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Opinion No. 04-032

Implementation of 2003 Pub. Ch. 344 (Tennessee Commission of Indian Affairs)

QUESTIONS

1. The state legislature re-established the Commission of Indian Affairs (Commission) through 2003 Pub. Ch. 344. The Commission is attached to the Tennessee Department of Environment and Conservation (TDEC) for administrative purposes only. Section 6(k) requires the new Commission to operate “without dependence on state appropriations.” Section 8(a) of the act states that fiscal records are to be kept by the Commissioner of TDEC and will be subject to audit. Can the apparent conflict between the fiscal language in section 8(a) be reconciled with the financial limitations of section 6(k), since the performance of these services have a state cost involved?

2. What fiscal responsibility does TDEC have for administrative oversight of the Commission?

3. If the Commission raises funds, are they to be deposited with TDEC?

A. If so, then how would expenditures be accomplished without violating section 6(k)?

B. How are the funds to be handled?

4. Is the use of TDEC employees for any purpose relative to the Commission prohibited, including legal advice from TDEC’s counsel?

5. Is TDEC permitted and/or required to provide space or equipment for the Commission?

OPINIONS

1. Yes. The apparent conflict in the statutory language can be reconciled. The obligation to keep the financial records of the Commission is a statutory obligation of TDEC. Nothing in the enabling statutes suggests that the Commission must pay for those services.

2. The statute only requires the TDEC Commissioner to keep fiscal records for the

Commission.

3. No. The statutory language does not require Commission funds to be deposited with TDEC. Because of our opinion here, questions 3A and 3B are pretermitted.

4. No. The Act requires TDEC to keep the Commission's fiscal records and TDEC employees would have to provide that service, including legal advice relating to that service. Although not required to do so, TDEC is not prohibited under the Act from using its employees, including its legal counsel, for any other purpose relative to the Commission on such terms as TDEC and the Commission might agree.

5. The Act provides that "all offices, equipment, supplies, property, facilities, funds and other resources of any program under the Tennessee Commission of Indian [A]ffairs shall be transferred to the Tennessee Commission of Indian [A]ffairs created by this act." If any offices, equipment, etc., under the foregoing provision are within TDEC, then the Department must provide them to the Commission. TDEC is permitted, but not required, to provide other space or equipment to the Commission beyond that designated by the above provision on such terms as TDEC and the Commission might agree.

ANALYSIS

1. In 2003, the legislature re-established the Tennessee Commission of Indian Affairs after the previous Commission terminated on June 30, 2001 in accordance with the sunset laws. *See* Tenn. Code Ann. §§ 4-29-112, 4-29-222. Under Tenn. Code Ann. § 4-34-101(b), the legislature mandated that "the Commission shall be attached to the department of environment and conservation for administrative purposes only." The only statutory obligation imposed on the Tennessee Department of Environment and Conservation (TDEC) Commissioner is to keep fiscal records for the Commission that will be subject to audit. Tenn. Code Ann. §4-34-107(a). The legislature authorized the Commission to raise and expend funds to carry out the mission of the Commission, but the Commission is to operate without dependence on state appropriations. Tenn. Code Ann. § 4-34-105(k).

It is a well-established principle that legislative intent is derived from the plain and ordinary meaning of the statutory language without forced or subtle construction that would limit or extend the meaning of the language. *Chadwell v. Knox County*, 980 S.W.2d 378, 382 (Tenn. Ct. App. 1998); *City of Caryville v. Campbell County*, 660 S.W.2d 510, 512 (Tenn. Ct. App. 1983). The plain language of Tenn. Code Ann. § 4-34-105(k) clearly states that the Commission "is to operate without dependence on state appropriations." In the same statute section, the legislature charged the Commission to raise funds from other sources by providing, "[T]he Commission is authorized to raise and expend funds for the purpose of carrying out the mission of the Commission." The

legislature expects the Commission to find outside sources of funding for the operation of the Commission. But the obligation to keep the financial records of the Commission is a statutory obligation of TDEC. Nothing in the enabling statutes suggests that the Commission must pay for those services. The state dollars expended by TDEC to perform this function enable TDEC to perform an obligation imposed upon TDEC by statute. In other words, the record-keeping expense created by Tenn. Code Ann. § 4-34-107(a) is one imposed by law on TDEC and is not an operating expense of the Commission.

2. Tenn. Code Ann. § 4-34-101(b) states that the Commission is attached to TDEC for administrative purposes only. The only statutory obligation imposed on TDEC is to keep fiscal records for the Commission that will be subject to audit. Tenn. Code Ann. §4-34-107(a).

3. The Commission has the authority to administer the monies it raises, and, therefore, the monies do not need to be deposited with TDEC. 2003 Pub. Ch. 344 §12 states in part, “the Tennessee Commission of Indian Affairs created by this act has the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities outlines in this part or assigned to the Commission by law, regulation or order.”

4. TDEC employees may be used relative to keeping the fiscal records of the Commission and making those records available for audit. This includes the use of TDEC’s legal services. The statutes do not require the use of TDEC employees for any other purpose relative to the Commission. However, TDEC is not prohibited under the Act from using its employees, including its legal counsel, for any other purpose relative to the Commission on such terms as TDEC and the Commission might agree.

5. 2003 Pub. Ch. 344 §11(b) provides that “all offices, equipment, supplies, property, facilities, funds and other resources of any program under the Tennessee Commission of Indian [A]ffairs shall be transferred to the Tennessee Commission of Indian [A]ffairs created by this act.” If any offices, equipment, etc., under the foregoing provision are within TDEC, then the Department must provide them to the Commission. TDEC is permitted, but not required, to provide other space or equipment to the Commission beyond that designated by the above provision on such terms as TDEC and the Commission might agree.

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