

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

August 22, 2016

Opinion No. 16-31

Official Bonds of County Officials

Question 1

Does Chapter 749 of the Public Acts of 2016 in any way modify Tennessee Code Annotated § 8-19-101(a) - (d) to allow a county government to purchase an insurance policy in lieu of individual official bonds for those officials who have specific statutes requiring a bond to be posted?

Opinion 1

Yes. Public Chapter 749, by its plain language, has modified Tennessee Code Annotated § 8-19-101(a) - (d) to allow a county government to purchase an insurance policy in lieu of individual official bonds for those officers who have specific statutes requiring a bond to be posted. Public Chapter 749 provides a new alternative for a county government to meet its bonding requirements.

Question 2

Does Chapter 749 of the Public Acts of 2016 repeal by implication all other statutes requiring public officials to give bonds in their individual capacities?

Opinion 2

No.

Question 3

If Public Chapter 749 allows a county government to purchase an insurance policy in lieu of an individual bond for the county trustee, do the minimum policy limits required by Public Chapter 749 apply to the trustee or does the revenue-based formula in Tennessee Code Annotated § 8-11-103 determine the minimum limits of the policy?

Opinion 3

The four hundred thousand dollars (\$400,000) minimum policy limits required by Public Chapter 749 apply.

ANALYSIS

Many county officials, such as the sheriff, trustee, and register of deeds, are statutorily required to post an official bond upon assuming office. *See* Tenn. Code Ann. §§ 8-8-103, 8-11-102, 8-13-102. An “official bond” is a “common type of legally mandated bond . . . [that] is typically used to refer to an instrument by which a public officer and a secondary obligor undertake to pay up to a fixed sum if the public officer does not faithfully discharge the duties of his or her office.” Restatement (Third) of Suretyship & Guaranty § 71 cmt. c (1996).

Tennessee Code Annotated § 8-19-101 generally governs the form and execution of bonds by state and county officials who are required by law to furnish official bonds. Chapter 749 of the Public Acts of 2016 recently amended this statute. Prior to this amendment, Tennessee Code Annotated § 8-19-101 provided as follows:

(a) The official bonds of all state and county officers, now required by law to furnish official bonds, shall be executed by such officials as principal and may be executed by some surety company authorized to do business in the state of Tennessee, as surety.

(b)(1) The form of all official bonds of all state officials and employees and all county officials and employees shall be prescribed by the comptroller of the treasury, with the approval of the attorney general and reporter. Such prescribed forms shall be filed in the office of the secretary of state. All official bonds of all such officers and employees executed hereafter shall be in the prescribed form if one has been provided. To the extent any such official bond is not in the prescribed form, the same shall stand reformed by implication of law so as to comply with the prescribed form.

(2) Should the prescribed form be amended, the amendment shall affect only bonds and undertakings executed subsequently thereto. Bonds shall continue to be executed in their present form until a form is prescribed therefor under this law. Forms shall be prepared so as to comply with the requirements of statutes of Tennessee relating to such bonds. Where the conditions of bonds are prescribed by statute, the statute shall prevail.

(c) Nothing in this chapter or elsewhere in this code shall be construed as prohibiting the use by any county, municipality, or metropolitan government, of a blanket bond for coverage of two (2) or more of its officials. A separate rider or attachment to the blanket bond shall be prepared for each principal, and wherever in this chapter the term “bond” is used, it likewise includes a blanket bond and each rider or attachment thereto. Each rider or attachment to a blanket bond shall be signed by the named principal, shall be acknowledged by the bond sureties, shall expressly incorporate the conditions stated in § 8-19-111, shall refer specifically to the blanket bond of which it is a part, and shall be filed, approved, and otherwise processed in the manner required for bonds under this chapter.

(d) The governing body of any county by a two-thirds (2/3) vote shall elect whether or not the county officials of the county shall make a surety bond or a bond with two (2) or more good sureties, approved by the legislative body, prior to the time such official is inducted and sworn into office.

(e) County governments are required to obtain and maintain blanket surety bonds coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds shall be one hundred fifty thousand dollars (\$150,000).

Tenn. Code Ann. § 8-19-101 (Supp. 2015).

As set forth above, subsection (e) provided that county governments were to obtain and maintain blanket surety bonds for all county employees not covered by individual bonds referenced elsewhere in statute. Public Chapter 749 deleted subsection (e) in its entirety and substituted the following:

(e) County governments shall either:

(1) Obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds shall be one hundred fifty thousand dollars (\$150,000); or

(2)(A) Obtain and pay the premiums or other costs with respect to a policy of insurance issued by an insurance company duly authorized to do business in this state or an agreement with a pool established pursuant to § 29-20-401 or any entity established pursuant to § 29-20-401(b)(2) for administration of such agreement, that provides government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities. Any such policy or agreement maintained shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence;

(B)(i) A policy or agreement satisfying the requirements set forth in subdivision (e)(2)(A) shall be deemed to be a blanket official bond for each official or office identified in the policy or agreement for all purposes, including § 4-4-108 and this chapter;

(ii) A certificate of insurance evidencing the officials and offices covered, the amount of coverage maintained, and the type of coverage provided shall be filed in the register's office for the county in which the official is located;

(iii) A certificate of insurance shall satisfy the requirement for the filing of the official bond by the named officials;

(C) If a governmental entity obtains and pays premiums on an insurance policy or agreement pursuant to this subdivision (e)(2), then the monetary limits pursuant to the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20 shall not increase.

2016 Tenn. Pub. Acts, ch. 749, § 1.

In short, subsection (e)(1) preserves prior law: County employees not covered by individual bonds referenced elsewhere in statute must be covered by a blanket surety bond in an amount not less than one hundred fifty thousand dollars (\$150,000). County officials covered by individual bonds referenced elsewhere in statute remain covered by their respective individual bonds prescribed by statute.

Subsection (e)(2) provides a new alternative for a county government to meet its bonding requirements. Unlike subsection (e)(1) which purely addresses a county's procurement of coverage for its employees, subsection (e)(2) provides that a county may obtain coverage for its officials, in addition to its employees, by obtaining a policy of insurance or an agreement with a pool or entity described therein that "provides government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees," as long as the policy or agreement has limits of not less than four hundred thousand dollars (\$400,000) per occurrence. Significantly, such a policy or agreement is "deemed to be a blanket *official bond* for each official or office identified in the policy or agreement *for all purposes, including § 4-4-108 and this chapter.*" Tenn. Code Ann. § 8-19-101(e)(2)(B)(i) (Emphasis added). Further, the "certificate of insurance [] satisf[ies] the requirement for the filing of the *official bond* by the named officials." Tenn. Code Ann. § 8-19-101(e)(2)(B)(iii) (Emphasis added).

1. Accordingly, Public Chapter 749, by its plain language, has modified Tennessee Code Annotated § 8-19-101(a) - (d) to allow a county government to purchase an insurance policy in lieu of individual official bonds for those officers who have specific statutes requiring a bond to be posted. Such a policy is "a blanket official bond for each official or office identified in the policy . . . for all purposes, including . . . [chapter 18 of Title 9 of the Tennessee Code]." Tenn. Code Ann. § 8-19-101(e)(2)(B)(i). The passage of Public Chapter 749 denotes a clear departure from prior law which required county officials covered by individual bonds referenced elsewhere in statute to be covered by those individual bonds. *See Dunn v. Hackett*, 833 S.W.2d 78, 81 (Tenn. Ct. App. 1992) (as a general rule of statutory construction, a change in the language of a statute indicates the legislature intended a departure from the old law). *See also State v. Gomez*, 367 S.W.3d 237, 244 (Tenn. 2012) (an amendment to a statute raises presumption that the General Assembly intended to change existing law).

2. Subsection (e)(2), however, does not repeal by implication those statutes requiring county officials to post individual official bonds. Repeals by implication are strongly disfavored by Tennessee courts. *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995); *Jenkins v. Loudon Cnty.*, 736 S.W.2d 603, 607-608 (Tenn. 1987). Courts have a duty to attempt to arrive at a reasonable interpretation that will effectuate the intention of the General Assembly, as well as

provide for harmonious operation of the laws. *State v. Hicks*, 55 S.W.3d 515, 523 (Tenn. 2001); *Cronin*, 906 S.W.2d at 912. See *State By and Through Pierotti ex rel. Boone v. Sundquist*, 884 S.W.2d 438, 444 (Tenn. 1994) (a construction which places one statute in conflict with another must be avoided; therefore, courts must resolve any possible conflict between statutes in favor of each other, so as to provide a harmonious operation of the laws). Repeals by implication “will be recognized only when no fair and reasonable construction will permit the statutes to stand together.” *Cronin*, 906 S.W.2d at 912. Consequently, a court will hold a later statute to have repealed an earlier statute by implication only when the conflict between the statutes is irreconcilable. *Id.*; *Pacific Eastern Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 954 (Tenn. Ct. App. 1995) (a repeal by implication is found only when a conflict between the acts is inescapable).

Accordingly, if two acts can stand together through a reasonable construction, there is no implied repeal. *Metropolitan Gov’t v. Hillsboro Land Co., Inc.*, 222 Tenn. 431, 440, 436 S.W.2d 850, 854 (1968). In this instance, a reasonable construction exists which avoids statutory conflict and provides for the harmonious operation of the laws. As discussed above, Public Chapter 749 does not replace prior law; it merely provides a new alternative for a county to meet its bonding requirements for its officials. Public Chapter 749 still permits counties to cover its employees not covered by individual bonds referenced elsewhere in statute by posting a blanket surety bond in an amount not less than one hundred fifty thousand dollars (\$150,000). If a county chooses this option, then the county’s officials covered by individual official bonds referenced elsewhere in statute must be covered by their respective individual bonds prescribed by statute. Thus, statutes requiring county officials to post individual official bonds continue to have effect and may stand together with Public Chapter 749.¹

3. Your final question concerns the required minimum limits of an insurance policy that covers the county trustee. You ask whether the minimum policy limits required by Public Chapter 749 apply or whether Tennessee Code Annotated § 8-11-103 determines the minimum limits of the policy.²

As discussed above, Public Chapter 749 provides a new alternative for a county government to meet its bonding requirements. A county may now purchase an insurance policy in lieu of individual official bonds for those officers who have specific statutes requiring a bond, and that policy is “deemed to be a blanket official bond for each official.” The “certificate of insurance [] satisf[ies] the requirement for the filing of the official bond by the named officials.” Public Chapter 749 further provides that the policy shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence. Because the General Assembly explicitly expressed the minimum limits of the policy to be procured, these are the limits that apply; the minimum limits provided in Tennessee Code Annotated § 8-11-103 do not. Under the statutory construction canon of *expressio unius est exclusio alterius*, the mention of one thing in a statute is to exclude

¹ A determination that these laws stand in harmonious coexistence is also consistent with and furthers the General Assembly’s express intent that “[s]ections 8-19-101 – 8-19-106 are cumulative and supplemental to all existing laws.” Tenn. Code Ann. § 8-19-107.

² Tennessee Code Annotated § 8-11-103 requires the county trustee to execute an official bond for a minimum amount that is determined on a revenue-based formula.

other things of the same kind which are not mentioned. *D & E Constr. Co. v. Robert J. Denley Co., Inc.*, 38 S.W.3d 513, 519 (Tenn. 2001). See *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626, 633 (Tenn. 2008); *State v. Strode*, 232 S.W.3d 1, 10 (Tenn. 2007).

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