

AG Opinion: Pledge of City Appropriations to Nonprofit Organization

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Sincerely,

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Reference Number: MTAS-1887

Tenn. Op. Atty. Gen. No. 99-225
Office of the Attorney General
State of Tennessee

Opinion No. 99-225
December 3, 1999

Pledge of City Appropriations to Nonprofit Organization

Honorable Curtis Person, Jr.
State Senator
Suite 308, War Memorial Building
Nashville, TN 37243-0031

Question

Is the City of Millington authorized to make a commitment to appropriate funds to a nonprofit organization for 15 years without a public referendum?

Opinion

The City of Millington is not authorized, either under its charter or [under] any provision of general law, to make a binding commitment to appropriate funds to a nonprofit organization for 15 years.

Analysis

This opinion concerns the authority of the City of Millington to make a commitment to appropriate funds to a nonprofit organization for 15 years. Our opinion is confined to this question and does not address any other legal issues that the proposed transaction might present.

Our opinion is based on the following facts as presented in the opinion request: The YMCA is planning to build a new center in the City of Millington. It has been proposed that the City of Millington would donate 10 acres of land, presumably owned by the city, to the YMCA for the project. The city would "pledge" \$150,000 to the YMCA each year for the next 15 years, beginning in 1999, for the construction of the Millington YMCA. The city would sign a "letter of commitment" addressed to the YMCA stating that the city is committed to the YMCA and desires that construction begin as soon as financing can be finalized. The city would waive all costs associated with fees and permits generally required by the City of Millington for the construction project. The board of directors of the YMCA would sign an agreement stating that, in the event the Millington YMCA decides to close in the future, the building and property will revert to the City of Millington. The lender providing the funds for construction would accept these conditions.

The request does not specify the form of the city's commitment to appropriate funds or the purpose the commitment is intended to serve. Based on the request, it appears that the city's "pledge" to appropriate funds is intended to provide some incentive for the YMCA to obtain a loan to finance construction of the new facility. We therefore address whether the city may enter into a commitment to appropriate funds for this purpose, either from current or from future city revenues, that could be enforced by a proposed recipient or a third party such as a lender. Generally, municipalities may exercise those express or necessarily implied powers delegated to them by the legislature in their charters or under statutes. *City of Lebanon vs. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988); *Professional Home Health & Hospice, Inc. vs. Jackson-Madison County General Hospital District*, 759 S.W.2d 416, 419 (Tenn.Ct.App. 1988), p.t.a. denied (1988), reh'g denied (1988); *City of Chattanooga vs. Tennessee Electric Power Co.*, 172 Tenn. 524, 533, 112 S.W.2d 385, 388 (1938) (a municipal corporation may exercise only such powers "as are expressly granted in its charter or arise by necessary implication in order to carry out the declared objects and governmental purposes for which the corporation was created"). Neither the Millington City Charter, nor any general law, expressly authorizes such a commitment.

Under T.C.A. § 12-2-301 et seq., a city may lease property to or from a not-for-profit corporation. Based on the facts included in the request, however, the proposed transaction does not appear to fall within this statutory scheme. Cities are generally authorized to appropriate city funds for the financial aid of

civic and charitable organizations under the limitations set forth in T.C.A. § 6-54-111. Depending on the facts and circumstances, the beneficiary of an appropriation made in compliance with this statute may have the right to enforce its disbursement in accordance with its terms. But that statute does not authorize a city to make a binding commitment or pledge to appropriate funds either from current or from future revenues, nor is such a transaction “necessarily implied” by any of the powers granted in the Millington City Charter or general law.

Therefore the City of Millington is not authorized, either under its charter or any provision of general law, to make a binding commitment to appropriate funds to a non-profit organization for fifteen years.

Paul G. Summers, Attorney General and Reporter
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