

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 22, 2022

Opinion No. 22-08

Authority of Community Oversight Boards Under Tenn. Code Ann. § 38-8-312

Question 1

Under the authority and limits of Tenn. Code Ann. § 38-8-312, does a community oversight board, as defined therein, have the authority to formally declare, by board action, the opposition or support for local, state, or federal legislation, candidates, or ballot measures?

Opinion 1

No.

Question 2

Under the authority and limits of Tenn. Code Ann. § 38-8-312, does a community oversight board, as defined therein, have the authority to conduct an audit—i.e., conduct an official financial examination of the accounts of—agencies involved in public safety and the administration of justice within its jurisdiction, absent an allegation of misconduct?

Opinion 2

A community oversight board has no authority to conduct an official financial examination of the accounts of agencies involved in public safety and the administration of justice within its jurisdiction under any circumstances.

ANALYSIS

Community oversight boards, which are also known as citizen review boards or civilian review boards, oversee local law enforcement agencies. Local governments create these boards to independently review allegations of police misconduct and evaluate internal procedures used by local law enforcement personnel. *See* Tenn. Att’y Gen. Op. 18-07 (Mar. 8, 2018).

Because community oversight boards are created by local governments for various purposes, they do not all operate or function in the same way. To bring some uniformity to the operation of community oversight boards in Tennessee, the General Assembly enacted Tenn. Code Ann. § 38-8-312 in 2019. Under that statute, “community oversight board” is broadly defined as “a board or committee established by a local government to investigate *or* oversee investigation into possible law enforcement officer misconduct *or* the operations of an agency employing a law enforcement officer.” Tenn. Code Ann. § 38-8-312(g)(2) (emphasis added). And under the

statute, a “community oversight board” must exercise its functions in accordance with the “limited” authority granted to it by the General Assembly:

The authority of a community oversight board *shall be limited to* the review and consideration of matters reported to the board and the issuance of advisory reports and recommendations to the duly elected or appointed officials of the agencies involved in public safety and the administration of justice within the jurisdiction for which the community oversight board is established.

Tenn. Code Ann. § 38-8-312(a) (emphasis added).

The statute confers no other authority on community oversight boards. Moreover, the statute makes clear that a community oversight board has no independent authority to issue subpoenas for documents or to compel witness testimony when it exercises its “limited” authority. *See id.* § 38-8-312(b) (providing process for local legislative body to have subpoena issued on behalf of a community oversight board under certain conditions).

It is well established that an administrative body, such as a board, has no inherent or common law powers. *General Portland, Inc. v. Chattanooga-Hamilton Cnty. Air Pollution Control Bd.*, 560 S.W.2d 910, 914 (Tenn. Ct. App. 1976); 73 C.J.S. *Public Administrative Law and Procedure* § 147 (2022). Such a body may exercise only those powers conferred expressly or impliedly upon them by statute. *Hammond v. Harvey*, 410 S.W.3d 306, 309 (Tenn. 2013); *see Tennessee-Carolina Transp., Inc. v. Pentecost*, 206 Tenn. 551, 556, 334 S.W.2d 950, 953 (1960) (“The powers of [an administrative body] must be found in the statutes. If they are not there, they are non-existent.”). Thus, a community oversight board has no authority to formally declare, by board action, the opposition or support for local, state, or federal legislation, candidates, or ballot measures because a community oversight board’s authority is now expressly “*limited to* the review and consideration of matters reported to the board and the issuance of advisory reports and recommendations to” local officials. Tenn. Code Ann. § 38-8-312(a) (emphasis added).

Similarly, because of the express statutory limitations on its authority, a community oversight board has no authority to conduct an “audit” of a local law enforcement agency in the sense of an official financial examination of the agency’s accounts. *New Oxford American Dictionary* 105 (3rd ed. 2010).¹ Hence, construing the authority of a community oversight board to encompass the power to conduct such a financial audit of a local law enforcement agency would impermissibly broaden the language of Tenn. Code Ann. § 38-8-312. *See State v. Fleming*, 19 S.W.3d 195, 197 (Tenn. 2000) (a court ascertains a statute’s purpose “from the plain and ordinary meaning of its language within the context of the entire statute without any forced or subtle construction that would limit or extend the meaning of the language”); *Worley v. Weigels, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996) (in determining legislative intent and purpose, a court must not unduly restrict or expand a statute’s coverage beyond its intended scope).

¹ A community oversight board, however, could “audit” a law enforcement agency in the secondary sense of the word—a “systematic review or assessment of something,” *New Oxford American Dictionary* 105 (3rd ed. 2010)—if the board got a complaint or request that required a systemic review. *See* Tenn. Code Ann. § 38-8-312(a) (allowing community oversight board to “review and consider[] matters reported to the board”).

Further, any local legislation that attempts to give a community oversight board authority or power beyond the statutory limits would be preempted by Tenn. Code Ann. § 38-8-312. Local governments may not effectively nullify state law on the same subject by enacting ordinances or other regulations that ignore applicable state laws and grant rights that state law denies. *State ex rel. Beasley v. Mayor and Aldermen of Town of Fayetteville*, 196 Tenn. 407, 415-16, 268 S.W.2d 330, 334 (1954). And, correspondingly, any local legislation in existence prior to the passage of Tenn. Code Ann. § 38-8-312 that gave a community oversight board authority or power beyond the statutory limits has been superseded and impliedly repealed by Tenn. Code Ann. § 38-8-312. See *City of Memphis v. Shelby Cnty.*, 469 S.W.3d 531, 547 (Tenn. Ct. App. 2015); *Methodist Healthcare-Jackson Hosp. v. Jackson-Madison Cnty. Gen. Hosp. Dist.*, 129 S.W.3d 57, 69 (Tenn. Ct. App. 2003).

In sum, under Tenn. Code Ann. § 38-8-312 a community oversight board does not have authority to formally declare, by board action, the opposition or support for local, state, or federal legislation, candidates, or ballot measures and does not have authority to conduct an official financial inspection of the accounts of local law enforcement agencies involved in public safety and the administration of justice within its jurisdiction under any circumstances.

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