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Intergovernmental Agreements

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Intergovernmental Agreements

Reference Number: CTAS-449

The Constitution of Tennessee, legislation enacted by the General Assembly and administrative rules and regulations issued by agencies of the executive branch control the relationship between the State of Tennessee and its political subdivisions. The courts of the state interpret the provisions of the Constitution and ultimately determine the validity of statutes and regulations. The attorney general regularly issues opinions on the constitutionality, operation and effect of statutes. Opinions by the attorney general are particularly influential in Tennessee. For example, county officials frequently resolve disputes over various interpretations of law following the issuance of an attorney general's opinion, avoiding the necessity and expense of a court test. Also, legislators often request opinions about the authority of counties to perform functions contemplated in pending legislation or about what actions the state can legally take with regard to county governmental affairs.

County officials and personnel deal with state government as a matter of course in their daily activities. The county is not separate from the state, but is part of the state. It is a basic unit in the organization of political parties and in the administration of elections. County officials administer what are essentially state programs in areas of health and welfare, schools, courts and the collection of license fees and taxes. Counties supply services the state cannot provide or chooses not to provide. County sheriffs enforce state law and counties incarcerate thousands of state prisoners in local jails. The state oversees these activities performed on its behalf and often provides county programs with administrative and financial assistance.

The state comptroller's office has a division of local government audit responsible for seeing that local government finances are audited properly, while watching for potential financial difficulties. Another official in the office of the comptroller reviews local bond issues and advises local governments on bond problems. The state provides an Elections Coordinator in the office of the Secretary of State who works with local governments on local election problems and issues, giving assistance in election law and procedures. The Tennessee Emergency Management Agency is available to assist any local government in times of disaster. The Police Officers Standards Commission prescribes qualifications and training for local law enforcement officers. County jails are inspected in accordance with state laws.

The state is particularly cooperative in county purchasing and financial management. State law empowers counties to make purchases under the state purchasing contract without letting bids. This means automobiles, road salt, typewriters and anything that the state purchases can be purchased by local governments under the same contract. The state operates a Local Development Authority (LDA). Under the LDA, the state issues revenue bonds and loans proceeds to local governments for the construction of wastewater treatment projects. Local governments pay off these bonds through the revenues from local user charges. The state has also authorized a local government investment pool through which counties and other entities can invest idle funds with full protection.

State and counties share some of the same revenue sources. The state collects not only the state sales tax, but also county and municipal sales taxes. The state retains a small administrative fee for collecting local sales taxes and remits the balances to the county trustee for distribution within that county. The state also collects the state gasoline tax which is shared with cities and counties.

There are numerous worthy governmental programs and purposes which could not be performed or executed without extensive state and county cooperation. For example, the state Fire Marshal's office in the Department of Insurance, is responsible for reviewing the plans of all schools, multi-story office buildings and institutional buildings in each local jurisdiction to make sure they are safely constructed. The Department of Health and Environment has a technical assistance program to assist local wastewater treatment facility operators to comply with environmental regulations. The Department of Economic and Community Development works with cities and counties to help them recruit industrial prospects and to publicize local resources. These are a few of the ways counties interact with the state on a daily basis for a variety of reasons and functions.

The state of Tennessee has been divided into nine development districts for the purpose of regional planning, joint community and economic development projects, and the provision of certain services on a regional basis. Each development district serves as an area agency on aging that administers many programs based on federal funds that are passed through the state to the development districts to assist elderly and disabled citizens. Each county, plus each municipality is represented on the board of the development district for the region along with other state representatives. The county mayor represents his or her county on the development district board and may serve on its executive committee.

Another form of intergovernmental cooperation is the representation of local governments on state boards and commissions. Some of the bodies on which county officials are represented include the Tennessee

Advisory Commission on Intergovernmental Relations, the Air Pollution Control Board, the Consolidated Retirement System Board of Trustees, the Emergency Medical Services Board, the Tennessee Housing Development Agency, the Peace Officers Standards and Training Commission, the Solid Waste Disposal Control Board, the Water Quality Control Board, and many others. Local government representation on these boards and commissions is provided for by statute.

Interlocal Agreements

Reference Number: CTAS-479

Within county boundaries exist the county government, sometimes several city governments and special service districts. These entities may have contractual relationships for the provision of services with one or more of the others. A county may be part of an economic development district, a planning district, a federal regional project or it may have an agreement with an adjoining county to supply emergency medical or fire fighting services. Examined from the local level upward, the administration of government in Tennessee depends on numerous small units interacting with even smaller units as well as the large agencies and departments of the state. The sheer number of these units raises questions of their necessity, efficiency and ability to interact effectively.

Interlocal agreements, for the joint exercise of powers, may be entered into between cities, counties, and other public agencies of the state and the federal government. Under Title 12, Chapter 9, Part 1 of the Tennessee Code Annotated, local governments are permitted to cooperate with other localities in an attempt to provide services and facilities in the most efficient and mutually advantageous fashion.

Pursuant to this Interlocal Cooperation Act, agreements for the joint exercise of powers may be entered into by cities, counties, and other public agencies of the state and the federal government. T.C.A. § 12-9-104. Governing bodies may enter into contracts "with any one or more public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform". T.C.A. § 12-9-108. These contracts should set out in detail the "purposes, powers, rights, objectives and responsibilities of the contracting parties" and must be authorized by the governing body of each party to the contract. T.C.A. § 12-9-108. These contracts generally deal with ongoing services. For example, they may govern how a city and county run a joint solid waste transfer station. Also, a municipality may enter into an agreement with the sheriff, court of general sessions and the county legislative body of any county in which it is located to provide for the enforcement of the municipality's ordinances T.C.A. § 12-9-104. There are also other statutes providing specific authority for an interlocal agreement to deal jointly with a particular activity. Examples are interlocal agreements for joint jails or workhouses among adjoining counties (T.C.A. § 5-7-105) and urban-type public facilities for utilities such as water and sewer services. T.C.A. § 5-16-107.

Any interlocal agreement that creates a local government joint venture must be filed with the comptroller of the treasury within 90 days of its execution. Each county participating in a local government joint venture must file an annual statement with the comptroller stating the names of the parties to the agreement, the annual revenue and expenses of any entity created under the agreement and such other information as the comptroller may require. T.C.A. § 12-9-112(a).

While the Intergovernmental Cooperation Act gives broad authority to all governmental units, T.C.A. §§ 5-1-113 and 5-1-114 give specific powers to counties. A county may contract with any city within its borders to conduct, operate and maintain services and functions of the two governments. Also, any two contiguous counties may cooperate to jointly conduct or finance necessary services. No government may agree to cooperate in any activity except one in which each government may participate separately. The Tennessee Code sets out the functions in which a government may engage. Many laws authorizing specific activity often contain permissive clauses for cooperative performance by local governing bodies (see, e.g. T.C.A. §§ 12-9-101 through 12-9-109).

Tennessee Code Annotated § 7-51-402, provides that counties, municipalities, utility districts and cooperatives of this state billing and collecting user fees, rates or charges for a utility service, including but not limited to, water, sanitary sewer and electricity, or for garbage and refuse collection and disposal services, are authorized by resolution to enter into agreements with each other to provide for this billing and collection to be done one for the other on such terms as may be agreed upon.

Mutual Assistance and Mutual Aid Agreements

Reference Number: CTAS-480

When disasters strike, they often tax the resources and personnel of a local government beyond its capacity to respond properly. In such situations, neighboring cities and counties have the opportunity to be lifesavers, often literally. Under the Mutual Aid and Emergency and Disaster Assistance Act of 2004

(discussed below), a statewide system of mutual assistance exists that may be used at the option of the local government. Prior to the enactment of this legislation, many local governments had mutual aid agreements in place. The local governments that wished to keep these older agreements in force had to adopt a resolution before July 1, 2004, to extend them. If the local government did not pass such a resolution, then the provisions of the 2004 law are in effect in the county. This re-adoption requirement to keep an old agreement does not affect service and operational agreements between local governments that are not emergency or disaster related. Also, local governments may adopt new mutual aid agreements.

The 2004 Mutual Aid and Emergency and Disaster Assistance Act makes a distinction between aid, which is provided under this law on request in situations in which there has been no declaration of a state of emergency or disaster and for which no cost reimbursement is required, and assistance, which is provided after an emergency or disaster is declared and for which cost reimbursement is required. The law allows municipal and county mayors and executives to declare local states of emergency. Requests for aid or assistance may be made verbally, but such requests must be confirmed in writing within 30 days of the initial request.

Parties must keep records of all requests for assistance made under the act. The law allows a responding entity to send personnel and equipment anywhere in the state to respond to a request for aid or assistance, but there is no duty to respond to a request or to stay at a scene for any length of time. Responding employees and entities acting outside their boundaries have the same protections they have in their home jurisdiction.

For liability purposes, employees of the responding party will be considered employees of the requesting party while under the requesting party's supervision. At all other times, they will be considered employees of the responding party. The requesting party is required to pay the responding party all documented allowable costs incurred by the responding party in providing assistance after a state of emergency has been declared. The responding party is entitled to one-half its reimbursable costs for the first six hours of its response and 100 percent after six hours are exceeded.

This does not apply to responding utilities, which are to be reimbursed for 100 percent of their costs from the beginning of the state of emergency. The requesting party is required to reimburse personnel costs and equipment and material costs according to Federal Emergency Management Agency (FEMA) fee schedules. The responding party must maintain records and submit itemized invoices for reimbursement to the requesting party no more than 60 days after the provision of assistance has ended. This law allows, but does not require, local government entities to provide aid or assistance to any state or federal entity upon request in any part of Tennessee. T.C.A. § 58-8-101 *et seq.*

Tennessee Fire Service Emergency Response System--The Tennessee Fire Chiefs Association created the Tennessee Fire Service Emergency Response System to provide for the systematic mobilization, deployment, organization, and management of fire service resources to assist local agencies in a large fire event, disaster, or other major emergency.

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