

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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November 21, 2005

Opinion No. 05-170

Applicability of Certain State Statutes to Housing Authorities

QUESTION

Do Tenn. Code Ann. § 12-3-101 through § 12-3-1005, pertaining to public purchasing, Tenn. Code Ann. § 12-4-101 through § 12-4-802, pertaining to public contracting, and Tenn. Code Ann. § 62-6-101 through 62-6-124, governing general contractors, apply to housing authorities established by municipalities or counties pursuant to Tenn. Code Ann. § 13-20-101, *et seq.*?

OPINION

Because a housing authority is considered an instrumentality of the municipality or county which created it, statutes which apply to a municipality would generally apply to a city housing authority and statutes which apply to county government generally apply to a county or regional housing authority. However, housing authority transactions related to acquiring, operating, or disposing of property are exempt from the purchasing and contracting statutes.

ANALYSIS

You have requested our opinion regarding the applicability of certain state statutes governing public purchasing, public contracting, and general contractors to housing authorities established pursuant to Tenn. Code Ann. § 13-20-101, *et seq.* Housing authorities may be established by either a municipality, or a county, or two or more contiguous counties may form a regional housing authority. Tenn. Code Ann. §§ 13-20-402, 13-20-501, and 13-20-502. The Tennessee Supreme Court held, under the predecessor statute to the current Housing Authorities Act, that a housing authority created by a municipality is to be treated as an instrumentality of the municipality. *Knoxville Housing Authority, Inc. v. City of Knoxville*, 123 S.W.2d 1085 (1939). Since many of the factors relied upon by the court still exist under the current act, this Office has consistently opined that a city housing authority is an instrumentality of the creating municipality and that a county or regional housing authority is an instrumentality of the creating county or counties. *See* Op. Tenn. Att’y Gen. 99-013 (January 25, 1999); Op. Tenn. Att’y Gen. 89-102 (August 16, 1989); Op. Tenn. Att’y Gen. 89-62 (April 24, 1989).

Since a housing authority is considered an instrumentality of either a county or a municipality, in general, statutes that apply to a municipality would apply to a municipal housing authority and statutes that apply to a county would apply to a county or regional housing authority. *See* Op. Tenn. Att’y Gen. 89-102 (August 16, 1989) (opining that municipal, county and regional

housing authorities are subject to audit by the Comptroller pursuant to Tenn. Code Ann. § 6-56-105 and § 5-8-501). Statutes that do not apply to a county or municipality would not apply to their respective housing authorities. For example, under the public purchasing statutes, Tenn. Code Ann. § 12-3-101 (a) requires that all equipment for “state government, or any of its departments, institutions, or agencies” be purchased through the department of general services. Because this statute applies to state, not municipal or county, government, it would not be applicable to a housing authority. However, Tenn. Code Ann. § 12-3-1001 through § 12-3-1009 govern purchases by local government and, therefore, would apply to a housing authority. Most of these statutes are phrased in permissive, not mandatory, terms. *See* Tenn. Code Ann. § 12-3-1001 (a) (allowing the department of general services to make purchases for a local government); Tenn. Code Ann. § 12-3-1004 (allowing a local government to make purchases for any other local governmental unit); Tenn. Code Ann. § 12-3-1008 (authorizing county governments to utilize discounts obtained through the National Association of Counties Financial Services Center Cooperative Purchasing Alliance). It appears that Tenn. Code Ann. § 12-3-1007, regarding competitive bidding, is the only one of these statutes that is mandatorily applicable to local government and, thus, to a housing authority.¹

It should also be noted that a number of the statutes governing public contracting only apply if state funds are to be used in the project. *See, e.g.*, Tenn. Code Ann. § 12-4-402 (6) (defining “state construction project” for purposes of the Prevailing Wage Act of 1975 as a construction project in excess of \$50,000 . . . wherein any state funds may be appropriated or expended). If a housing authority receives state funds, it may be subject to these statutes as well. While it is impractical to go through each statute referenced in your opinion request, this is the type of analysis that would apply in each instance.

This office has previously opined that Tenn. Code Ann. § 62-6-101 through § 62-6-304, the Contractors Licensing Act of 1994, do not apply to a housing authority. *Op. Tenn. Att’y Gen.* 99-013 (January 25, 1999). Although the act has been amended since our most recent opinion, nothing in the amendments changes our previous analysis.

Finally, the legislature has also provided that:

. . . an authority may do all things necessary and convenient to carry out the purposes and provisions of this chapter. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the

¹By its terms, this statute only applies to a municipality, a county, or a metropolitan government with a population greater than 150,000 according to the latest federal census. Tenn. Code Ann. § 12-3-1007 (a).

general assembly shall specifically so state.

Tenn. Code Ann. § 13-20-104 (c). Because nothing in the statutes governing public purchasing, public contracting or general contractors specifically states that these provisions apply to housing authorities, it appears that housing authorities would be exempt from such statutes for transactions related to acquiring, operating, or disposing of property.

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