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April 12, 2021

Contracts with other Governmental Entities; No Private Use of Equipment

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Reference Number: CTAS-116

T.C.A. § 54-7-202 generally prohibits the use of county highway department equipment or material for any purpose other than a county highway purpose. Work on private roads or for private purposes is strictly forbidden. Neither can rock, crushed stone, or any other road material be sold or given away. If any employee of the county road department uses any truck, equipment, or any rock or material for personal use or sells or gives anything belonging to the county away, the chief administrative officer is obligated to discharge the employee immediately. The county highway department cannot legally gravel churchyards, privately-owned graveyards, or privately-owned roads leading either to churchyards or to privately owned cemeteries. Tenn. Op. Atty. Gen. 84-300 (November 8, 1984).

The CUHL prohibits a county official from using county equipment to perform work on a private road or for private purposes even if the county is reimbursed for the work. T.C.A. § 54-7-202(c). The only exception regarding working on a private road exists when a local board of education or the appropriate postal authorities request in writing that the county highway department provide a route and a turnaround area. The county highway department is not required to honor such a request, but may do so if the county obtains the written permission of the owner of any property to be used for the postal service or school bus turnaround. The county highway department and the postal authority or board of education shall determine whether all or part of the cost of such work will be reimbursed to the county highway department before any work commences on the project. T.C.A. § 54-7-202(g).

The county legislative body may authorize the county road department to “perform work” for other governmental entities, provided that the cost of the projects are reimbursed to the county road department. T.C.A. § 54-7-202(d)(2). For example, the county legislative body could authorize the county highway department to repair certain city streets for a certain fair cost, as this is to be “work performed.” However, the rock could not be sold to the city for a certain sum. Likewise, the county legislative body could allow the county highway department to gravel a school parking lot, but would have to cause a transfer of funds from the school fund to the highway fund.

Cities and counties may perform certain tasks jointly by interlocal agreement. Joint purchases could be made by interlocal agreement to buy a greater quantity in an effort to lower costs.

County highway departments may perform work on private residential property on behalf of the county in order to clean up property after natural disasters pursuant to T.C.A. § 7-51-1601. The county legislative body must approve the work being done prior to it being performed by the highway department and the highway department must be reimbursed for its costs associated with the clean up.

While TDOT is responsible for maintaining roads and bridges within state parks, counties may enter into agreements with TDOT to perform the maintenance work under T.C.A. § 54-1-126.

A county highway department may receive “gifts” of materials, property, services, funds or supplies for the benefit of the county highway department which can be used or disbursed in good faith in accordance with the terms of the donation. Any funds so received must be paid into the county trustee’s office, credited to the county highway fund, and disbursed according to law as other funds of the county highway department. Also, the county highway department may adopt a policy to authorize private persons or entities to repair county roads to bring a road damaged by that person or entity up to the condition or standard of the road prior to the damage caused by the private person or entity. T.C.A. § 54-7-115.

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