

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
**PO BOX 20207**  
**NASHVILLE, TENNESSEE 37202**

January 19, 2010

Opinion No. 10-03

Requirement of Local Governments to Provide Police, Fire, and Medical Services

---

**QUESTIONS**

1. Are cities and counties legally required to provide police and fire services?
2. Are cities and counties legally required to provide medical services, either as part of or independently from fire services?

**OPINIONS**

1. No statute of general applicability requires a city to provide police services within its boundaries. Where a city does not provide a police force, the sheriff must patrol the area within the city boundaries. Under Tenn. Code Ann. § 38-3-102(b), the sheriff is required to patrol the county roads, ferret out crimes, secure evidence of crime, and apprehend and arrest criminals. County governing bodies are required by law to fund the operations of the county sheriff's department. Tenn. Code Ann. § 8-20-120. Under Tenn. Code Ann. § 38-3-103, various city and other public officials are conservators of the peace and may act with all the power of the sheriff to aid in the prevention and suppression of public offenses. Cities may provide fire service in the exercise of their police powers or authority to provide services and utilities. Counties are also expressly authorized to provide fire service under at least two different statutory schemes. But no statute of general applicability requires a city or a county to provide fire service within its boundaries.

2. State law establishes a system of county boards of health and county health departments to execute state health programs and enforce state and county health rules and regulations. In addition, many cities and counties are expressly authorized to operate hospitals or contribute to hospital authorities created by private act. Other statutes of general applicability authorize but do not require local governments to operate or contribute to health care facilities. Many cities and counties are expressly authorized to operate hospitals or contribute to hospital authorities created by private act. But we are not aware of any statute of general applicability legally requiring cities and counties to provide medical services beyond the regulatory functions provided by local health departments.

## ANALYSIS

### 1. Requirement for City or County to Provide Police and Fire Service

#### a. Police Service

This opinion addresses services that cities and counties are legally required to provide under laws of general applicability. A definitive answer to this question would depend on the particular city or county and the charter and private acts that govern it. The first question is whether cities and counties are legally required to provide police and fire services. Statutes addressing the powers of cities and counties are frequently permissive or discretionary rather than mandatory. Thus, our Office has concluded in the past that no statute of general applicability requires a city to provide police services within its boundaries. Op. Tenn. Att’y Gen. U96-019 (March 11, 1996). Research indicates that this continues to be the case.

Where a city does not provide a police force, the sheriff must patrol the area within the city boundaries. Op. Tenn. Att’y Gen. 08-134 (August 14, 2008). The sheriff and the sheriff’s deputies are conservators of the peace within the county. Tenn. Code Ann § 8-8-213; Tenn. Code Ann. § 38-3-102(a). Under Tenn. Code Ann. § 38-3-102(b), the sheriff is required to patrol the county roads, ferret out crimes, secure evidence of crime, and apprehend and arrest criminals. County governing bodies are required by law to fund the operations of the county sheriff’s department. Tenn. Code Ann. § 8-20-120. Under Tenn. Code Ann. § 38-3-103, various city and other public officials are conservators of the peace and may act with all the power of the sheriff to aid in the prevention and suppression of public offenses.

#### b. Fire Service

State law continues to authorize the formation of private fire companies. Tenn. Code Ann. §§ 7-38-101, *et seq.* Both private and governmental fire departments must meet the requirements of the Fire Department Recognition Act, Tenn. Code Ann. §§ 68-102-301, *et seq.* A city is generally authorized, as an exercise of its police powers, to provide fire service within its boundaries or to contract for the provision of such service. *See, e.g.*, Tenn. Code Ann. § 6-2-201 (powers of city incorporated under the mayor-aldermanic charter). But no statute of general applicability requires it to do so. Similarly, statutes of general applicability authorize counties to provide fire service within their boundaries, or to contract with a neighboring local government to provide fire services. Tenn. Code Ann. §§ 5-17-101, *et seq.*; Tenn. Code Ann. §§ 5-16-101, *et seq.* Counties are also authorized to contribute county funds to nonprofit volunteer fire departments. Tenn. Code Ann. § 5-9-101(23). But no statute of general applicability legally requires a county to provide fire service.

### 2. Requirement for City or County to Provide Medical Service

The second question is whether cities and counties are legally required to provide medical services, either as part of or independently from fire services. The powers and duties of any particular city are governed by its charter. Under Tenn. Code Ann. § 6-2-201(26), for

example, cities incorporated under the mayor-aldermanic form of government are authorized, but not required, to “[p]rovide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences and services[.]” This statute could include medical services.

State law establishes a system of county boards of health and county health departments to execute state health programs and enforce state and county health rules and regulations. Tenn. Code Ann. §§ 68-2-601, *et seq.* Each county must establish a county health department. Tenn. Code Ann. § 68-2-603. The Commissioner of the Tennessee Department of Health appoints each director of a county health department, and the State pays the director’s compensation. *Id.* Counties are required, and cities are authorized, to provide funds to maintain these departments. Tenn. Code Ann. § 68-2-604; Tenn. Code Ann. § 68-2-605.

As the request notes, under Tenn. Code Ann. § 7-61-102, for example, a city or county “may” provide and maintain and do all things necessary to provide ambulance service as a public service. Many cities and counties are expressly authorized to operate hospitals or contribute to hospital authorities created by private act. Similarly, other statutes of general applicability authorize but do not require local governments to operate or contribute to health care facilities. *See, e.g.,* Tenn. Code Ann. § 9-21-105(22)(A)(local governments may issue debt to finance “public works projects,” including health centers, clinics, and hospitals). But we are not aware of any statute of general applicability legally requiring cities and counties to provide medical services beyond the regulatory functions provided by local health departments.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

BARRY TURNER  
Deputy Attorney General

ANN LOUISE VIX  
Senior Counsel

Requested by:

Honorable Eddie Bass  
State Representative  
109 War Memorial Building  
Nashville, TN 37243