

## MEMORANDUM

FROM: Sid Hemsley, Senior Law Consultant  
DATE: June 16, 2005  
RE: Dissolution of Airport Authority

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You have the following question: Can the City abolish the airport authority that it created?

Tennessee Attorney General's Opinion U98-128 opines that the answer is yes, but I have some serious reservations about that opinion. In my opinion, the city could be well-advised to ask for legislation authorizing municipal airport authorities established under the Airport Authorities Act [Tennessee Code Annotated, ' 42-3-101 et seq.] to dissolve, and to provide for what happens to the airport when such authorities are dissolved.

Your Airport Authority was created by ordinance under the authority of the Airport Authorities Act found in Tennessee Code Annotated, ' 42-3-103. [Municipal Code, title 20, chapter 11]. Under that Act municipalities and counties are authorized to create such authorities, but Tennessee Code Annotated, ' 42-3-101 et seq., says nothing about how such an authority is dissolved or what happens to the airport when it is dissolved.

Tennessee Attorney General's Opinion U90-128 opines that an airport authority can be dissolved by its creating municipality, in that case the Franklin Municipal Airport Authority. That opinion cites for support State ex rel. Patton v. Mayor and Board of Aldermen of City of Lexington, 6262 S.W.2d 5 (Tenn. 1981) for support. In that case, the question was whether the city's governing body could abolish the utility board it had created under the Municipal Electric Plant Law of 1935 [Tennessee Code Annotated, ' 7-52-101 et seq.] and itself take over the operation of the utility. The Tennessee Supreme Court held that the answer was yes. One of the reasons the Court gave was that, "Generally, the power of a municipal corporation to repeal an ordinance or a resolution, is, by necessary implication, as broad as the power to enact it." [At 6] However, another reason it gave was that the Municipal Electric Power Plant Law of 1935 itself gave governing bodies of a city that operated its electric systems under that law the option of placing the operating of the system in a board, or of itself operating the system.

OAG Opinion U90-128 overlooks the second reason. There is no such option contained

in Tennessee Code Annotated, ' 43-3-101 et seq., nothing at all in that statutory scheme to indicate what happens to the airport if the airport authority is dissolved. Indeed, the Metropolitan Airport Authorities act, which obviously authorizes the establishment of metropolitan airport authorities, contains a dissolution provision that provides for both how a metropolitan airport authority is dissolved and for what happens to the property of such authority upon the dissolution. Arguably, it was no accident on the part of the General Assembly that the Airport Authorities Act does not contain a dissolution provision.

Airport authorities established under the Airport Authorities Act appear to be independent bodies that have a broad range of power to conduct the business of running an airport. The authority of the creating municipal corporations appears to be quite limited, generally to engage in various activities that promote the interests of the airport authority. [See Tennessee Code Annotated, ' 42-3-117] Moreover, unlike utility boards under the Municipal Electric Plant Law of 1935, airport authorities signify their separateness from their creating municipality by being separately incorporated by the Tennessee Secretary of State. [See Tennessee Code Annotated, ' 42-3-103]

It does not necessarily follow that if a municipality is authorized to establish an independent authority of some kind that the municipality can dissolve the authority. Even Patton, above, makes exception to the general rule that municipalities have the authority to repeal ordinances and resolutions:

There are limitations on this general power, such as, where the ordinance or resolution to be repealed is contractual in nature, or where it is enacted under a limited grant of authority to do a single designated thing in the manner and at a time fixed by the legislature. [At 6]

Tennessee Code Annotated, ' 42-3-301 et seq., gives municipalities the authority, by ordinance, to create airport authorities, gives them wide powers to operate, and does not even remotely imply that they have the power to dissolve them. In fact, everything in that statute prescribing the power of such authorities points away from the proposition that municipalities can dissolve them. An ordinance authorized to be adopted by a municipality under that statute comes close to being an ordinance that authorizes municipalities to do a “single designated thing...”

In United Cities Gas Company v. Wigington, 815 S.W.2d 506 (Tenn. 1991), the Tennessee Supreme Court addressed the question of whether a utility system that owned a gas distribution system could sell that system to a private investor-owned gas company. The Court held that the answer was no. Although that case involved the question of whether an independent utility district could dissolve itself, how the Court handled that question has some bearing on the right of a municipality to dissolve an authority it created.

In Wigington, the plaintiffs conceded that the utility district’s sale of the gas system to a

non-municipal entity was not specifically authorized by statute, but urged that the following statutes in the Utility District Act of 1937 authorized utility districts to make such a sale:

Tennessee Code Annotated, ' 7-82-304, which gives utility districts the power to:

- (3) Acquire by purchases, gift, devise, lease or exercise of the power of eminent domain or other mode of acquisition, hold and dispose of real and personal property of every kind within or without the district, whether or not subject to mortgage or any other liens;
- (4) Make and enter into contract, conveyances, mortgages, deeds of trust, bonds, or leases;
- (5) Incur debts, to borrow money, to issue negotiable bonds and to provide for the rights of holder thereof;
- (6) Fix, maintain, collect and revise rates and charges for any service;
- (7) Pledge all or any part of its revenues;
- (8) Make such covenants in connection with the issuance of bonds, or to secure the payment of bonds, that a private business corporation can make under the general laws of the state, notwithstanding that such covenants may operate as limitations on the exercise of any power granted by this chapter.

Tennessee Code Annotated, ' 7-82-306:

[a]ny district created pursuant to the provisions of this chapter shall be vested with all of the powers necessary and requisite for the accomplishment of the purpose for which such district is created, capable of being delegated by the legislature. No enumeration of particular powers herein created shall be construed to impair or limit any general grant of power herein contained nor to limit any such grant to a power or powers of the same class or classes as those enumerated. The district is empowered to do all acts necessary, proper or convenient in the exercise of powers granted herein.

Tennessee Code Annotated, ' 7-82-309(a):

- (4) Lease, purchase, sell, convey and mortgage the property of the district and to execute all instruments, contracts, mortgages, deeds or bonds on behalf of the district in such manner as the board shall

direct; ....

None of those statutes supported the sale of the utility district's gas system to the private utility, said the Court, because (I will quote the Court at length):

The general powers granted under ' 7-82-304 are general corporate powers necessary for the transaction of the district's business. The exercise of these powers is, however, limited by the heading of ' 7-82-304 "*Powers in carrying out purposes*" (emphasis added). Those powers granted under that section *can be exercised only in furtherance of the purposes for which the district was created which, in this case, was the distribution of natural gas.* [My emphasis.] The same limitation on the exercise of "general implementing powers" is found in ' 7-82-306. The vesting of those powers is plenary in scope, not confined to those enumerated, but *is limited to those powers "necessary and desirable for the accomplishment of the purposes for which such district is created."* [My emphasis.] Section 7-82-309 designated the board of commissioners as the executive and administration officials of the district and provides that they are authorized to exercise the powers granted to the district. This section does not, however, vest in the commissioners any powers not possessed by the district. It only authorizes the commissioners to act on behalf of the district. See ' 7-82-2012(a). Pursuant to these statutes, relied upon by the appellees, the district acting by and through its board of commissioners has, in addition to the powers peculiar to the providing of utilities to the public, the general power to acquire, hold, use, encumber, and sell real and personal property, enter into contracts and perform in accordance with the terms thereof, protect and enforce its rights by suits in court, and otherwise *do all acts incident to the development and operation of a public utility.* (Emphasis is mine.) ....

*Utility districts, being municipalities, "may exercise only those express or necessarily implied powers delegated to them by the Legislature in their charters or under statutes."* [Emphasis is mine.] *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988). The power to merge or consolidate with another utility district or municipality is expressly granted to Horton District by applicable statutes. The power to sell all its assets to a private enterprise and thus cease operation is not so expressed in title 7, Chapter 82.

This Court cannot conclude that the power of a utility district to

sell its entire system to a private corporation is Anecessarily implied by the Utility District Law of 1937. *In fact, that enactment recognizes that the district is vested only with “all the powers necessary and requisite for the accomplishment of the purpose for which such district is created.....”* [At 508-09] [Emphasis is mine.]

I can find nothing in the Airport Authorities Act that expressly or impliedly authorizes an airport authority to be dissolved by the municipality that created it. Tennessee Code Annotated, '42-3-110, contemplates the disposal of property by airport authorities, but it is highly likely that it does so in the same sense as Tennessee Code Annotated, ' 7-82-309(a) contemplated the disposal of property by a utility district in Wigington in accomplishment of its purposes. It does not contemplate the sale or the other disposition of the airport authority as a part of the dissolution of the authority.

I note that in skipping through the laws governing the creation of various authorities and municipal corporations in Tennessee Code Annotated, title 7, there is a provision in the statutory scheme governing each of them for the dissolution of the authority: Industrial Development Corporations (Tennessee Code Annotated, ' 7-53-103); Metropolitan Hospital Authorities (Tennessee Code Annotated, ' 7-57-105); parking authorities (Tennessee Code Annotated, ' 7-65-119); sports authorities (Tennessee Code Annotated, ' 7-67-1219). As pointed out ad nauseam, above, there is no such provision in the Airport Authorities Act.

If the Airport Authority has issued bonds, the bond covenants may require that the airport authority set fees and charges, etc., for airport services. If that is so, under State ex rel. Barr v. Selmer, 417 S.W.2d 532 (1957) such covenants may be binding upon the city for the life of the bonds.

I think the city should proceed with caution in attempting to dissolve the Airport Authority without some clear statutory authority to do so.