

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 03-073

Ambulance Service - Tenn. Code Ann. 7-61-104

QUESTION

Does Tenn. Code Ann. § 7-61-104 permit a county to provide ambulance service for a city, or is a county required to have a written or authorized agreement with a city in order for the county to provide ambulance service for such city?

OPINION

Tenn. Code Ann. § 7-61-104 authorizes a county to provide ambulance service for a city, so long as any such interlocal cooperation agreement to provide and maintain ambulance services, including a license, franchise, or contract, is approved by the governing body of the area to be served.

ANALYSIS

The governing body of any county or city of Tennessee may provide and maintain, and do all things necessary to provide, ambulance service as a public service. Tenn. Code Ann. § 7-61-102. *See Morristown Emergency and Rescue Squad, Inc. v. Volunteer Development Company, Inc.*, 793 S.W.2d 262 (Tenn. App. 1990). It also may license, franchise, or contract for private operators or nonprofit general welfare corporations to provide ambulance service, and may adopt and enforce reasonable regulations to control the provision of private or nonprofit ambulance service, in order to protect the public health and welfare. Tenn. Code Ann. § 7-61-103.¹

However, Tenn. Code Ann. § 7-61-104(a) disallows the provision of ambulance service outside

¹Tenn. Code Ann. § 68-140-506 (a), contained in the Emergency Medical Services Act of 1983, provides that "[n]o person, either as owner, agent, or otherwise, shall hereinafter furnish, operate, conduct, maintain, advertise or otherwise engage in or profess to engage in the business or service of transporting patients upon the streets, highways or airways within this state, or the provision of emergency medical services in the state unless such person complies with the provisions of this part and regulations pursuant thereto." Moreover, Tenn. Code Ann. § 68-140-506(g) provides that "[t]he issuance of any authorization hereunder shall not be construed so as to authorize any person to provide ambulance services or to operate any ambulance not in conformity with any ordinance or regulation enacted by any county, municipality or special purpose district or authority. *No county or municipality shall adopt standards less stringent than state standards and regulations.*" (Emphasis added.)

a county's or city's corporate boundaries, without the approval of the governing body of the area to be served:

No county may provide and maintain, license, franchise, or contract for ambulance service within the boundaries of a city or another county, and no city may provide and maintain, license, franchise, or contract for ambulance service outside its corporate boundaries, without the approval of the governing body of the area to be served.

Tenn. Code Ann. § 7-61-104(a).

Yet, Tenn. Code Ann. § 7-61-104(b) provides as follows:

(1) Except as provided in subdivision (b)(2), any two (2) or more counties and municipalities may enter into agreements with each other and with persons providing both emergency and nonemergency ambulance service for a county or counties on a county-wide basis, for joint or cooperative action to provide for ambulance service as authorized in this chapter.

(2) In any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), or in any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000), according to the 1990 federal census or any subsequent federal census, any two (2) or more counties and municipalities may enter into agreements for joint or cooperative action to provide for ambulance service as authorized in this chapter.

Tenn. Code Ann. § 7-61-104(b) does not require that any such agreements be entered into. However, in construing together Tenn. Code Ann. § 7-61-104(a) and § 7-61-104(b), if a county or city wishes to provide and maintain, license, franchise, or contract for ambulance service within the boundaries of another county or a city as set forth in that section, then it also must obtain formal approval of any such agreement, including approval of any such license, franchise, or contract, from the governing body of the area to be served. We note that, while Tenn. Code Ann. § 7-61-104 does not require specifically that any such interlocal cooperation agreements be in writing, nevertheless we are unable to envision, in a practical sense, exactly how a governing body of the area to be served could reflect its approval, unless it were to be memorialized somehow in writing. At the very least, any action taken by such governing body necessarily would appear in the governing body's official records. Moreover, if the governing body were to approve a license, franchise, or contract, for example, presumably the license, franchise agreement, or contract itself would be submitted for the local governing body's consideration and approval, or at least approved on the record via city ordinance or otherwise. See *Morristown, supra*, at 263.

Therefore, it is the opinion of this office that, read as a whole, Tenn. Code Ann. § 7-61-104 authorizes a county to provide ambulance service for a city, so long as any such interlocal cooperation agreement to provide and maintain ambulance services, including a license, franchise, or contract, is approved by the governing body of the area to be served.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SARA E. SEDGWICK
Assistant Attorney General

Requested by:

Nathan Vaughn
State Representative
Suite 109, War Memorial Building
Nashville, TN 37243-0102