

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

**November 15, 2022**

**Opinion No. 22-14**

**Purchasing Laws Applicable to Transit Authorities Created Under Tenn. Code Ann. §§ 7-56-101 to -109**

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**Question**

Is the Chattanooga Area Regional Transportation Authority required to comply with the Municipal Purchasing Law of 1983?

**Opinion**

When a transit authority is created by a municipality or county under Tenn. Code Ann. §§ 7-56-101 to -109, the transit authority is subject to the same purchasing laws that apply to the municipality or county that established it. And when there is more than one municipality or county participating in a transit authority created under Tenn. Code Ann. §§ 7-56-101 to -109, the transit authority must take into account the purchasing laws applicable to each participating entity and follow the most stringent applicable law to assure that each participating entity satisfies its legal obligations. Thus, in the case of the Chattanooga Area Regional Transportation Authority, which both the City of Chattanooga and Hamilton County participate in and subsidize, the Authority must consider the purchasing laws applicable to both the City and the County and follow the most stringent law applicable to the particular purchase.

**ANALYSIS**

In 1970, the General Assembly passed an Act to empower “[a]ny municipality or county . . . or any combination thereof . . . to establish . . . a public transportation system.” 1970 Public Acts, ch. 515, § 1, as amended by 1971 Public Acts, ch. 160, § 5 (codified at Tenn. Code Ann. § 7-56-101(a)). The Act provided that such a public transportation system may be under the direct jurisdiction, control, and management of a municipality, county, or combination thereof; or that a municipality, county, or combination thereof is permitted “to create a transit authority or other operating or management entity by ordinance or resolution, for the purpose of managing such a public transportation system, and to prescribe the qualifications and eligibility of members of such a transit authority, their terms of office, powers and duties.” *Id.* Further, the General Assembly specified that the Act “shall form a part of the charters of all incorporated municipalities in the State of Tennessee and shall be authority for any of the counties of Tennessee to provide public transportation or to join with any municipality or combination of municipalities, either in the State of Tennessee or in other states, for the purpose of providing such public transportation.” 1970 Public Acts, ch. 515, § 8 (codified at Tenn. Code Ann. § 7-56-108).

The following year, the Board of Commissioners for the City of Chattanooga passed an ordinance to create “a METROPOLITAN TRANSIT AUTHORITY for the City of Chattanooga, Tennessee and Hamilton County, Tennessee . . . to be called the Chattanooga Area Regional Transportation Authority (CARTA).” City of Chattanooga, Tenn., Ordinance 6310 (June 29, 1971) (citing 1970 Public Acts, ch. 515, as amended by 1971 Public Acts, ch. 160, as authority for the ordinance).<sup>1</sup> Consistent with the authority granted by the Act, the ordinance provided that the Board of CARTA shall consist of one member appointed by each governmental entity that participates in CARTA, other than the City of Chattanooga, which is to appoint a number of members to the Board equal to the total of all participating governmental entities plus one. *Id.* § 3.<sup>2</sup>

Significantly, several governmental entities, including governmental entities in the State of Georgia, participated in CARTA at its inception;<sup>3</sup> but only the City of Chattanooga and Hamilton County appear to currently participate in CARTA, as these are the only two entities that now appoint members to the Board of CARTA.<sup>4</sup> As explained below, the current composition of CARTA directly bears on the query as to which laws govern purchases made by CARTA.

Transit authorities created under Tenn. Code Ann. §§ 7-56-101 to -109, like CARTA, have wide-ranging powers, which include the power to make purchases and enter contracts. First, § 7-56-102 grants a transit authority the power to

establish, acquire, purchase, construct, extend, improve, maintain, operate or franchise a public transportation system, including the acquisition of any type of vehicles necessary, car barns, terminals, garages, repair shops, buildings, lands, accessory apparatus, rights-of-way and easements, and all other appurtenances necessary, usual or proper to such a public transportation system for hire of passengers. . . . A transit authority . . . has the power to make any and all contracts,

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<sup>1</sup> The creation of CARTA is now codified in Chapter 23 of the Chattanooga City Code. Section 23-1 reflects that the 1970 and 1971 Public Acts, which provided the authority for the original creation of CARTA, are currently codified in Tenn. Code Ann. §§ 7-56-101 to -109, as amended. Chattanooga City Code § 23-1 (1986).

<sup>2</sup> The Chattanooga City Code now states that the Board “shall consist of: one (1) member appointed by each governmental entity that participates in [CARTA], other than the city, plus additional members appointed by the city equal to the greater of: (1) ten (10); or (ii) one (1) more than the number which is equal to the total number of members appointed by all other participating governmental entities.” Chattanooga City Code § 23-2 (1986).

<sup>3</sup> See *Dove v. Chattanooga Area Reg’l Transp. Authority*, 539 F.Supp. 36, 42 (E.D. Tenn. 1981) (referencing the local political subdivisions in Tennessee and Georgia that participate in CARTA); Tenn. Att’y Gen. Op. 78-346 (Sept. 21, 1978) (referencing the nine other municipalities that participate in CARTA in addition to the City of Chattanooga); see also City of Chattanooga, Tenn., Ordinance 6310, § 18 (June 29, 1971) (stating that “this ordinance shall be an interlocal governmental agreement pursuant to Article VI, Paragraph I, Sub-Section a. of the Georgia Constitution, and Section 69-1201 et seq., Georgia Annotated Code”).

<sup>4</sup> See <https://www.gocarta.org/about/board-of-directors/> (last visited Nov. 1, 2022); Hamilton County, Tenn., Resolution 1021-3 (Oct. 6, 2021) (reappointing member for five-year term).

including franchises, with any persons, partnerships, firms or corporations, public or private, necessary and incident to carry out this purpose.

Tenn. Code Ann. § 7-56-102(a).

Then, § 7-56-103 expounds on the contractual authority granted to a transit authority and the manner in which contracts are to be executed:

“[A] transit authority . . . has the right to make any and all agreements with or applications to any person, firm, federal or state agency, municipality, or public or private corporation, relating to the acquisition, construction, maintenance and operation of all or any part of a public transportation system, and contracts for loans, grants or other financial assistance from any state or federal agency. Such . . . a transit authority . . . is expressly granted the right to contract with any person, partnership or corporation, to manage and operate the transit system and to employ the necessary personnel under the direction and supervision of the municipality, county, or combination of municipality and county, or a transit authority created by it. *Any such contracts made by . . . a transit authority . . . shall be entered into and executed in such manner as may be prescribed by the charter of the municipality, or the general laws of this state.*”

Tenn. Code Ann. § 7-56-103 (emphasis added).

In sum, Tennessee law grants transit authorities extensive power to make purchases and enter contracts, but commands them to execute contracts “in such manner as may be prescribed by the charter of the municipality, or the general laws of this state.”

The requirement that transit authorities execute contracts “in such manner *as may be prescribed by the charter of the municipality, or the general laws of this state*” conveys that when the transit authority enters contracts it does so as an “arm” or instrumentality of the municipality or county that has created it.<sup>5</sup> Thus, when a transit authority contracts with others it stands in the

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<sup>5</sup> While Tenn. Code Ann. § 7-56-103 specifically mentions municipalities, but not counties, when it provides that contracts are to be executed “in such manner as prescribed by the charter of the municipality,” this phrase cannot be considered in a vacuum because it is immediately followed by the phrase “or the general laws of this state.” *See In re Estate of Tanner*, 295 S.W.3d 610, 614 (Tenn. 2009) (language of a statute cannot be considered in a vacuum, but should be construed, if practicable, so that its component parts are consistent and reasonable). Transit authorities may be established by counties *alone*, *see* Tenn. Code Ann. §§ 7-56-101(a), -108; thus, the phrase “or the general laws of this state” necessarily includes those laws applicable to counties. Moreover, when the Act at issue here was passed in 1970, only municipalities were capable of having a charter form of government. *See Jordan v. Knox Cnty.*, 213 S.W.3d 751, 767 (Tenn. 2007) (after the ratification of article VII, section 1 of the Tennessee Constitution in 1978, the General Assembly passed enabling legislation to allow counties to adopt a charter form of government as an alternative form of county government). In any case, for purposes of the question presented here, the significance of the requirement that contracts be executed “in such manner as may be prescribed by the charter of the municipality,” is that a transit authority entering into a contract is to be viewed as an instrumentality of the local governmental entity that has formed it—whether the local governmental entity forming the transit authority is a municipality or a county. Viewing a transit authority as an instrumentality of a municipality for such purposes, but not as an instrumentality of a county for such purposes merely because Tenn. Code Ann. § 7-56-103 specifically mentions municipal charters, would not be logical. *See Voldafone Americas Holdings, Inc. & Subsidiaries v. Roberts*, 486 S.W.3d 496, 535 (Tenn. 2016) (statutes must be construed in common-sense manner).

same shoes as the municipality or county that has formed it. *See Chattanooga Area Reg'l Transp. Authority v. T.U. Parks Constr. Co.*, No. 03-A01-9712-CH-00524, 1999 WL 76074 at \*5 (Tenn. Ct. App. 1999) (finding that CARTA's execution of a contract with a construction company that provided for arbitration was *ultra vires* because CARTA is a governmental entity without authority to agree to arbitration).

When municipalities and counties make purchases, they are generally required by charter, Private Act, or Public Law to competitively bid the purchases.<sup>6</sup> Nothing in Tenn. Code Ann. §§ 7-56-101 to -109 exempts municipalities or counties—or transit authorities established by them—from complying with competitive bidding laws. *Compare* Tenn. Code Ann. § 54-6-104 (exempting “public entities” under the Public-Private Transportation Act of 2016 from the purchasing and contracting requirements under title 6 and title 12, chapter 3). Accordingly, when a transit authority is created by a municipality or county under Tenn. Code Ann. §§ 7-56-101 to -109, the transit authority is subject to the same purchasing laws that apply to the municipality or county that established it.

When there is more than one municipality or county participating in a transit authority created under Tenn. Code Ann. §§ 7-56-101 to -109, the question arises as to which purchasing laws the transit authority must follow. In a prior Opinion, this Office concluded that a solid waste authority that is a creation of multiple counties or the creation of counties and municipalities participating by agreement must follow the most stringent applicable competitive bidding law, whether county or municipal. Tenn. Att’y Gen. Op. 97-145 (Oct. 23, 1997).<sup>7</sup> The rationale for the conclusion was essentially two-fold: “[C]ompetitive bidding laws are primarily intended to benefit the public, because it is taxpayer money that is being used for the purchase” and “every procurement obligation is met.” *Id.* (emphasis added). In other words, to protect the public funds of the participating entities of the solid waste authority and to assure that each participating entity satisfies its legal obligations to protect those funds, the solid waste authority must take into account the purchasing laws applicable to each participating entity and then follow the most stringent applicable law. *See id.*

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<sup>6</sup> *See, e.g.*, Tenn. Code Ann. §§ 5-14-101 (County Purchasing Law of 1957); §§ 5-14-201, *et seq.* (County Purchasing Law of 1983); §§ 5-21-101, *et seq.* (County Financial Management System of 1981); §§ 6-18-101, *et seq.* (City Manager-Commission form of government); §§ 6-30-101, *et seq.* (Modified City Manager-Council form of government); §§ 6-56-301, *et seq.* (Municipal Purchasing Law of 1983); Tenn. Code Ann. § 12-3-1204 (applicable to municipalities and counties with a population greater than 150,000 according to the latest federal census).

<sup>7</sup> In 2004, this Office affirmed the conclusion of Opinion 97-145. Tenn. Att’y Gen. Op. 04-101 n. 11 (July 2, 2004). And in 2006, this Office similarly concluded that when an entity is created under the Interlocal Agreement Act, Tenn. Code Ann. §§ 12-9-101, *et seq.*, and the different participating agencies are subject to different bidding requirements, the entity created by the interlocal agreement should comply with the most restrictive limit. Tenn. Att’y Gen. Op. 06-081 (May 1, 2006).

Thus, in the case of CARTA, which both the City of Chattanooga and Hamilton County participate in and subsidize,<sup>8</sup> CARTA must consider all the purchasing laws applicable to both entities and follow the most stringent law applicable to the particular purchase.

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<sup>8</sup> See <https://budget.chattanooga.gov/#!/year/2021/operating/0/program/CARTA+Subsidy/0/service; FY21ACFR.pdf> ([hamiltontn.gov](http://hamiltontn.gov)).