

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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March 23, 2009

Opinion No. 09-33

ETHRA Probationary Services

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**QUESTIONS**

1. Is East Tennessee Human Resource Agency (ETHRA) required to be licensed and registered by the Tennessee Private Probation Services Council in order to provide misdemeanor probation services in Tennessee in accordance with Tenn. Code Ann. §§ 16-3-901, et seq.?
2. If ETHRA is not required to be licensed and registered by the Tennessee Private Probation Services Council, what exemption allows it to provide such services?
3. Does ETHRA face any penalties for failing to be registered with the Tennessee Private Probation Services Council?
4. Is ETHRA an appropriate entity to provide probationary services in Cocke County, Tennessee?

**OPINIONS**

1. No. Because ETHRA is a governmental entity, it is not required to be licensed and registered by the Tennessee Private Probation Services Council.
2. ETHRA is governed by the Human Resource Agency Act of 1973, Tenn. Code Ann. §§ 13-26-101, et seq.
3. No.
4. Yes.

**ANALYSIS**

1. Effective July 1, 1998, the legislature created a private probation services council. Tenn. Code Ann. § 16-3-901; 1998 Tenn. Pub. Acts, ch. 1067, § 2. "The purpose of the council is to ensure that uniform professional and contract standards are practiced and maintained by private corporations, enterprises and entities engaged in rendering general misdemeanor probation supervision, counseling and collection services to the courts." Tenn. Code Ann. § 16-3-902; *see also*

§ 16-3-909. In order to ensure that such standards are maintained, the council shall:

- (1) Provide oversight of private entities;
  - (2) Promulgate uniform professional standards and uniform contract standards for private entities;
  - (3) Establish forty (40) hours of orientation for new private probation officers and twenty (20) hours of annual continuing education;
  - (4) Promulgate rules and regulations regarding noncompliance with the uniform professional standards and uniform contract standards;
  - (5) Promulgate rules and regulations requiring periodic registration of all private entities;
  - (6) Publish an annual summary report; and
  - (7) Promulgate rules and regulations requiring criminal records checks of all private probation officers.
- (b) All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

Tenn. Code Ann. § 16-3-909. A plain reading of the statute indicates that the council governs private, not public or governmental, agencies.

ETHRA was created as a public, governmental agency. Pursuant to the Human Resource Agency Act of 1973:

The chief elected public officials of various counties and/or cities of the economic development districts established under chapter 14 of this title, are empowered to create a human resource agency. It is the intent of this chapter that there may be four (4) metropolitan human resource agencies (Memphis-Shelby, Nashville-Davidson, Knoxville-Knox, Chattanooga-Hamilton) and no more than nine (9) rural human resource agencies, coterminous with the boundary lines of the development districts. It is the further intent of this chapter that the agencies so created may be the delivery system for human resources, and in no way an infringement on the planning functions of the development districts.

Tenn. Code Ann. § 13-26-102. “[A]gencies created pursuant to this chapter shall be a body, politic and corporate, and shall be public and governmental bodies acting as agencies and instrumentalities of the creating and participating counties and cities, and such agencies are declared to be for a public and governmental purpose and a matter of public necessity.” Tenn. Code Ann. § 13-26-105(a). ETHRA was created pursuant to this statute. Tenn. Code Ann. § 4-29-236. Because ETHRA is a

governmental agency, rather than a private entity, it is not governed by the Tennessee Private Probation Services Council. Instead, it is governed by the Human Resource Act of 1973. *See* Tenn. Code Ann. §§ 13-26-101, *et seq.* That act provides that, for purposes of general oversight, agencies created pursuant to that chapter are attached to the department of human services. Tenn. Code Ann. § 13-26-111(a).

2. The administration of probation services is not limited to private entities. Tenn. Code Ann. § 40-35-302(f)(1) (2008 Supp.) provides that, unless a defendant is currently being supervised by the state board of probation and parole, nothing in that statute is intended “to restrict the use, where necessary, of any county probationary service or private probation company established for the purpose of supervising defendants convicted of misdemeanors.” Thus, “the court may order an eligible defendant placed on probation to be supervised by any public or private agency, program or association that has been established for the purpose of supervising defendants convicted of misdemeanors.” *Op. Tenn. Att’y Gen. No. 99-029* (Feb. 17, 1999).

3. Because ETHRA is not required to be registered by the Tennessee Private Probation Services Council, it would not face any penalties for failing to register.

4. ETHRA, which was created pursuant to the Human Resource Act of 1973, is a public, governmental agency. Tenn. Code Ann. §§ 4-29-236; 13-26-102, -105. Any public or private agency, program, or association established for the purpose of supervising defendants convicted of misdemeanors may provide such services in Tennessee. *See* Tenn. Code Ann. § 40-35-302(f)(1) (2008 Supp.); *Op. Tenn. Att’y Gen. No. 99-029* (Feb. 17, 1999).

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