110.[5]

It was not until recently that the General Assembly addressed the dissolution of a municipal airport authority under the Airport Authorities Act. In 2009, the General Assembly amended the Act to allow a county legislative body to dissolve a municipal airport authority in a very limited circumstance. *See* 2009 Tenn. Pub. Acts, ch. 446, § 1. The Act now provides in pertinent part:

> (d)(1)(A) The county legislative body of any county that has created a municipal airport authority where the commissioners of the airport authority have, without legal authority to do so in accordance with § 42-3-104, altered their certificate of authority filed with the secretary of state, referring to the municipal airport created pursuant to this section as a regional airport authority, shall have the authority, if the county legislative body determines that it is in the best interest of the county that the airport authority so created be dissolved, then upon adoption of a resolution by a two-thirds ( 2/3 ) vote of the county legislative body, the county mayor shall execute and file for record with the secretary of state a certificate of dissolution reciting those facts and declaring the authority to be dissolved. The resolution shall

[5] Tenn. Code Ann. § 42-3-110 provides:

> Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by § 42-3-114, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

> be read and passed upon two (2) separate readings at two (2) consecutive meetings in open session. At least thirty (30) days shall have elapsed between the first and second readings. Any resolution not so read and passed shall be null and void.
>
> (B) The resolution dissolving the airport authority shall further provide whether the governing body of the municipality shall become the governing body to operate the airport.

Tenn. Code Ann. § 42-3-103(d).

1. You have asked whether a municipality organized by private act has the authority to pass an ordinance to dissolve an airport authority that it created under the Airport Authorities Act. For the reasons that follow, we are of the opinion that such a municipality does not.

It is well established that municipalities in Tennessee have no authority other than that granted by the legislature. *Arnwine v. Union Cnty. Bd. of Educ.*, 120 S.W.3d 804, 807 (Tenn. 2003); *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988); *Nichols v. Tullahoma Open Door, Inc.*, 640 S.W.2d 13, 18 (Tenn. Ct. App. 1982). Thus, "absent some indication to the contrary, the General Assembly must be presumed to have endowed local governments with only as much authority as it has granted through the language of its delegation." *Southern Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 712 (Tenn. 2001).

In determining the authority of a municipality, it is proper to apply Dillon's Rule to construe the intent of the General Assembly. *See Shorts v. Bartholomew*, 278 S.W.3d 268, 276 (Tenn. 2009); *Arnwine*, 120 S.W.3d at 807. *But cf. Southern Constructors*, 58 S.W.3d at 714 n. 7 (Dillon's Rule not applicable to home rule municipalities or counties organized under a charter government). "At its most basic level, Dillon's Rule is a canon of statutory construction that calls for the strict construction of local governmental authority." *Southern Constructors*, 58 S.W.3d at 710. Dillon's Rule provides that a municipal government has the authority to act only when:

> (1) the power is granted in the "express words" of the statute, private act, or charter creating the municipal corporation; (2) the power is "*necessarily or fairly implied* in, or *incident* to[,] the powers expressly granted"; or (3) the power is one that is neither expressly nor fairly implied from the express grants of power, but is otherwise implied as "essential to the declared objects and purposes of the corporation."

*Id*. at 710-11 (citation omitted) (emphasis original). "Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the [municipal] corporation and the power is denied." *Id*. at 711 (quoting *City of Nashville v. Linck*, 80 Tenn. 499, 504 (1883)).

As explained above, a municipality has express authority to create an airport authority under the Airport Authorities Act. But there is no express authority for the municipality to dissolve an airport authority, except in one limited circumstance. *See* Tenn. Code Ann. § 42-3-103(d). Therefore, the next consideration is whether a municipality has implied power to pass an ordinance to dissolve an airport authority that it created. *See Arnwine*, 120 S.W.3d at 807.

Generally, "the power of a municipal corporation to repeal an ordinance or a resolution is, by necessary implication, as broad as the power to enact it." *State ex rel. Patton v. Mayor and Board of Aldermen*, 626 S.W.2d 5, 6 (Tenn. 1981). The Tennessee Supreme Court has recognized limitations, though: "There are limitations on this general power, such as, where the ordinance or resolution to be repealed is contractual in nature, or where it is enacted under a limited grant of authority to do a single designated thing in the manner and at a time fixed by the legislature." *Id*. This general power may also be limited, expressly or impliedly, by the terms of the grant of power itself. *McCarty v. City of Kansas City*, 671 S.W.2d 790, 793 (Mo. App. 1984) (citation omitted). *See* 56 Am.Jur.2d Municipal Corporations § 356 (2016) (general power to repeal may be "negatived by statute"). *See also City of Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978) (municipality may not exercise implied power that contravenes state statute).

In *Patton*, the Court considered whether a municipality had implied power to abolish a Board of Public Utilities that it had created under the Municipal Electric Plant Law of 1935 and return control of the utility to the governing body of the municipality. *Id*. at 5. The Act provided that any municipality owning or operating an electric plant could appoint a board to supervise and control the plant. If a board was not created, the Act provided that the governing body of the municipality was to be the supervisory body. *Id*. at 5-6. In finding that the municipality could abolish the board, the Court reasoned: "Implicit in the granting of the option is the authority to make changes in the supervisory body, when the governing body of the municipality deems a change to be in the manifest best interest of the municipality. . . ." *Id*. at 6.

Unlike municipal electric plants, airport authorities created under the Airport Authorities Act are corporate entities that are separate, distinct entities from the municipalities that create them. *Compare Keeble v. Loudon Utils.*, 212 Tenn. 483, 489, 370 S.W.2d 531, 534 (1963) (municipal electric plant created under the Municipal Electric Plant Law of 1935 is not a separate legal entity; it is a department of the city that created it) *with City of Memphis v. Civil Service Comm'n*, W2003-02799-COA-R3-CV, 2004 WL 3021120, at *6 (Dec. 29, 2004) (declaring a metropolitan airport authority to be a separate corporate entity based on examination of statutory scheme); Tenn. Att'y Gen. Op. 81-220 (Apr. 6, 1981) (same conclusion with respect to municipal airport authority). Because "corporations are creatures of and sired by statute they must also be eliminated or dissolved by statute." *Owens v Bricks, Inc*., 703 S.W.2d 147, 150 (Tenn. Ct. App. 1985).

The Metropolitan Airport Authority Act provides a statutory dissolution procedure for airport authorities created under that Act. In contrast, the Airport Authorities Act provides for the dissolution of a municipal airport authority in only one limited circumstance; it does not provide for dissolution in any other circumstance. *See* Tenn. Code Ann. § 42-3-103(d). Statutes "in pari materia" – those relating to the same subject or having a common purpose – are to be construed together, and the construction of one statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994). Additionally, under the principle of *expressio unius est exclusio alterius*, the expression of one thing implies the exclusion of all things not expressly mentioned. *Rich v. Tennessee Bd. of Medical Exam'rs.*, 350 S.W.3d 919, 927 (Tenn. 2011). Both of these statutory construction principles, along with Dillion's Rule, lead to the conclusion that a municipality is not empowered to dissolve an airport authority under the Airport Authorities Act except as specified in Tenn. Code Ann. § 42-3-103(d). Had the General Assembly desired to give municipalities under the Airport Authorities Act the

same broad dissolution powers that it gave to municipalities under the Metropolitan Airport Authority Act, it could have done so.

Therefore, a municipality organized by private act does not have the implied authority to pass an ordinance to dissolve an airport authority created under the Airport Authorities Act.[6] A city may not pass an ordinance which ignores the State's own regulatory acts nor may it grant a right that state law denies. *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 426 (Tenn. 2013); *State ex rel. Beasley v. Mayor and Aldermen*, 196 Tenn. 407, 415-16, 268 S.W.2d 330, 334 (1954). *See Manning v. City of Lebanon*, 124 S.W.3d 562, 565 (Tenn. Ct. App. 2003) (municipal authorities cannot adopt ordinances which infringe the spirit of state law or are repugnant to the general policy of the state).[7]

2. The General Assembly, though, could pass a private act to allow the municipality to dissolve the airport authority. Because a municipality organized by private act is not a "home rule" municipality, the General Assembly is not constitutionally prohibited from passing a private act affecting it. *See* Tenn. Const. art. XI, § 9. But the private act must "either require[] the approval of a two-thirds vote of the local legislative body of the municipality . . . or require[] approval in an election by a majority of those voting in said election in the municipality . . . affected.] *Id*.

Moreover, the proposed private act must comport with article XI, section 8 of the Tennessee Constitution, which provides in part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals inconsistent with the general laws of the land; nor pass any law granting to any individual or individuals, rights, privileges, immuntie [immunities], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

In short, this constitutional provision provides that the legislature has no power to suspend any general law for the benefit of a particular individual that is inconsistent with the general laws of the land. Through judicial interpretation, this provision applies to counties and cities, as well as individuals. *Hart v. City of Johnson City*, 801 S.W.2d 512, 515 (Tenn. 1990) (citations omitted).

In order to trigger application of article XI, section 8, a statute must contravene some general law with mandatory statewide application. *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997) (citations omitted). If a statute contravenes general law for the benefit of an individual,

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[6] Tenn. Att'y Gen. Op. U90-128 (Sept. 6, 1990) is superseded to the extent it conflicts with this opinion.

[7] In reaching this conclusion, we also considered the most recent amendment to the Airport Authorities Act which provides that the powers conferred by the Act are in addition to those conferred by any other law. 2011 Tenn. Pub. Acts, ch. 139, § 3 (codified at Tenn. Code Ann. § 42-3-118(a)). Certainly there are dissolution provisions in our state incorporation laws, *see generally* Tenn. Code Ann. §§ 48-11-101, *et seq*.; but Tenn. Code Ann. § 42-3-103(b)(3) is clear that an airport authority's certificate of incorporation is issued "pursuant to this chapter." Thus, a dissolution of an airport authority under this Act must be governed by a statute that applies to Chapter 3 of Title 42.

municipality, or county, the statute violates article XI, section, 8, if there is no rational basis for the classification.[8] *See id*.; *Hart*, 801 S.W.2d at 515. Under rational basis scrutiny, a statutory classification will be upheld if some reasonable basis can be found for the classification or if any state of facts may reasonably be conceived to justify it. *Riggs*, 941 S.W.2d. at 53.

As explained above, the Airport Authorities Act does not authorize a municipality to dissolve an airport authority, except in one limited circumstance. Therefore, the proposed private act would be inconsistent with the Act and contravene general law. Thus, absent a rational basis for suspending the law for one municipality, the proposed private act would be unconstitutional under article XI, section 8 of the Tennessee Constitution. Accordingly, any proposed act to authorize the municipality to dissolve the airport authority that is created under the Airport Authorities Act should articulate the reasons why such dissolution is necessary.

Finally, the validity of a proposed private act would depend on the facts and circumstances surrounding the dissolution of the municipal airport authority. For instance, there may be contractual obligations of the municipal airport authority that may prevent dissolution unless provision is made for the fulfillment of those obligations.

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[8] All classifications that do not affect a fundamental right or discriminate as to a suspect class are generally subject to the rational basis test. *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978).