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Authority of the County Commission to Manage the Day-to-Day Operations of a County Department

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-2493

We are of the opinion that it is not within the law for the county commission to manage the day-to-day operations of a county department, for these reasons:

(1) Constitutionality -- Under the structure of county government as established in the 1978 constitutional amendments, the county legislative body should not be involved in executive functions such as supervising the day-to-day operations of county departments. See Op. Tenn. Att'y Gen. 03-096 (Aug. 13, 2003), which is partially reproduced below. Accordingly, the arrangement would be subject to constitutional challenge.

(2) Lack of Authority – Statutory Authority Required.

In order for county legislative bodies, or commissioners, to have a particular power, it would have to be granted to them statutorily, by the legislature. The Tennessee Supreme Court has long enunciated this principle in numerous cases. For example, in "Shelby County v. Exposition Co., 96 Tenn. 653, 657, 36 S.W. 694 (1896), it was stated, 'County courts, in this State, are creatures of statute merely, possessed of statutory jurisdiction alone, and wholly wanting in common law powers. All their powers emanate from the Legislature. . . .' In The Judges' Salary Cases, 110 Tenn. 370, 388, 75 S.W. 1061 (1903), and Brock v. Foree, 168 Tenn. 129, 131-132, 76 S.W.2d 314 (1934), it was said that county courts 'have only such jurisdiction and power as has been expressly vested in them by enactments of the legislature.' In State v. True, 116 Tenn. 294, 311, 95 S.W. 1028 (1905), the Court added that, when the power or jurisdiction exercised by the county court is questioned, 'the party relying upon the action of the court must be able to point out the statute conferring the jurisdiction.' Further, inasmuch as 'the powers intrusted to the county courts emanate from the Legislature alone . . . when a power claimed for them is not conferred it must be held not to exist.' Wright v. State, 171 Tenn. 628, 637, 106 S.W.2d 866 (1937). And, 'In construing statutes defining the powers of county courts, the rule of 'liberal construction' does not prevail.' Southern v. Beeler, 183 Tenn. 272, 300, 195 S.W.2d 857 (1946). Later, the Supreme Court reminded that 'it is familiar law that the authority and jurisdiction of county courts will not be extended by implication, but must be conferred expressly by the Legislature.' State v. Wilson, 194 Tenn. 140, 142-143, 250 S.W.2d 49 (1952). A number of the foregoing statements were repeated in Mosier v. Thompson, 216 Tenn. 655, 658-659, 393 S.W.2d 734 (1965), where the Court also said, 'The power and jurisdiction of quarterly courts is set out by statute and it has long been the policy of this State that such enabling statutes are strictly construed.' Id., 216 Tenn. at 658.

AG OP 83-462

Structure Of County Government

The general statutory scheme of county government enacted by the legislature in 1978 as set out in Chapter 5 and 6 of Title 5 of the Code establishes county government basically along the lines of the separation of powers principles embodied in the federal and state governments.

Constitutionally speaking, the county legislative body does not have an executive function. Under the Tennessee Constitution the county mayor exercises the executive function within the framework of county government. Accordingly, the county mayor should be the person to supervise the day to day operations of county departments (excluding other elected county official's offices) and not the county legislative body.

As a result of the 1978 constitutional amendment, the structure of county government in Tennessee was substantially changed from a system with a county judge, who served both judicial and executive functions, and a quarterly county court, which served both judicial and legislative functions, to a system with **a county executive, who only serves only an executive function, and a county legislative body, which serves only a legislative function.**

See AG OP 03-096. SEE ALSO AG OP 78-435.

In AG OP 78-435, discussing the adoption of the Tennessee Local Government Act, the AG stated:

The county commission is now the chief legislative body of the county. More specifically, it is a unicameral legislative body, similar to this State's General Assembly in manner of operation. **The sole function of its members, aside from the solemnization of marriage, is the conduct of the legislative business of a county.**

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