

September 11, 2008

COUNTY FIRE PROTECTION FUNDING OVERVIEW

The sources of funding of county fire services are limited. Fire protection in counties can be funded based upon the type of fire services structure that the county has allowed to exist or has created. In counties that do not have a countywide fire department created in accordance to T.C.A. § 5-17-101, the source of county funding is limited to a donation to the independent non-profit fire department as allowed by T.C.A. § 5-9-101(23). Concerns and issues regarding how the funds are spent, management/organizational issues, strategic planning, and inter-agency cooperation have been raised due to the lack of oversight that the county has with the volunteer fire departments since there is basically no oversight exercised from the county with the donation.

According to T.C.A. § 5-17-101(d), counties may fund a countywide fire department by either of the following two methods:

- 1) Fire tax levied on property within one or more fire tax districts according to T.C.A. § 5-17-105, -106, and -107; or
- 2) Appropriations from the general fund consisting of situs based revenues from the unincorporated areas of the county and/or revenues that have already been shared with municipalities (examples include TVA PILOT funds, Hall income tax, alcohol/ beer tax in the unincorporated areas, the county's share of the second half of local option sales tax revenues, etc.).

The countywide fire department may contract with independent and municipal fire departments to provide coverage within unincorporated portions of the county. Additionally, T.C.A. § 5-17-101(d)(4) allows the local government to receive donations or charitable contributions for fire protection regardless of the mechanism of funding selected.

FIRE TAX DISTRICTS

A county that chooses to fund fire protection using fire tax districts must create one or more districts which encompass the entire county outside of the municipal limits, pursuant to T.C.A. § 5-17-105. However, cities may elect to be included in the fire tax districts. The fire tax is to be assessed the same as the property tax and collected as an addition to it. Under T.C.A. § 5-17-106(b), the rate set must be sufficient to pay for each district's share of the total county fire department budget. This is a dedicated revenue stream that can only be used for fire protection activities.

FIRE FEES

Many counties have been looking for alternative revenue sources for funding of fire protection. As of July 1 this year, 2008 Public Chapter 1034 amended T.C.A. § 5-16-101(b)(2) to allow counties to set up "Urban Type Public Facilities" to provide fire protection and to be able to charge a fire fee. To do this, T.C.A. § 5-16-102 states that a majority of the county legislative body would need to pass a resolution placing the authority to

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exercise the power in this chapter with:

- (1) Some agency of the county already in existence (an example of this would be a countywide fire department created in accordance to T.C.A. § 5-17-101 *et seq.*).
- (2) A public works department to be created; or
- (3) A board of public utilities established under T.C.A. § 5-16-103.

Clearly, having the countywide fire department in existence prior to pursuing this revenue source would be the most practical alternative. The fire fee can be based upon structures rather than the fire tax that is assessed the same as the property tax. As an example, the fee collected could be structured so that all one-and two-family dwellings are charged \$10 per month while commercial property is assessed a \$15 fee. Discounts could be given for structures that have automatic fire protection sprinkler systems installed and maintained according to code.

The challenge with this type of revenue stream is how the fee would be collected. It cannot be added to the property tax and would need to be billed. Shelby County currently attaches it to the monthly utility bill. This is one way that it could be collected. If a county were looking to collect the fee in this manner, a few issues would need to be reviewed:

1. The utility district would have to agree to the collection mechanism. There is no provision that would require the utility district to participate in this program.

2. If a utility customer refused to pay the additional fee, there is basically no recourse to collect the delinquent payment. The utility could not be disconnected for nonpayment of the fire fee.
3. In counties where there are multiple utility districts, the likelihood that all districts would cooperate to collect the fee in the same manner is unlikely and would create a challenge for the accounting of the revenue stream.

NON-PROFIT VOLUNTEER FIRE DEPARTMENTS

As stated previously, T.C.A. § 5-9-101(23) allows the county to make a monetary donation to any not-for-profit volunteer fire department that has been registered with the Secretary of State as a not-for-profit organization and duly recognized by the State Fire Marshal's Office in accordance with the Fire Department Recognition Act in T.C.A. § 68-102-301 *et seq.*

Under T.C.A. § 12-3-1010 a county may purchase fire equipment with general county funds and then transfer that equipment to a privately chartered not-for-profit fire department. However, the county cannot purchase the property with general obligation debt and then transfer it to the fire department. If the property is financed, the county would have to own and operate the equipment in its own fire department. (Attorney General's Opinion 07-87).