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Technical Bulletins: Municipal Services Outside the Corporate Limits: 1987 Legislative Acts

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MUNICIPAL SERVICES OUTSIDE THE CORPORATE LIMITS:
1987 LEGISLATIVE ACTS

By M. Michael Tallent and Dennis Ruffer

The 1987 Tennessee Legislature passed three distinct pieces of legislation that will affect the way a municipality provides services outside its corporate limits or receives services inside its corporate limits from another local government. Following is a brief synopsis of each act:

Local Government Emergency Assistance Act of 1987, Chapter 155, Public Acts of 1987. This Act authorizes any municipality or other local governmental entity to go outside of its local jurisdiction in response to a request for emergency assistance by another local government. It does not create a duty to respond to or to stay at the scene of an emergency outside its jurisdiction.

Unlike other "mutual aid" provisions provided in Tennessee Code Annotated, Section 6-54-601 for fire services and Section 12-9-101 and the following sections (et. seq.) for interlocal cooperation (which presumably covers all services), this Act does not require written agreements between requesting or responding local governments. However, it does require that each local government establish policies and procedures to be followed in requesting and responding to requests for emergency assistance. These policies and procedures must be approved by the governing bodies of the local governments in question before they go into effect. The policies and procedures may cover only one service: fire, police, public works, several services, or all of the services named in the Act and listed in the attached model on policies and procedures. They may also include a provision for compensation for emergency assistance when it is provided.
The Act provides that the senior officer of the requesting party will be in command at the scene of the emergency.

With respect to the liabilities of the requesting and responding local governments, the act provides that: (1) neither the responding party nor its employees shall be liable for any property damage or bodily injury at the actual scene of any emergency due to actions performed in responding to a request for emergency assistance; (2) the requesting party is not liable for damages to the equipment and personnel of the responding party in response to the request for emergency assistance; and (3) neither the requesting party nor its employees is liable for damages caused by the negligence of the personnel of the responding party while en route to or from the scene of the emergency.

This Act does not limit a municipality's ability to enter into written mutual aid agreements or associations. It does eliminate the need for municipalities to enter into mutual aid agreements in order to provide or receive emergency assistance. Hopefully, this "streamlined" alternative to legally receiving or providing "mutual aid" will enable municipalities to more readily provide each other emergency assistance.

(INCLUDED WITH THIS TECHNICAL BULLETIN IS A MODEL SET OF POLICIES AND PROCEDURES THAT CAN BE USED AS A GUIDE IN IMPLEMENTING THIS LAW).

FIRE PROTECTION OUTSIDE CORPORATE LIMITS, CHAPTER NO. 158, PUBLIC ACTS OF 1987. This Act repeals Tennessee Code Annotated, Section 7-34-104 subsection (9) and amends Tennessee Code Annotated, Section 6-54-601 by providing that rural fire protection outside of the corporate limits must be preceded by an agreement between the municipality and the county, but that it may be provided with or without individual contracts between the municipality and individual property owners. This does not preclude a municipality from entering into individual contracts with property owners, but it removes what had been an onerous and potentially risky burden of being required to obtain such contracts before providing rural fire protection.

The fact that individual contractual requirements have been removed from the law does not mean that every municipality is required to provide, or should even consider to provide rural fire protection. However, municipalities considering providing rural fire protection should know that such protection can be provided in more than one county and that counties are authorized to appropriate funds and pay the municipalities for this service. Fire protection is not a free service, as any municipal taxpayer will
readily testify. A municipality should not give fire protection away without considering the cost of the service.

Furthermore, rural fire protection should not be considered unless a municipality has adequate equipment and personnel to protect the citizens and facilities of the municipality while part of its fire fighting forces are outside of the corporate limits fighting a rural fire.

ANY MUNICIPALITY WHICH INTENDS TO PROVIDE RURAL FIRE PROTECTION UNDER CHAPTER 158 SHOULD CONTACT AN MTAS MANAGEMENT CONSULTANT FOR ASSISTANCE IN DRAWING UP AN APPROPRIATE AGREEMENT.

POLICE SERVICES OUTSIDE THE CORPORATE LIMITS, CHAPTER 233, PUBLIC ACTS OF 1987. This Act amends Tennessee Code Annotated Title 6 Chapter 54 by providing that municipalities are authorized to make contracts for mutual aid agreements with other local governments for the purpose of furnishing one another assistance in law enforcement. It also provides that municipalities may enter into contracts with organizations of residents of unincorporated communities for the purpose of providing law enforcement assistance to the unincorporated community. The agreement should serve the public interest of the municipality.

The Act also provides that in authorizing or permitting its law enforcement officers to answer calls outside the corporate limits, the municipality and its officers and employees shall be considered as acting in a governmental capacity. This Act is almost identical to the current provisions of Tennessee Code Annotated, Section 6-54-601 which provides mutual assistance in fire fighting and appears to create and define police service mutual aid authority as the same law previously created and defined fire service mutual aid authority. In that respect it clarifies Tennessee Code Annotated, Section 6-5-601. However, the Act may also overlap the provisions of Tennessee Code Annotated, Section 12-9-101 et. seq. (Interlocal Cooperation Act) and with the provisions of the Local Government Emergency Assistance Act of 1987 as addressed earlier in this technical bulletin. Municipalities should review each of these laws and determine which one will best meet their needs to legally offer and receive emergency assistance in the area of law enforcement. For example, this Act or at least certain provisions of this Act may be duplicated by the provisions of the Local Government Emergency Assistance Act of 1987, which does not require written agreements.

ANY MUNICIPALITY WHICH INTENDS TO ENACT THE PROVISIONS OF CHAPTER 233 SHOULD CONTACT AN MTAS MANAGEMENT CONSULTANT FOR ASSISTANCE.
THE PROVISIONS OF THESE PROCEDURES ARE IN COMPLIANCE WITH THE LOCAL GOVERNMENT EMERGENCY ASSISTANCE ACT AND, OTHER THAN ADDING A PROVISION TO COMPENSATE A LOCAL GOVERNMENT FOR PROVIDING EMERGENCY ASSISTANCE OR ESTABLISHING A SYSTEM FOR COSTING OUT EMERGENCY ASSISTANCE, THEY SHOULD NOT BE CHANGED WITHOUT CONSULTATION WITH THE LOCAL MUNICIPAL ATTORNEY AND AN MTAS LEGAL CONSULTANT.

EMERGENCY ASSISTANCE

POLICY AND PROCEDURES

The purpose of this document is to establish the policy and procedures that will govern the (City) (Town) of ___ in the process of requesting emergency assistance from another local government or in responding to the request of another local government for emergency assistance.

The following sections establish the guidelines under which decisions and their extent of implementation will be made regarding emergency assistance:

1. Definitions:

"Emergency assistance" as defined in the Local Government Emergency Assistance Act of 1987 shall mean fire fighting assistance, law enforcement assistance, public works assistance, emergency medical assistance, civil defense assistance, or other emergency assistance provided by local government or any combination or all of these requested by a local government in an emergency situation in which the resources of the requesting local government are not adequate to handle the emergency.

"Local government" shall mean any incorporated city or town metropolitan government, county utility district, metropolitan airport authority, or other regional district or authority.

"Requesting party" means a local government which requests emergency assistance.

"Responding party" means a local government which responds to a request for emergency assistance.
"Appropriate senior officer" shall mean (list the senior officer for each governmental function or service to which these procedures are intended to apply. The appropriate senior officer can include several positions in a single service; for example, the fire chief, who might not accompany a fire unit on an emergency assistance call and the officer in command at the emergency assistance site).

2. Requesting Assistance:

All requests for emergency assistance made on behalf of the (City) (Town) of ______ shall be made or authorized by ______. The (City) (Town) of ______, through its appropriate senior officer, in accordance with the provisions of the Local Government Emergency Assistance Act of 1987, will be in full command of its emergency as to strategy, tactics, and overall direction of the operation and shall direct the actions of the responding party by relaying orders to the senior officer in command of the responding party.

The (City) (Town) of ______ accepts liability for damages or injuries, as defined in Tennessee Code Annotated, Section 29-20-101 et. seq., caused by the negligence of its employees or the employees (including authorized volunteers) of a responding party while under the command of the senior officer of the (City) (Town) of ______. However, the (City) (Town) of ______ does not accept liability for damages to the equipment or personnel (including authorized volunteers) of a responding party, nor is the (City) (Town) of ______ liable for any damages caused by the negligence of the personnel of the responding party while en route to or returning from the scene of the emergency.

The (City) (Town) of ______ acknowledges that any party from whom assistance is requested has no duty to respond nor does it have any duty to stay at the scene of the emergency and may depart at its discretion.

3. Responding to a Request for Emergency Assistance:

The (City) (Town) of ______ will respond to calls for emergency assistance only upon request for such assistance made by the appropriate senior officer on duty for the requesting city. All requests for emergency assistance shall be made only to the (list the officer or positions that can authorize an emergency assistance response).
Upon the receipt of a request for aid as provided for in the preceding paragraph the city is authorized to respond as follows:

a. The city is authorized to provide at least one (1) piece of equipment and one (1) person or crew from that particular service area from which emergency assistance is requested.

b. The greatest response that the (City) (Town) will provide is fifty percent (50%) of the personnel and resources of that particular service for which emergency assistance is requested. The (City) (Town) response shall be determined by the severity of the emergency in the requesting party's jurisdiction as senior officer of the requesting party.

(These are suggested degrees of response and may be altered according to the municipality's needs.)

The (City) (Town) of has no duty to respond to a request and will reject a request for emergency assistance or will depart from the scene of the emergency based upon the discretionary judgment of the appropriate senior officer in command at the scene of the emergency or the appropriate senior officer (department head) for that service for the (City) (Town) of . In cases where two or more requests for emergency assistance are made at the same time, the appropriate senior officer of the (city) (town) of shall determine, based upon a reasonable appraisal of the emergencies of the requesting jurisdictions, how best to respond to the requests. The appropriate senior officer may determine to send all available resources to the jurisdiction with the most dire emergency, or may send some resources to each requesting jurisdiction.

The (City) (Town) accepts full liability, as defined in Tennessee Code Annotated, Section 29-20-101 et. seq. for any damages to its equipment and personnel in responding to a request for emergency assistance and for damages caused by its equipment or personnel while en route to or returning from the scene of the emergency. However, the (City) (Town) shall not be liable for any property damage or bodily injury at the actual scene of any emergency due to actions which are performed in responding to a request for emergency assistance.

The personnel of the (City) (Town) of shall have extended to any geographic area necessary as a result of a request for emergency assistance the same jurisdiction, authority, rights, privileges, and immunities, including coverage under the Worker's Compensation Laws, which they have in the (City) (Town) of .
Emergency Assistance requests or responses will be made only with those local governments that have also adopted policies and procedures that govern their actions during such requests or responses.

Adopted ___________ 19__.

Signed

____________ Mayor

Attest:

City Recorder

(This document can be adopted by simple motion of the governing body or by resolution. In either case, the fact of adoption and the document itself should be recorded in the municipality's minutes.)
The Municipal Technical Advisory Service (MTAS), one of four operating units of The University of Tennessee's Institute for Public Service, works closely with the Tennessee Municipal League. MTAS was created in 1949 by the General Assembly at the request of Tennessee cities. The mission of MTAS is to assist Tennessee city officials in responding effectively to changing municipal needs. MTAS consultants work daily with city officials in an effort to provide practical assistance where and when it is most needed.