

STATE OF TENNESSEE

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Opinion No. 08-23

Applicability of Certain Statutes to the City of Tullahoma

QUESTIONS

Is either of the following statutes applicable to the City of Tullahoma:

1. Tenn. Code Ann. § 6-33-106 regarding a long-term capital improvement program?
2. Tenn. Code Ann. § 6-36-105(5) regarding the Board of Education?

OPINIONS

1. Unless the City has recently adopted the Modified City Manager-Council Charter in accordance with Tenn. Code Ann. § 6-30-106, Tenn. Code Ann. § 6-33-106 does not apply to it.

2. Unless the City has recently adopted the Modified City Manager-Council Charter in accordance with Tenn. Code Ann. § 6-30-106, Tenn. Code Ann. § 6-36-106 does not apply to it.

ANALYSIS

This request concerns the applicability of two statutes to the City of Tullahoma. The first is Tenn. Code Ann. § 6-33-106, which provides:

The council shall establish a planning commission, and may by ordinance within the framework of this charter, exercise authority in the fields of planning, zoning, subdivision control and related activities as provided by general laws of the state. The rules and regulations of the planning commission shall have no force or effect unless approved by the council. No later than ninety (90) days prior to each fiscal year, the planning commission shall submit to the city manager a long-term capital improvement program with recommendations as to the priority of individual projects and the methods of financing them. The members of the planning commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in official duties.

This statute is part of the Modified City Manager-Council Charter that appears at Tenn. Code Ann. §§ 6-30-101, *et seq.* Tenn. Code Ann. § 6-30-102 provides in relevant part:

As used in chapters 30-36 of this title, unless the context otherwise requires:

(1) “City” means any city or territory to be incorporated *that may adopt the provisions of chapters 30-36 of this title*;

(Emphasis added). Tenn. Code Ann. § 6-30-106 provides in relevant part:

(c) Except for the provisions of chapters 30-36 of this title that are adopted by reference in other municipal charters, the provisions of chapters 30-36 of this title apply only to those cities that have adopted chapters 30-36 of this title by referendum as authorized by law.

Research indicates that the City of Tullahoma operates under a private act charter. This charter was most recently amended in 2005. 2005 Tenn. Priv. Acts Ch. 40. We have reviewed the Tullahoma City Charter. It does not adopt Tenn. Code Ann. § 6-33-106 by reference.¹ For this reason, unless the City has recently adopted the Modified City Manager-Council Charter in accordance with Tenn. Code Ann. § 6-30-106, Tenn. Code Ann. § 6-33-106 does not apply to it.

The second question is whether Tenn. Code Ann. § 6-36-105(5) applies to the City of Tullahoma. That statute provides in relevant part:

The board of education has the power and duty to:

* * * *

(5) Initiate, review, revise and approve plans for the erection or improvement of buildings and facilities to be used for educational purposes, and transmit copies of all such plans that bear on the long range development of the schools to the city planning commission for incorporation as part of the capital improvement program[.]

As discussed above, this provision is part of the Modified City Manager-Council Charter, and applies only in a city that has adopted the Modified City Manager-Council Charter or the charter of which incorporates the statute by reference. The Tullahoma City Charter does not adopt Tenn. Code Ann. § 6-36-105 by reference. For this reason, unless the City has recently adopted the Modified City Manager-Council Charter in accordance with Tenn. Code Ann. § 6-30-106, Tenn. Code Ann. § 6-36-105 does not apply to it.

¹Section 8(b) of the Charter incorporates Tenn. Code Ann. “Title 6, Chapter 15” into the City Charter. The same section refers to “Tennessee Code Annotated, Section 6-1508.” Based on this codification, the statute refers to the Municipal Electric Plant Law, now codified at Tenn. Code Ann. §§ 7-52-101, *et seq.*

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