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Melissa Ashburn
Municipal Technical Advisory Service

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Municipal Technical Advisory Service
In cooperation with the Tennessee Municipal League

#129
HOT topic

July 25, 2006

2006 LEGISLATIVE CHANGES IMPACTING MUNICIPAL COURTS AND MUNICIPAL CODE ENFORCEMENT

Melissa Ashburn, Legal Consultant

The General Assembly made changes in laws during the 2006 legislative session that affect municipal courts and municipal code enforcement. This publication explains those changes and provides guidance for complying with the new legislation.

ADOPTION OF STATE MISDEMEANORS AS MUNICIPAL ORDINANCES

Municipal courts are civil courts rather than criminal courts and have jurisdiction only over ordinance violations. Municipal courts with concurrent general sessions jurisdiction are an exception to this rule, as such courts have specifically been granted criminal jurisdiction. Municipal courts without concurrent jurisdiction may hear only offenses for actions that are in violation of municipal ordinances. For that reason, the law has long provided that certain state misdemeanors may be adopted by reference by cities as ordinance violations that may be tried in city courts, with certain limitations.

The method by which cities adopt state misdemeanors as ordinances was changed by the 2006 General Assembly. Previously, cities relied upon the authority granted under T.C.A. § 55-10-307, which provided that specific sections of the law could be adopted by reference through ordinance. Most of the sections of the Tennessee Code listed in the statute are found in the section of our state code titled "Rules of the Road." The laws requiring the use of seatbelts and child safety seats are also included. T.C.A. § 55-10-307 has been repealed, and another section of the state law has been amended to provide broader authority.

The statute that now provides authority to cities adopting state misdemeanors is T.C.A. § 16-18-302(a), which states:

Notwithstanding any provision of law to the contrary:

(1) A municipal court possesses jurisdiction in and over cases:
  (A) For violation of the laws and ordinances of the municipality; or
  (B) Arising under the laws and ordinances of the municipality; and

(2) A municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute duplicated or cross-referenced is a Class C misdemeanor.

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The above language amends the Municipal Court Reform Act and replaces certain language that prevented cities from enforcing state misdemeanors adopted as ordinance violations if the state statute levied a fine of more than $50. Now, cities may adopt and enforce state Class C misdemeanors, regardless of the state fine, but may levy only a $50 fine for violations. The Tennessee Supreme Court ruled that municipal ordinance violations are limited to fines of $50. *City of Chattanooga v. Davis and Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W.3d 248 (Tenn. 2001).

The amendment to T.C.A.§ 16-18-302(a) quoted above does not limit authority to particular sections of the state law but requires only that such laws be classified as Class C misdemeanors. Cities may therefore now adopt other offenses, including the law governing window tinting on vehicles codified at T.C.A. § 55-9-107.

If your city ordinance adopting state laws cites T.C.A. § 55-10-307, the ordinance must be amended to state that such adoption is made pursuant to the authority contained in T.C.A. § 16-18-302(a). This amendment to the city ordinance and code should be made as soon as possible, as the legislation took effect immediately upon being enacted in June of 2006.

Note: Many city ordinances adopting state traffic laws do not cite T.C.A. § 55-10-307. If your ordinances contain no mention of the former statute, no amendment is necessary.

FAILURE TO YIELD TO EMERGENCY VEHICLE, OR THE "MOVE OVER LAW," MAY NOT BE ENFORCED IN MUNICIPAL COURTS

As noted in the new statutory language quoted above from T.C.A. § 16-18-302(a), municipalities may now adopt and enforce state Class C misdemeanors. One state law that has been adopted by many cities as an ordinance violation is the offense of failure to yield to emergency vehicles contained in T.C.A. § 55-8-132. 2006 Public Acts Chapter 653 amends the statute to now make the offense a Class B misdemeanor, subject to a fine of $100 to $500. Cities may now adopt and enforce state laws "if and only if the state criminal statute duplicated or cross-referenced is a Class C misdemeanor." T.C.A. § 16-18-302(a)(2). In light of this change and the upgrading of the offense to a Class B misdemeanor, the new language appearing in T.C.A. § 55-8-132 invalidates all municipal ordinances requiring drivers to yield to emergency vehicles. The effective date of this legislation is July 1, 2006.

Municipal courts may no longer hear cases for violation of ordinances requiring drivers to yield to emergency vehicles. Municipal courts with concurrent general sessions jurisdiction may try such offenses as state law violations. Cities without such jurisdiction should instruct their police officers to cite offenders to the general sessions court.

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OTHER OFFENSES THAT MAY NOT BE HEARD IN MUNICIPAL COURTS

In limiting the jurisdiction of municipal courts to state offenses that are Class C misdemeanors adopted by ordinance, the legislature has removed jurisdiction over a number of former municipal offenses. Many municipal codes have provisions proscribing behavior that the state laws classify as Class B or A misdemeanors or felonies. Such code violations may no longer be heard in municipal court.

Following is a list of municipal offenses contained in many municipal codes that may not now be enforced in municipal courts:

- Reckless driving, adult underage drinking and driving without valid license: T.C.A. § 16-18-302(b), may be enforced only by cities with population over 150,000;
- Cruelty to animals: T.C.A. § 39-14-202, Class A misdemeanor;
- Assault and battery: T.C.A. § 39-13-101, Class A or B misdemeanor;
- Malicious mischief and vandalism: T.C.A. § 39-14-408, Class A misdemeanor up to a Class B felony;
- Abandoned refrigerators and airtight containers: T.C.A. § 39-17-103, Class B misdemeanor;
- Disorderly houses, prostitution, and immoral conduct: T.C.A. §§ 39-13-513 through 515, Class A or B misdemeanor up to Class E felony;
- Obscene literature or material: T.C.A. § 39-17-901, et seq., Class A misdemeanor up to Class E felony;
- Public indecency and indecent exposure: T.C.A. § 39-13-511, Class A or B misdemeanor;
- Window peeping: T.C.A. § 39-13-607, Class A misdemeanor;
- Promotion of gambling: T.C.A. § 39-17-503, Class B misdemeanor;
- Criminal littering: T.C.A. § 39-14-502, Class B misdemeanor;
- Disrupting meeting or procession: T.C.A. § 39-17-306, Class B misdemeanor; and.,
- Worthless checks: T.C.A. § 39-14-121, Class A misdemeanor or felony.

Note: Failure to appear ordinances that mirror, substantially duplicate, or reference T.C.A. § 39-16-609 may no longer be enforced in municipal court, as the statute makes such offense a Class A misdemeanor. T.C.A. § 7-63-105 appears to authorize cities to make failure to appear an ordinance violation, separate from the state law. If the city failure to appear ordinance cites T.C.A. § 7-63-105 or contains no state law citation, in the opinion of MTAS consultants the ordinance may still be enforced in municipal court.

For further information concerning the amendment to your municipal code made

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necessary by these legislative changes, please contact your MTAS municipal management consultant.

MUNICIPAL COURTS NOW HAVE AUTHORITY TO ISSUE ADMINISTRATIVE INSPECTION WARRANTS

In 2003 the General Assembly passed a law providing for the issuance of administrative inspection warrants, codified at T.C.A. § 68-120-117. This law created an important tool for code enforcement by local governments by establishing a procedure for code officials to seek an inspection warrant when probable cause exists that a code violation is occurring on private property. The statute provides that the burden of proof is not the same as is required for the issuance of criminal search warrants and further limits the purposes for which such warrants may be used.

The 2006 General Assembly passed an amendment to the administrative inspection warrants statute to make clear that municipal judges have the authority to issue such warrants. 2006 Public Acts Chapter 758 amends T.C.A. § 68-120-117(a)(1) by expanding the definition of "issuing officer" to include "[a]ny municipal court having jurisdiction over the agency making application for an administrative inspection warrant, provided that the judge of the court is licensed to practice law in the state of Tennessee."

Code enforcement officials may now apply to their municipal courts for administrative inspection warrants, if the judge is also a licensed attorney. No ordinance or resolution is required before a city takes action under the law and seeks a warrant. The statute sets the procedure to follow when making such an application and further specifies what information must be contained in the warrant. No hearing or notice to the property owner is required before an administrative inspection warrant is issued.

For further information about administrative inspection warrants, please contact your MTAS municipal management consultant.

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Melissa Ashburn, Legal Consultant

MTAS OFFICES

Knoxville (Headquarters) . . . (865) 974-0411
Johnson City . . . . . (423) 854-9882
(423) 282-0416
Jackson . . . . . (731) 423-3710
Nashville . . . . . (615) 532-6827
Martin. . . . . (731) 881-7057

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