

STATE OF TENNESSEE

OFFICE OF THE
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May 14, 2007

Opinion No. 07-65

Water and wastewater treatment authorities

QUESTION

Whether water and wastewater treatment authorities, as authorized in Title 68, Chapter 221, Part 6, are included within the definition of “county” in Tenn. Code Ann. § 8-17-102(a)(2).

OPINION

To the extent that a water and wastewater treatment authority is established by a county or metropolitan government, then it would be included within the definition of “county” in Tenn. Code Ann. § 8-17-102(a)(2).

ANALYSIS

You have asked whether water and wastewater treatment authorities are included within the definition of “county” in Tenn. Code Ann. § 8-17-102(a)(2). That statute defines “county” as:

a county, metropolitan or consolidated government, inclusive of any boards, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county. Furthermore, for the purpose of this chapter, the county election commission shall be considered as an instrumentality of county government; and the administrator of elections and other employees of the election commission shall be considered county employees. Likewise, for the purpose of this chapter, the county health department shall be considered a county department and its employees shall be considered county employees. Also, likewise, for purpose of this chapter, utility districts shall be considered a county department and its employees shall be considered county employees.

In 1974, the General Assembly adopted the Water and Wastewater Treatment Authority Act, which authorizes the creation of water and wastewater treatment authorities. *See* Tenn. Code Ann.

§§ 68-221-601, *et seq.* Tenn. Code Ann. § 68-221-604(a) provides that any city, metropolitan government or county may create a water and wastewater treatment authority in accordance with the provisions of the Act and is considered, for purposes of the Act, the “creating governmental entity.” *See* Tenn. Code Ann. § 68-221-603(4). To create an authority, the Act requires that the governing body of the creating governmental entity adopt, and its executive officer approve, a resolution calling for a public hearing on the question of creating an authority. After the hearing, if the governing body determines that the public convenience and necessity require the creation of an authority, it is required to adopt, and its executive officer to approve, a resolution or an ordinance so declaring and creating an authority. Tenn. Code Ann. § 68-221-604(b) and (d). The Act further provides that the governing body of any such authority shall be a board of commissioners “appointed by the executive officer of the creating governmental entity and approved by its governing body.” Finally, Tenn. Code Ann. § 68-221-602(a) provides that “water and wastewater treatment authorities created pursuant to this part shall be public and governmental bodies acting as agencies and instrumentalities of the creating and participating governmental entities; . . .”

In accordance with these provisions of the Water and Wastewater Treatment Authority Act, water and wastewater treatment authorities would be considered “authorities, corporations or other instrumentalities appointed or created by the county or an official of the county.” Tenn. Code Ann. § 8-17-102(a)(2). Thus, to the extent that a water and wastewater treatment authority is created by a county or metropolitan government it would be included within the definition of “county” contained in Tenn. Code Ann. § 8-17-102(a)(2).¹

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¹Similarly, a water and wastewater treatment authority created by a city would be included within the definition of “municipality,” which is defined as “an incorporated city or town, inclusive of any boards, commissions, authorities, corporations or other instrumentalities appointed or created by the municipality.” *See* Tenn. Code Ann. § 8-17-102(a)(4).

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Requested by:

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