Technical Bulletins: Mutual Aid and Emergency Assistance: An Update

Tennessee Municipal League Risk Management Pool

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Mutual Aid and Emergency Assistance: An Update

By the staff of the Tennessee Municipal League Risk Management Pool

Cities must have proper authority before rendering aid outside their jurisdictions. If not, they run the risk of tremendous liability.

And their taxpayers could end up footing the bill.

Fortunately, there are laws providing cities with the authority they need to help other jurisdictions. Since some confusion about these laws still exists, explanations of them may help clear things up. We’ll get to those later.

First, however, let’s examine what could happen to a city that leaves its jurisdiction — without authority — to render aid.

It is the state attorney general’s opinion that a municipality going outside its corporate limits without proper authority could lose the protection of the tort liability limits established in the state Tort Liability Act. This means the municipality’s liability would be unlimited as opposed to the $130,000-per-person and $350,000-per-occurrence limit established by the act.

In other words, if the municipality’s employees, through their negligence, inflicted $2 million in damages, the city would be liable for this full amount. Furthermore, since the municipality was acting without authority, insurance coverage likely would not apply.

As you can see, dire consequences could await a municipality that sends its employees — fire, police, public works, or others — outside the city without authority.

The best way to avoid this pitfall is with the mutual aid agreement. With these pacts, cities and various other governments (other cities, counties, etc.) agree beforehand about helping each other when aid is needed. Most importantly, these agreements authorize such aid and thus protect the entities from unlimited liability.

In addition to granting cities the authority they need to respond when others need help, these agreements can aid in planning for emergencies. Ideally, the process leading to a mutual aid agreement helps emergency planning by opening up lines of communication between the cooperating parties.

The agreement itself should be an aid in planning for emergencies. It should indicate:

- the level of response to be expected from different jurisdictions;
- from and to whom calls for help will be made;
- who will be in charge at the emergency scene; and
- how liability among the parties will be allocated.

Also, cities should note that all laws allowing municipalities to go outside their boundaries in situations short of declared disasters — with the exception of the Local Government Emergency
Assistance Act and certain charter provisions — will require a written agreement between the participating entities. This agreement should be made with the same formalities the municipality uses for other contracts.

Now, let's look at two laws dealing with the issue of mutual aid.

**The Interlocal Cooperation Act**

The Interlocal Cooperation Act (Tennessee Code Annotated, Sections 12-9-101 through 12-9-109) authorizes joint or cooperative action by political subdivisions of this state, including municipalities, and between political subdivisions of this state and those of other states when the other state also authorizes such joint action.

In other words, this law authorizes mutual aid when an agreement about such aid has been reached beforehand.

**The Local Government Emergency Assistance Act of 1987**

This law (T.C.A. Section 58-2-601 and the following sections) has caused a lot of confusion. Many local officials believe the Local Government Emergency Assistance Act of 1987 has eliminated the need for formal mutual aid agreements. That was not its purpose.

The act does authorize 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.

Thus, the act does not apply in non-emergency situations in which mutual aid is rendered routinely or when it is requested just to back up a jurisdiction's regular forces.

The purpose of the act was to fill the legal gap that became noticeable when the attorney general said municipalities leaving their boundaries without authority might lose the protection of tort liability limits.

It is common knowledge that municipalities sometimes leave their boundaries to help in jurisdictions with which they would never have any reason to have a mutual aid agreement. A good example of this is the 1978 Waverly train disaster.

Municipalities and other local governments from many miles away sent employees and equipment to assist Waverly. Many of these municipalities and local governments, because they were so far away, would have had no reason to have a mutual aid agreement with Waverly.

Therefore, under the attorney general's opinion, they were probably acting without authority and risking their city's assets to help another city in need. The Local Government Emergency Assistance Act provides the authority for municipalities and other local government entities to act in these situations without fear of losing their liability protection.

The Local Government Emergency Assistance Act should cause municipalities and other local entities to breathe easier about liability when responding to emergencies in other jurisdictions. However, it does not supplant the need for formal mutual aid agreements among jurisdictions in close proximity.

The bottom line is this: A mutual aid agreement can protect your city in more ways than one.

If there is no such charter or ordinance constraint, however, the act authorizes the mayor to request or respond to a request for emergency assistance. The mayor, with confirmation by the governing body, may designate other personnel to request or respond to an emergency assistance request.

The Local Government Emergency Assistance Act allows, but does not require, the governing body or departments to adopt policies and procedures for its implementation. The University of Tennessee's Municipal Technical Advisory Service (MTAS) has copies of sample policies and procedures for cities interested in them.

**The authors**

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The Local Government Emergency Assistance Act is self-executing, that is, it requires no local action unless the municipality has a charter provision or ordinance prohibiting responses outside the municipality.

In these cases, the ordinance or charter provision should be changed if the municipality wants to respond under this act.

If there is no such charter or ordinance constraint, however, the act authorizes the mayor to request or respond to a request for emergency assistance. The mayor, with confirmation by the governing body, may designate other personnel to request or respond to an emergency assistance request.

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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 in providing technical assistance services to officials of Tennessee’s incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, communications, ordinance codification, and wastewater management.

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The University of Tennessee
Municipal Technical Advisory Service
600 Henley Street
Suite 120
Knoxville, Tennessee 37996-4105

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