

December 22, 2010

Honorable Terry Harrell, Mayor
City of Winchester
7 South High Street
Winchester, Tennessee 37398

Dear Mayor Harrell,

The city has by ordinance created an airport authority under the provisions of Tennessee Code Annotated (TCA) Section 42-3-103. The city ordinance codified under Title 20, Chapter 2 indicates that it is the city's intent to confer upon the Winchester Municipal Airport Authority all those duties, powers and limitations anticipated in TCA 42-3-103 through TCA 42-3-205, as amended. The TCA sections in the ordinance include the creation and operation of an airport authority, as well as the joint operation of the airport.

The statutes require that an authority so created immediately file for a certificate of incorporation with the Secretary of State's Office and register the corporation with the county registrar's office. The only charter registered with the Secretary of State's Office was the one filed in 1997 by David R. Bean. The charter provided that there shall be no members. I could not locate any airport authority charter or charters at the Franklin County Register of Deeds office.

Since the creating ordinance requires city council approval of leases and approval of the annual budget, it seems that it is the intent of the city council that the authority be operated as a joint authority. A joint operation would require an agreement among the participating agencies. I have not been able to locate any joint agreement for the operation and management of the airport authority.

- I. If the authority is created under the provisions of TCA 42-3-103 through TCA 42-3-108, and is not a joint authority:
 - a. Its members shall receive no compensation, but shall be entitled to necessary expenses, including travel incurred in the discharge of the commissioner's duties.
 - b. Each commissioner shall hold office until a successor has been appointed and has qualified.
 - c. The powers of the authority are vested in the commissioners of the authority.
 - d. The authority has all the powers necessary or convenient to carry out the authorized purposes, including, but not limited to the power to:
 - (b) Sue and be sued.
 - (c) Have a seal.
 - (d) Have perpetual succession; and
 - (e) Have such immunity in tort cases as do municipalities under the Municipal Airport Act, compiled in Chapter 5 of Title 42.

- e. Execute such contracts and other instruments and take such other actions as may be necessary or convenient to carry out the purposes of the authority.
- f. Plan, establish, develop, construct, enlarge, improve, etc. as necessary to carry out their purpose.

Such an airport authority is somewhat independent of the city council and the city is not liable for its debt or actions.

- II. If the authority is a joint authority, TCA 42-3-202 provides for an agreement for a joint operation of the airport authority. Each agreement shall specify its duration, the proportionate interest that each public agency shall have in the property, facilities and privileges involved in the joint undertaking, the proportion of costs of operation, etc., to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities and privileges jointly owned, prior to, or at such time as the property, facilities and privileges, or any part of the property, facilities and privileges, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint undertaking that remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

TCA 42-3-204 indicates that agencies acting jointly pursuant to this part shall create a joint board, which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their terms and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have powers, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or aviation easement or airport hazard to be jointly acquired, controlled and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, aviation easement or airport hazard, subject to the limitations of TCA 42-3-204.

TCA 42-3-204 places limitations on the joint board and requires some approvals of the governing bodies of the constituent public agencies.

So, is the Winchester Municipal Airport Authority operating as a regular airport authority under the provisions of TCA 42-3-103 through TCA 42-3-108 or is it operating as a joint authority under TCA 42-3-202 through TCA 42-3-205? If it is indeed a joint authority, there must be a joint agreement. If there is no joint agreement, then one needs to be developed. If the charter has not been certified to the Secretary of State and filed with the Franklin County Registrar, then one needs to be certified and filed as required by statute. Clearly the responsibilities of the authority and the city need to be clarified.

Please let me know if you have questions or need additional assistance.

Respectfully Yours

Ron Darden, Municipal Management Consultant
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MTAS legal Consultant Josh Jones