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MTAS
MUNICIPAL TECHNICAL ADVISORY SERVICE

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MUTUAL AID AND EMERGENCY ASSISTANCE: 2002 UPDATE

by
Ray Crouch, Fire Management Consultant
and
Todd Moore, TML Risk Management Pool Legal Consultant

Introduction

The state legislature and constitution create and govern municipalities and grant them their powers and authority. As a general rule, the powers and authority are limited to actions municipalities can take within their corporate limits. In Tennessee, however, the General Assembly has recognized that under certain circumstances, state residents benefit from local governments being able to provide assistance and services beyond their boundaries. Specifically, Tennessee cities have the authority to enter into agreements with other local governments to cooperate and provide assistance in the provision of police, fire, public works and other services. These agreements may determine whether the Tennessee Governmental Tort Liability Act (*Tennessee Code Annotated* 29-20-101 et seq.) applies and whether a city is insured when acting outside its corporate limits. This bulletin outlines when, where and how a town or city may act beyond its corporate limits without exposing the municipality and its employees to potential additional liability. We also have attached model agreements and policies that will help give your city the greatest protection possible under current law.

Extraterritorial Jurisdiction

A municipality's authority is normally confined to its corporate or territorial limits. "Extraterritorial jurisdiction" is simply any authority a city has beyond these limits. Extraterritorial powers must be specifically authorized by statute. For example, *T.C.A.* 6-54-301 extends the police authority of all incorporated towns and cities a distance of one mile from the corporate limits "for the suppression of all disorderly acts and practices forbidden by the general laws of the state." However, this authority does not extend to within one mile of any other incorporated town or city, nor does it extend beyond the border of the county in which the city is located. This statute authorizes the suppression of state law violations only within this one-mile area outside the city limits and should not be used for the enforcement of municipal ordinance violations.

In cities that have city court, officers have authority to serve warrants for the arrest of persons committing municipal offenses and to execute on municipal judgments for fines and costs at any point within the county where the municipality is located (*T.C.A.* 6-54-302 – 303). Even when properly authorized, such extraterritorial jurisdiction may raise constitutional due process issues that are too complicated to adequately address in this bulletin.

In addition to the statutory authority cited above, the Tennessee courts have held that police officers have authority to pursue and arrest persons who commit a felony or misdemeanor within the city limits and in their presence. In the Tennessee Supreme Court case of *Francis vs. State* (498 S.W.2d 107 (Tenn. Crim. App., 1973)), the court upheld an arrest that occurred after a city officer pursued the defendant beyond the city limits and the statutory one-mile area. However, this case was very fact specific, and it is not clear whether, under Tennessee law, an officer's status may become that of a private individual once he or she leaves the employer's jurisdiction. Therefore, pursuing an offender outside the city limits could negatively affect the municipality's protection under the Tort Liability Act and its insurance coverage. Pursuits that lead beyond the city limits are likely to be high speed and therefore increase the potential danger to the public. The TML Risk Management Pool has repeatedly urged that cities use extreme caution before initiating any pursuit. This is especially true when the pursuing officer is likely to leave the city limits.

Tort Liability

In addition to constitutional concerns, a city going outside its limits without statutory authority could lose the protection of the liability limits established in the Tennessee Governmental Tort Liability Act (*T.C.A.* 29-20-101 et seq.). Under the Tort Liability Act, for actions arising before July 1, 2002, a city's liability is limited to $130,000 per person and $350,000 per occurrence for bodily injury and $50,000 for property injuries arising out of use of automobiles. These limits increase to $250,000, $600,000 and $85,000 for any actions arising on or after July 1, 2002, but before July 1, 2007; and to $300,000, $700,000 and $100,000 for actions arising on or after July 1, 2007. However, the following hypothetical situation illustrates what could happen if a city acts beyond its statutory authority: A car accident and fire occur on a state highway four miles outside of town. A witness to the wreck calls city hall, and both the police and fire departments respond by going to the scene of the accident. The city does not have a mutual aid or assistance agreement with the county. In route to the accident, but two miles outside the corporate limits a city police cruiser tries to pass slower traffic causing an accident with an oncoming car. The driver and passengers of the car are seriously injured. If the officer is found to be negligent and his or her actions result in catastrophic injuries and damages, the city may be liable for the full amount of these injuries and damages, potentially millions of dollars. In addition, since the municipality was acting without proper statutory authority, liability insurance coverage may not apply, and the city would be responsible for paying these damages from the general fund. A municipality that allows any of its employees (fire, police, public works, or others) to act outside the city without proper authority is subjecting the taxpayers to huge potential liabilities.

The good news is that the city can protect itself, its employees and its citizens from this liability exposure by making sure it enacts and follows policies and enters into agreements that authorize its employees to go outside the city limits only when they have the statutory mandate to do so.

The Interlocal Cooperation Act

The Interlocal Cooperation Act (*T.C.A.* 12-9-101 – 109) authorizes joint action by political subdivisions of the state, including municipalities, and between political subdivisions of the state and those of other states when the other state also authorizes such joint action. Under this act, a city's governing body may make agreements relative to any power or any authority vested in, funded by, or under the control of the governing body and relative to which the governing body may make other types of contracts. An agreement under this act must meet several specific requirements as set out in *T.C.A.* 12-9-104. The act has been used by municipalities to provide mutual assistance in firefighting, law enforcement, and public works.

Mutual Aid

In addition to the Interlocal Cooperation Act, the General Assembly adopted more specific legislation for police and fire protection assistance among municipalities. The statutes described in this section authorize municipalities to make agreements with other municipalities specifically for the provision of mutual aid in fire and police protection. These agreements are not intended to address only emergency or disaster relief situations, but any situation in which the municipalities involved intend to provide support to one another. Emergency assistance is described in the following section.

Law Enforcement

T.C.A. 6-54-307 deals with law enforcement assistance. It authorizes municipalities to make mutual aid agreements with other municipalities, counties, and metropolitan airport authorities that provide law enforcement service. It also authorizes agreements between Tennessee cities and municipalities in other states if the other states' laws allow such agreements. Similar to the Mutual Assistance in Firefighting Act, this statute also allows municipalities to make a contract with an organization of residents of an unincorporated community to provide law enforcement assistance.

Fire Protection

T.C.A. 6-54-601 allows municipalities to make mutual aid agreements with other municipalities, counties, private incorporated fire departments, utility districts, metropolitan airport authorities that provide firefighting service, and industrial fire departments to provide firefighting assistance. Mutual aid agreements made under this section of the law do not have to meet the requirements for agreements under the Interlocal Cooperation Act. The agreement should provide, however, for the allocation of liabilities in the event of a lawsuit. A model Mutual Aid Agreement for firefighting is presented in Appendix A. In addition, this section allows cities to provide firefighting assistance outside their corporate limits by agreement with counties and organizations of residents of unincorporated communities. In order to provide firefighting service to residents outside the city limits, the municipality must enter into a contract with an organization of residents and property owners of the community.

There are two ways a municipality may provide fire protection outside its city limits upon authorization and agreement with the county:

1. The municipality may provide protection on an individual contractual basis with individual property owners or occupants;
2. The municipality may make an agreement to provide fire protection within a certain area outside its city limits.

Under the second option, the area in which the city will provide fire protection must be established in the agreement with the county. The statute also provides that counties may pay compensation to cities for the extension of firefighting services.

Emergency Assistance

The Local Government Emergency Assistance Act of 1987 (now codified at *T.C.A.* 58-2-111(c)) authorizes local governments (municipalities, metropolitan governments, counties, utility districts, metropolitan airport authorities, and other regional districts and authorities) to go outside their boundaries without a mutual aid agreement to render emergency assistance (firefighting, law enforcement, public works, medical, civil defense) when the requesting jurisdiction has an emergency it cannot handle. The act does not apply in routine operational situations where a pre-existing interlocal agreement is in effect to provide for normal cooperation between two or more jurisdictions to handle the day-to-day provision of emergency services.

The purpose of the act was to fill a gap in the law after the Tennessee Attorney General ruled that municipalities going outside their boundaries without authority might lose the protection of the tort liability limits. The catastrophic events of September 11, 2001, exemplify why this act is necessary. Under such extreme emergency circumstances, it is necessary for cities and other local governments from many miles away to send employees and equipment to provide assistance. These local governments would not have any reason to have a mutual

aid or interlocal agreement with the distant municipalities. However, without legislative authority, the responding municipalities are risking the assets of their city to provide help. The Local Government Assistance Act provides the necessary authority for municipalities and other government entities to act in these situations without fear of losing the protection of the state's Tort Liability Act.

While the act should ease concerns regarding liability in emergency situations, it absolutely does not replace the need for formal, written agreements among jurisdictions located close together that may mutually benefit from joint operations. The existence of an agreement and a day-to-day working relationship among neighboring jurisdictions should result in more effective planning and operations at routine emergencies and, therefore, more cooperation during major disaster response.

Any type of agreement should outline what level of response each jurisdiction shall provide and may include specific details of equipment and manpower to be provided in one or a number of specific situations. It should also establish the chain of command during response to an emergency situation. Finally, the agreement should allocate any potential liabilities among the parties.

In the event that a local government that is located a long distance away, but that due to some extraordinary circumstance such as occurred on September 11, 2001, needs assistance, the Local Government Emergency Assistance Act will allow you to send assistance without fear of extra liability or loss of your tort liability limits. The Local Government Emergency Assistance Act requires no local action unless the city has a charter provision or ordinance prohibiting responses outside the municipality. In this situation, if the city were to take action under this act the ordinance or charter provision should be changed or repealed to be consistent with this act. If there is no prohibiting charter or ordinance, the act authorizes the mayor to request or authorize a response to a request for emergency assistance. The mayor, with confirmation from the governing body, may designate other personnel to request or authorize a response to a request for emergency assistance. The Local Government Emergency Assistance Act allows, but does not require, the governing body or departments to adopt policies and procedures for its implementation. Financial arrangements with the other local government should be worked out at the time of the request for assistance, or it should be assumed that you are providing this emergency response as part of a "good Samaritan policy" with no expectation for payment.

To receive reimbursements for emergency assistance through the Federal Emergency Management Agency (FEMA) and/or the Tennessee Emergency Management Agency (TEMA) for state or federal declared disasters, municipalities must have a properly authorized written emergency assistance agreement in effect prior to the declared event. It is recommended that your city adopt an agreement such as that in Appendix A in order to comply with this policy.

One additional situation regarding providing service outside your municipal boundaries that you must consider is serving an area that has no other fire or police protection. Except in those police situations discussed earlier, providing service outside your jurisdiction is a direct cost to your taxpayers. In extraordinary situations, it must be assumed that your citizens would want you to provide the help needed by the affected area. However, on a day-to-day basis, services provided outside your municipal limits should be cost justified by either a contract with those served, subscriptions from those benefiting from the service, or some other type of financial arrangement, such as a fire tax payment by the county made with the beneficiaries prior to service delivery. In every case, necessary written agreements must be completed in advance of service being provided.

Conclusion

A city normally has power to act only within its corporate limits. Any action taken outside the city limits should be specifically authorized by statute and may require a written agreement with the county or other municipality in order to minimize potential liability and maintain insurability. All written agreements should be properly authorized by the local governing body and signed by the mayor according to the city's charter and state law. All mutual aid, interlocal, or compact agreements should be identified as additional named insured on the declarations page of the municipality's insurance policy to be included within its coverage.

References

Statutory Authority

Fresh Pursuit Law (police only) - (*Francis vs. State*, 1973, 498 SW 2d 107)

Arrest Warrant Served within County (police only) - (*T.C.A.* 6-54-302)

One-mile Jurisdiction Extension (police only) - (*T.C.A.* 6-54-301)

General Law Charter: City Manager/Commission form - upon request from another entity, city commission may authorize fire department to respond anywhere in the state (fire only).

Local Government Emergency Assistance Act (all city services) - (*T.C.A.* 58-2-111(c))

Common Law Authority

A city may provide fire protection outside its corporate limits for fires on city property or fires that threaten the boundaries of the city.

Authorized Interlocal Cooperation

Interlocal Cooperation Act (*T.C.A.* 12-9-101 et seq.)

Police Mutual Aid (*T.C.A.* 6-54-307)

Fire Mutual Aid (*T.C.A.* 6-54-601(a))

Fire Protection Act (*T.C.A.* 6-54-601(c)) service contracts or defined protection area; fire districts assigned; subscription service outside corporate limits; county authorized to pay for these services.

FEMA Reimbursement for Disaster Assistance

T.C.A. 58-2-111(b) requires recordkeeping and specific type of written agreement.

For More Information

If you have questions about your municipality's authority to act outside its jurisdiction, mutual assistance agreements or emergency assistance, please contact:

- The TML Risk Management Pool at (615) 371-0049 or (800) 624-9698;
- Todd Moore, TML Risk Management Pool Legal Consultant, at (866) 789-1886; or
- Ray Crouch, Sr., MTAS Fire Management Consultant, at (615) 532-6827.

Or, call the **MTAS Answer Line** to receive quick answers to short questions: **(888) 667-MTAS** (6827). You also may visit our Web site at **www.mtas.utk.edu**.

APPENDIX A: INTERLOCAL MUTUAL AID AGREEMENT FOR FIRE, RESCUE AND EMS SERVICES
Pursuant to *T.C.A.* 6-54-601 and *T.C.A.* 12-9-104

THIS AGREEMENT entered as of the_____ day of_____, 20____, by and among:

The City of _____ ,

The Town of _____ ,

The City of _____ , and

The County of _____ .

Pursuant to *Tennessee Code Annotated* 6-54-601 relative to fire fighting assistance, and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The parties will respond to calls for fire fighting, rescue, and EMS assistance (provided by the respective fire departments) only upon request for such assistance made by the senior fire official on duty of the fire department of the respective city or county, except as otherwise provided in paragraph 9. All requests for assistance shall be made only to the E-911 dispatch center by radio or telephone.

2. Upon request for aid as provided for in paragraph (1), the senior fire officer of the responding party will authorize response as follows:

   (a) Each of the parties to this agreement will attempt to provide, when requested, either an engine, tanker, ladder or service truck and other specialized equipment in response to the specific request for such equipment, or vehicle dispatch may be based upon specific requests or assignments as agreed in a separate operations guideline worked out in advance by the individual department heads. Each vehicle shall have, when available, the following minimum crews:

   Engine – 3 firefighters
   Tanker – 2 firefighters
   Extrication vehicle – 2 firefighters
   Manpower squad – 4 firefighters
   EMS/Rescue – 2 EMS-trained firefighters
   Other vehicles – 2 firefighters

   The maximum response of any fire department will be no more than fifty percent (50%) of the total personnel and resources of the department. Each party's response will be determined by the severity of the emergency in the requesting party's jurisdiction as determined by the senior fire officer of the agency from which the request is made.

   (b) If there is also an emergency in the jurisdiction of the responding party at the time a request is made, or one occurs in the course of responding to a request under this agreement, and the senior fire officer of the responding party reasonably determines after a consideration of the severity of the emergency in both jurisdictions that the responding party cannot comply with the minimal requirements under this agreement without endangering life or incurring significant property damage in his jurisdiction, or both, he may choose to use all equipment and personnel in his own jurisdiction. In this case, the senior fire officer of the responding party shall attempt to inform the senior fire officer of the requesting party of the decision as soon as possible. In cases where two or more requests for mutual aid assistance are made at the same time, thereby making compliance with the minimum requirements of this agreement impossible for the responding party, the senior fire officer of the responding party

shall determine, based upon a reasonable appraisal of the emergencies of the requesting jurisdictions, how best to respond to the requests. The senior fire officer may determine to send all available resources under this agreement to the jurisdiction with the direst emergency, or he may send some resources to each requesting jurisdiction. The senior fire officer shall inform the requesting officer of the requesting parties of his decision. In both situations outlined in this subsection (b) where compliance with the minimal duties of this agreement is impossible, the requesting party or parties will not expect full compliance with those minimal duties but will expect a fair appraisal of the emergencies involved and a commensurate response.

3. When fire department personnel are sent to another community pursuant to this agreement, the jurisdiction, authority, rights, privileges, and immunities, including coverage under the Workers' Compensation Laws, which they have in the sending department shall be extended to and include any geographic area necessary as a result of the request when these personnel are acting within the scope of the authority conferred by this agreement.

4. The party who requests mutual aid shall in no way be deemed liable or responsible for the responding department's members' personal property that may be lost, stolen, or damaged while they perform duties under the terms of this agreement.

5. The party responding to the request for mutual aid under the terms of this agreement assumes all liabilities and responsibility as between the parties for damage to its own apparatus and/or equipment. The responding party also assumes all liability and responsibilities as between the parties for any damage caused by its own apparatus and/or negligence of its personnel while en route to or returning from a specific location.

6. Pursuant to *T.C.A.* 29-20-107(f), for liability purposes only, employees of the responding party shall be considered employees of the requesting party while at the scene of the emergency and undertaking operations pursuant to this agreement.

7. The parties will pay compensation under this agreement for mutual aid assistance based on the Compensation Schedule attached to this document as Exhibit 1, "Compensation Schedule."

8. The respective parties agree that no claim for compensation will be made by either against the other for loss, damage, or personal injury occurring in consequence of mutual aid assistance rendered under this agreement, and all such rights or claims are hereby expressly waived.

9. The senior fire officer in whose community the emergency exists and who places the request for assistance, shall in all instances be in command of the emergency as to strategy, tactics, and overall direction of the operations. All orders or directions regarding the operations of the responding party shall be relayed to the senior fire officer in command of the responding party.

10. In addition to the foregoing provisions, the parties agree to provide automatic mutual aid to the specific industrial, commercial and selected other properties as listed on Exhibit 2, "Automatic Aid property or zone," attached to this document. Adding or subtracting properties when agreed to by all the fire chiefs of the parties to this agreement may amend Exhibit 2. Automatic aid is defined as the simultaneous dispatch and response of two or more fire departments to the same property, area, or zone regardless of the actual location or jurisdiction of the property.

11. This agreement shall continue from year to year from_____, 20___, through _____, 20 ____, unless either party gives written notice of termination hereto at least sixty (60) days prior to July 1 of any year. No further obligations or liabilities shall be imposed upon the withdrawing party after termination. This agreement shall continue in effect with respect to all parties that have not withdrawn unless the number of active parties is reduced so that only one party remains.

12. This agreement shall be valid between the signed parties when it is executed by any two mayors/county executives and fire chiefs of the respective political jurisdictions pursuant to the ordinance/resolution of each jurisdiction authorizing the mayors/county executives to execute it.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year written above.

City of _____

By: _____ By: _____
Mayor Fire Chief

City of _____

By: _____ By: _____
Mayor Fire Chief

Town of _____

By: _____ By: _____
Mayor Fire Chief

County of _____

By: _____ By: _____
County Executive Fire Chief

Approved as to form: _____

_____

_____

_____

_____
City and/or County Attorneys

APPENDIX B: COMPENSATION SCHEDULE

Time Period	0 to 4 hours	4 to 12 hours	12 to 24 hours	24+ hours
Percent of Schedule	0%	50%	75%	100%

The following items will be charged at the rates and prices as stated herein:

Personnel:
All personnel shall be charged at their current rate of pay at the time of the beginning of the incident. Benefits shall be calculated at 25 percent of the current rate of pay. Volunteer firefighters shall be billed at three times (3X) the current minimum wage plus the benefit rate. All other volunteers shall be billed at two times (2X) the current minimum wage.

Supplies:
All supplies used by, for or as a direct or indirect result of the emergency shall be billed at their current replacement cost.

Equipment:
All equipment shall be billed at the rates established and as published on the FEMA Web site for equipment usage rates: www.fema.gov/r-n-r/pa/fin_eq_rates.htm.

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League to provide technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and wastewater management.

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MTAS OFFICES

Knoxville (Headquarters)
Phone: (865) 974-0411
Fax: (865) 974-0423

Johnson City
Phone: (423) 854-9882
Fax: (423) 854-9223

Nashville
Phone: (615) 532-6827
Fax (615) 532-4963

Jackson
Phone: (731) 423-3710
Fax: (731) 425-4771

Martin
Phone: (731) 587-7055
Fax: (731) 587-7059

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