

STATE OF TENNESSEE
OFFICE OF THE
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February 6, 2009

Opinion No. 09-13

Removal of Members of the Board of Directors of an Emergency Communications District

QUESTION

Whether the provisions of state law supersede a county policy relating to attendance requirements of members of county boards and prohibit the removal of 911 board members except as authorized by state law.

OPINION

A county policy relating to attendance of members of county boards does not apply to the board of directors of an emergency communications district because the board of directors is not a county board. Pursuant to Tenn. Code Ann. § 7-86-106, an emergency communications district is an independent “municipality” or public corporation, not an arm of the county. Furthermore, Tenn. Code Ann. § 7-86-314 provides the exclusive grounds and procedures for removal of members of the board of directors of an emergency communications district and thus prohibits the removal of board members except as authorized by that section.

ANALYSIS

This Office is informed that the Bedford County Commission has approved a policy that authorizes the removal of any member of a county board if that board member misses three meetings during a term, regardless of whether the absences are excused, and regardless of whether the absences are consecutive. The County Mayor seeks to remove members of the Board of Directors (“the Board”) of the County Emergency Communications District (“the District”) who have missed three or more meetings. Minutes of the Board’s meetings reflect that member absences were excused and that the absences were not consecutive. We are asked whether state law supersedes the county’s policy relating to attendance requirements of county boards and whether state law prohibits the removal of members of the Board except as authorized by state law.

Tenn. Code Ann. § 7-86-104(a) authorizes the legislative body of any county, by resolution, to create an emergency communications district within all or part of the boundaries of such county. Prior to the establishment of such district, Tenn. Code Ann. § 7-86-104(b) requires the county legislative body, by resolution, to request the county election commission to submit to the voters within the boundaries of a proposed emergency communications district the question

of creating such district in an election to be held pursuant to Tenn. Code Ann. § 2-3-204. Tenn. Code Ann. § 7-86-105(b) provides that an emergency communications district shall have a board of directors of no fewer than seven nor more than nine members to govern the affairs of the district. The board of directors is appointed by the county mayor, subject to confirmation by the county legislative body. The members serve for a term of four years. *See* Tenn. Code Ann. § 7-86-105(c). Once created, the emergency communications district “shall be a ‘municipality’ or public corporation in perpetuity under its corporate name, and the district shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes.” Tenn. Code Ann. § 7-86-106.

Tenn. Code Ann. § 7-86-314 governs the removal of members of the board of directors of an emergency communications district. Tenn. Code Ann. § 7-86-314(a) provides that a board member may be removed if he or she has three or more consecutive unexcused absences from meetings. Tenn. Code Ann. § 7-86-314(b) provides that a board member may also be removed if he or she refuses to carry out either the provisions of the Emergency Communications District Law or an order of the board. Tenn. Code Ann. § 7-86-314(c) provides that a board member may also be removed if he or she knowingly or willfully neglects to perform the duties of such office. If one or more of these grounds for removal exists, the process by which a board member may be removed is by order of the chancery court in the jurisdiction in which the emergency communications district operates, upon petition by either the board or a county or city governing body in the service area of such district. *See* Tenn. Code Ann. § 7-86-314(a)-(c).

The issue that we are asked to address in this opinion is whether state law allows Bedford County to apply a policy authorizing the removal of any member of a county board if that board member misses three meetings during a term (regardless of whether the member’s absences are excused or consecutive) to members of the Board of Directors of the County Emergency Communications District. It is our opinion that Bedford County’s attendance policy does not apply to members of the Board because the Board is not a county board. Pursuant to Tenn. Code Ann. § 7-86-106, the District is an independent “municipality” or public corporation, not an arm of the county. Because the members of the Board are not members of a county board, the county does not have authority to apply its attendance policy to them. The mere fact that the county mayor appoints and the county commission confirms the members of the Board does not make the Board a county board, particularly in the context of a clear statutory declaration that the Board constitutes a municipality or public corporation in its own name.

Additionally, the county’s attendance policy and removal procedures are in conflict with Tenn. Code Ann. § 7-86-314. It has long been held that local government rules which are “in conflict with and repugnant to a State law of a general character and state-wide application are universally held to be invalid.” *Southern Ry. Co. v. City of Knoxville*, 442 S.W.2d 619, 621 (Tenn. 1968). A local government may not enact a rule “which ignores the State’s own regulatory acts, or deny rights granted by the State or grant rights denied by the State and thus in effect nullify the State law.” *State ex rel. Beasley v. Mayor and Aldermen of Town of Fayetteville*, 268 S.W.2d 330, 334 (Tenn.1954). If a local government rule is in conflict with the general law of the state, it is an unconstitutional violation of Art. 11, § 8 of the Tennessee Constitution, which forbids the powers of a corporation from being increased by special laws. *See Smith Amusement Co. v. Mayor & Bd. of Commissioners*, 330 S.W.2d 320 (Tenn. 1959).

The county's attendance policy, if applied to members of the Board of Directors of the County Emergency Communications District, would conflict with Tenn. Code Ann. § 7-86-314 by countermanding provisions and procedures that Tenn. Code Ann. § 7-86-314 establishes. Tenn. Code Ann. § 7-86-314 provides that a Board member is subject to removal if he or she has three or more consecutive unexcused absences from meetings. The county's policy would subject a Board member to removal for three or more absences, regardless of whether the absences were excused or consecutive. Moreover, Tenn. Code Ann. § 7-86-314 provides that Board members are to be removed "by order of the chancery court . . . upon petition by either the board, or a county or city governing body in the service area of such district." Under the purported county policy, Board members would be subject to removal by the county mayor, without an order of the chancery court. Such a policy conflicts with Tenn. Code Ann. § 7-86-314 and thus cannot be applied to remove members of the Board of Directors of the County Emergency Communications District.

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