

February 12, 2003

Via fax no. 931-389-6142, and U.S. Mail

Re: Utilities commission

Dear Mayor,

I have been advised by your Management Consultant that your city has a utilities commission made up of three (3) members elected by the board of mayor and aldermen. Unfortunately, the commission does not comply with Tennessee law governing the operation of municipal utilities, and the city needs to repeal the code provisions under which this commission operates and adopt a new ordinance.

The City charter contains the standard language with regard to the power of the town to acquire, construct, operate and obtain public utilities, including following qualifying language:

such powers must be exercised pursuant to and in compliance with the general laws of the State of Tennessee.

That language clearly provides that any utility operated by the town must be operated in a manner consistent with the applicable general laws.

The code provisions under which the City currently operates the utilities commission are found in Title 18, Chapter 1 of the town code. Those provisions are inconsistent with the general law, and are therefore void.

The general law provides that a town or city which operates a waterworks and/or sewerage system is required to appoint a board of commissioners to supervise the operation of such utilities. T.C.A. '7-35-406, 407. This board must consist of five (5) members who are appointed by the governing body, and the members appointed must have been residents of the city or town for at least one (1) year prior to the appointment. T.C.A.' 7-35-407. The commissioners are appointed by majority vote of the governing body and the original members appointed serve terms of one, two, three, four, and five years. Successor members appointed serve five (5) year terms. T.C.A.' 7-35-408.

In the alternative to appointing a separate board of commissioners to oversee utilities, the board of mayor and aldermen may operate as the utilities board itself, pursuant to the following statutory language:

The governing body of any incorporated city or town may, by proper ordinance, elect to

perform the duties required of the boards under this part, in which event the governing body shall have all the powers, duties and responsibilities imposed upon the board, and all references to the board shall refer to such governing body acting in the capacity of such board. T.C.A.' 7-35-406(a).

The board members must take the same oath of office required of municipal officials and shall meet within ten (10) days of the date on which they are appointed. The board shall elect a chair from the members and designate a secretary and treasurer, who may or may not be members of the board. The person designated to act as treasurer must be bonded. All meetings of the board must be public, and the board sets its own rules of procedure. T.C.A.' 7-35-409(a).

Enclosed in the mailing of this letter are copies of the sections of the statute relevant to the board of commissioners, including the description of the powers and duties of the board, which is found at T.C.A.' 7-35-412.

Your City should take action in the near future to repeal the current code provisions relating to the utilities commission and to adopt a new ordinance which is consistent with the law.

I hope this information is helpful. Please contact your Management Consultant should you need further information or assistance.

Sincerely,

Melissa A. Ashburn  
Legal Consultant