

March 26, 2010

The Honorable Beth Lothers, Mayor
Town of Nolensville
P.O. Box 547
Nolensville, Tennessee 37135

Dear Mayor Lothers

You requested an opinion from MTAS relating to a police officer being assigned additional duties as a codes enforcement officer. I assume that code enforcement is property maintenance code enforcement only and not building codes, which requires enforcement by a certified building official.

Tennessee law authorizes a municipal governing board to designate the property maintenance code enforcement officer with special police powers to issue citations and make arrests for refusing to accept the citation. Because of the numerous legal issues involved in making an arrest, MTAS recommends that a certified police officer be called to make the arrest for refusing a citation issued by the property maintenance code enforcement officer. The codes officer cannot carry a firearm unless authorized by the chief of police.

It is my opinion that a certified police officer acting in his legal capacity as a police officer, sworn to uphold local ordinances, can also perform the duties of a property maintenance code enforcement officer with full arrest powers. I agree with the Florida Attorney General that the officer would be acting in his capacity as a police officer.

It is important that the codes officer know and understand code requirements, why the city has property maintenance standards, and be able to explain the requirements in order to obtain compliance. The focus should be on getting citizens to buy in to the city's property maintenance standards with minimal court enforcement. I assume that is the basis of the decision to not have the officer in uniform or in a marked police vehicle.

From your correspondence I noted that Florida authorizes its municipalities and counties to create by ordinance code enforcement boards for the enforcement of their local codes. The Tennessee Legislature is considering a similar proposal (SB3428) for property maintenance code enforcement with powers similar to those of a local beer board. You may want to encourage your local state legislators to support such an effort.

Please call me if you have questions or comments.

Respectfully Yours

Ron Darden
Municipal Management Consultant

CC. MTAS Legal Consultant Josh Jones