

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 27, 2005

Opinion No. 05-119

Members of the Blount County Regional Planning Commission

QUESTIONS

1. In 1967, the State Planning Commission established the Blount County Regional Planning Commission and designated the chairs of the Alcoa and the Maryville Planning Commissions as members. In 1993, the Local Government Planning Advisory Committee adopted a resolution authorizing the Blount County Executive to appoint one member other than the chair of each planning commission to serve on the Blount County Regional Planning Commission. Were these two resolutions authorized under the statutes then in effect?

2. Who appoints the members of the Blount County Regional Planning Commission?

3. Is the City of Maryville currently entitled to a designated seat on the Blount County Regional Planning Commission to be filled from the membership of the Maryville Planning Commission?

4. If the answer to Question 3 is yes, how should the Maryville member be chosen?

OPINIONS

1. Yes, both these resolutions were authorized under the statutes then in effect.

2. The members of the Blount County Regional Planning Commission are appointed by the county mayor, subject to confirmation by the county commission.

3. and 4. The City of Maryville is not entitled to a designated seat on the Blount County Regional Planning Commission. But the Blount County Mayor may appoint a Maryville official to the commission, subject to confirmation by the county commission and the restrictions set forth in Tenn. Code Ann. § 13-3-101(c)(2).

ANALYSIS

1. 1967 and 1993 Resolutions Regarding the Membership of the Blount County Regional Planning Commission

This opinion concerns the membership of the Blount County Regional Planning Commission (the “Blount Commission”). The first question concerns two resolutions by two different state agencies entrusted at different times with authority to create regional planning commissions. One was adopted in 1967, the other in 1993. The question is whether these resolutions were authorized under the law then in effect.

In 1967, the Tennessee State Planning Commission adopted a resolution creating the Blount Commission, to consist of eleven members. The resolution listed the members, including the Chairman of the Alcoa Planning Commission, “incumbent,” and the Chairman of the Maryville Planning Commission, “incumbent.” This resolution has evidently been interpreted as designating the chair of the Alcoa and the Maryville Planning Commissions — both municipal planning commissions — as members of the eleven-member Blount Commission.

In 1967, the State Planning Commission was authorized under Section 9 of Chapter 43 of the 1935 Public Acts to create regional planning commissions and to designate or appoint their members. The statute expressly authorized the commission to designate members of the county or city legislative body to serve on a regional planning commission, provided that the local legislative members would be less than a majority of the regional commission “and that not less than a majority of the members of the regional commission shall hold no salaried public office or position whatever excepting offices or faculty memberships of a university or other educational institution.” We think that, under this statute, the power to designate or appoint members of a regional planning commission authorized the State Planning Commission to designate the chairs of the Alcoa and Maryville Planning Commissions to serve as members of the Blount Commission. The 1967 resolution, therefore, complied with state law.

In 1972, the General Assembly amended the statutory scheme on regional planning commissions to abolish the State Planning Commission and replace it with the State Planning Office. 1972 Tenn. Pub. Acts Ch. 542. The same act created a Local Government Planning Advisory Committee appointed by the Governor. *Id.*, § 7. That section provides that this Committee is authorized to “[e]xercise the powers over regional planning commissions provided for in this Act.” This provision was codified at Tenn. Code Ann. § 13-102(c) to give the Local Government Planning Advisory Committee the authority to “exercise the powers over regional planning commissions *provided for in §§ 13-201, 13-202.*” (Emphasis added). At that time, these two statutes governed the creation and membership of regional planning commissions. Tenn. Code Ann. § 13-102(c) became Tenn. Code Ann. § 13-1-102 when the Tennessee Code was recodified in 1979. The act also provides that the powers of the State Planning Office or its director to create regional planning commissions were to be exercised with the approval of the Local Government Planning Advisory Committee. *Id.*, § 13. It is, therefore, not clear whether, at this point, the Local Government Planning Advisory Committee had sole authority to create and provide for the membership of

regional planning commissions or whether it was only authorized to approve decisions on these matters made by the State Planning Office. As codified, the statute appears to give the sole authority to the Committee.

In 1983, the General Assembly transferred the local planning division of the State Planning Office to the Department of Economic and Community Development, making it the Local Planning Assistance Section in that Department. 1983 Tenn. Pub. Acts Ch. 442. Section 2 of the act amended Tenn. Code Ann. § 13-1-102 in part by transferring it to the statutes governing the Department of Economic and Community Development. The statute was recodified at Tenn. Code Ann. § 4-3-727 (1983). Subsection (3) of that statute provided that the committee was authorized to “exercise the powers over regional planning commissions provided for in §§ 13-3-101, 13-3-102.” These statutes now govern the creation and membership of regional planning commissions. By amending the statute as it was then codified, we think the General Assembly ratified the statute giving sole authority over the creation and membership of regional planning commissions to the Local Government Planning Advisory Committee.

In 1993, the Local Government Planning Advisory Committee adopted a resolution providing that the Alcoa or Maryville representative of the Blount Commission “may be nominated by the Blount County Executive from among the appointive members of the planning commission.” The appointment “shall be coterminous with that member’s current service on the municipal regional planning commission. . . . Any successor will be proposed by the municipal regional planning commission¹ and nominated by the county executive before action by the Local Government Planning Advisory Committee.” As then codified, Tenn. Code Ann. § 13-3-101 authorized the Commissioner of Economic and Community Development to create and establish regional planning commissions and authorized the Commissioner to determine the number of members. Tenn. Code Ann. § 13-3-101(c)(2) authorized the Commissioner to designate members of the county or city legislative body to serve as members, so long as the number so designated was less than a majority of the commission, “and that not less than a majority of the members of the commission shall hold no salaried public office or position whatever excepting offices or faculty memberships of a university or other educational institution.” Tenn. Code Ann. § 13-3-101(c)(2) (1992). There is nothing in the language of the statute that could be read to prohibit the designation of members of a municipal planning commission to serve as regional planning commission members. Under the statutes in effect in 1993, therefore, the Local Government Planning Advisory Committee was authorized to adopt this resolution. The 1993 resolution, therefore, was authorized under the law then in effect.

2. Appointment of Members of the Blount County Regional Planning Commission

¹ Under Tenn. Code Ann. § 13-3-102, read together with Tenn. Code Ann. § 4-3-727, the Local Government Planning Advisory Committee may designate a municipal planning commission as a regional planning commission with regard to certain territory outside its boundaries. Both the Alcoa and the Maryville Municipal Planning Commissions have been designated as regional planning commissions with regard to certain territory under this statute. *Alcoa v. Blount County*, 658 S.W.2d 116 (Tenn. Ct. App. 1983), *p.t.a. denied* (1983).

under Current Law

The next question concerns who is authorized to appoint the members of the Blount Commission under current law. Tenn. Code Ann. § 13-3-101 authorizes the Department of Economic and Community Development to establish planning regions and define their boundaries. These powers are exercised by the Local Government Planning Advisory Committee under Tenn. Code Ann. § 4-3-727(f)(2). The current statute provides:

The department may create and establish a regional planning commission of any planning region created and defined under the provisions of this section, with members selected in accordance with subsections (c)-(h); *however, if the planning region consists of a single county, the members of the regional planning commission are to be selected according to provisions of subsection (i).*

Tenn. Code Ann. § 13-3-101(b) (emphasis added). The Blount Commission is a single county planning region. Therefore, under current law, its members are to be selected according to the provisions of subsection (i). That statute provides in relevant part:

(i)(1) In the event the boundaries of an existing planning region, as determined by the department of economic and community development, conform to the existing boundaries of a single county, the members of the regional planning commission for that region shall be appointed by the county mayor, subject to confirmation by the county legislative body.

(2) The number of members of any such commission shall be determined by the county legislative body, but shall not be less than five (5) nor more than fifteen (15).

(3) *The composition of such regional planning commission, the compensation of its members and the terms of service are subject to the same restrictions as stated in subdivision (c)(2) and subsections (d) and (e).*

(Emphasis added). Subdivision (c)(2) provides:

(2) The commissioner [of Economic and Community Development] may designate, as members of a regional planning commission, *persons who are members of county legislative bodies or of boards of aldermen or commissioners or other municipal legislative bodies;* provided, that the members of the regional planning commission, so designated from county and municipal legislative bodies shall be less in number than a majority of the commission, and that not less than

a majority of the members of the commission shall hold no salaried public office or position whatever, excepting offices or faculty memberships of a university or other educational institution;

(Emphasis added).

Under the 1995 amendments, therefore, the Local Government Planning Advisory Committee no longer has authority to define the membership and composition of a single-county regional planning commission. The 1993 resolution designating members from the Alcoa and Maryville planning commissions, therefore, is no longer in effect. Under current statutes, the members of the Blount Commission are appointed by the county mayor, subject to confirmation by the county commission. The county mayor's appointments are subject to the restrictions set forth in Tenn. Code Ann. § 13-3-101(c)(2), that is, the number of appointees from county and municipal legislative bodies must constitute less than a majority of the Blount Commission and the number of appointees who are salaried public officers or employees (excluding educational personnel) must constitute less than a majority of the Blount Commission.

3. and 4. Member from the Maryville Planning Commission

The next question is whether Maryville is entitled to a member on the Blount Commission. Unless the county mayor appoints a Maryville official to serve as a member, Maryville is not entitled to a member. The county major may appoint a Maryville official to serve on the Blount Commission, subject to confirmation by the county commission and the restrictions of Tenn. Code Ann. § 13-3-101(c)(2).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Joe McCord

Page 6

State Representative
214 War Memorial Building
Nashville, TN 37243-0118