

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

February 23, 2010

Opinion No. 10-19

Local Community Groups as Nonprofit Organizations Under Tenn. Code Ann. § 5-9-109

QUESTIONS

1. Are local community groups, for example, high school marching bands, civic clubs, or community supported athletic teams, within the definition of either “nonprofit charitable organization” or “nonprofit civic organization” as set forth in Tenn. Code Ann. § 5-9-109(a)(2)?

2. Does “[a]ny nonprofit organization” as set forth in Tenn. Code Ann. § 5-9-109(c)(1) include local community groups such as high school marching bands, civic clubs, or community supported athletic teams? If so, are such “nonprofit organizations” subject to the requirements contained in Tenn. Code Ann. § 5-9-109(c) and the publication of notice required by Tenn. Code Ann. § 5-9-109(d)?

OPINIONS

1. Yes. Local community groups may fit within the definition of either “nonprofit charitable group” or “nonprofit civic organization.” If no part of a local community group’s net earnings benefit private shareholders or individuals and if it provides services that benefit the general welfare of the county, then it is a “nonprofit charitable organization.” If a local community group has been granted tax-exempt status pursuant to § 501(c)(4) of the Internal Revenue Code and operates primarily in the county for the purpose of bringing about civic betterments and social improvements through efforts to maintain and increase employment opportunities in the county, then it is a “nonprofit civic organization.”

2. Yes. To the extent that such local community groups qualify as nonprofit organizations pursuant to § 5-9-109(a)(2), they would be included as nonprofit organizations for purposes of § 5-9-109(c)(1) and would be required to comply with the requirements of § 5-9-109(c) in the event they seek financial assistance from the county. Finally, such organizations would only be required to comply with the requirements of § 5-9-109(d) if they are not a charitable organization.

ANALYSIS

1. Tenn. Code Ann. § 5-9-109 sets forth certain requirements for counties to make appropriations to nonprofit organizations. Tenn. Code Ann. § 5-109(a)(1) specifies that counties may appropriate funds “for the financial aid of any *nonprofit charitable organization*, any chamber of commerce, exempt from taxation pursuant to the Internal Revenue Code of 1954, § 501(c)(6), as amended, or any *nonprofit civic organization*....” Emphasis added. Thus, § 5-109(a)(1) limits county appropriations to three types of organizations: chambers of commerce, nonprofit *charitable* organizations and nonprofit *civic* organizations.

Tenn. Code Ann. §§ 5-9-109(a)(2)(A) and (B) define nonprofit charitable organizations and nonprofit civic organizations. Section 5-9-109(a)(2)(A) defines nonprofit *charitable* organizations as those organizations “in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and that provides services benefiting the general welfare of the residents of the county.” Section 5-9-109(a)(2)(A) does not require nonprofit charitable organizations to be any particular type of legal association (*e.g.*, corporation or limited liability company), nor does it require nonprofit charitable organizations to have received tax-exempt status from either the Internal Revenue Service or the State of Tennessee. Therefore, a local community group will qualify as a nonprofit *charitable* organization if it meets only two requirements: first, its net earnings must not be used to benefit private parties, and, second, it must provide services benefiting the general welfare of the citizens of the county from which it will receive funding.

Section 5-9-102(a)(2)(B) defines a nonprofit *civic* organization as:

a civic organization exempt from taxation pursuant to § 501(c)(4) of the Internal Revenue Code that operates primarily in the county for the purpose of bringing about civic betterments and social improvements through efforts to maintain and increase employment opportunities in the county by promoting industry, trade, commerce, tourism and recreation by inducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational and agricultural enterprises to locate in or remain in the county.

Therefore, a local community group will qualify as a nonprofit *civic* organization if it meets two requirements: first, it must have received tax-exempt status from the Internal Revenue Service pursuant to I.R.C § 501(c)(4), and, second, it must be primarily focused on promoting employment opportunities in the county from which it will receive funding. As with nonprofit charitable organizations, nonprofit civic organizations need not be a particular type of legal association.

Whether a particular local community group, such as a high school marching band, civic club or community supported athletic team, qualifies as nonprofit organization for purposes of § 5-9-109, will depend on whether the group meets the requirements of either §§ 5-9-109(a)(2)(A) or (B).

2. While Tenn. Code Ann. §§ 5-9-109(a)(2)(A) and (B) define the nonprofit organizations to which county appropriations may be made, Tenn. Code Ann. §§ 5-9-109(c) and (d) outline certain requirements for nonprofit organizations seeking appropriations from the county. Specifically, § 5-9-109(c)(1) states:

[a]ny nonprofit organization that desires financial assistance from the county legislative body or the governing body of the county shall file with the county clerk a copy of an annual report of its business affairs and transactions, which includes, but is not limited to, a copy of an annual audit, a description of the program that serves the residents of the county, and the proposed use of the county assistance.

If a local community group qualifies as either a nonprofit charitable group or nonprofit civic group pursuant to §§ 5-9-109(a)(2)(A) or (B), then it would be considered a “nonprofit organization” for the purposes of § 5-9-109(c)(1). As a result, if the local community group seeks county appropriations, it would be subject to the filing requirements contained in § 5-9-109(c).

It might not, however, be subject to the publication notice required by § 5-9-109(d). That section states:

[a]ppropriations to nonprofit organizations *other than charitable organizations* may be made only when notices have been published in a newspaper of general circulation in the county of the intent to make an appropriation to a *nonprofit but not charitable organization*, specifying the intended amount of the appropriation and the purposes for which the appropriation will be spent. (Emphasis added).

Therefore, the publication requirements of § 5-9-109(d) would not apply to a local community group that qualifies as nonprofit charitable organization pursuant to § 5-9-109(a)(2)(A). The publication requirement would, however, apply to a local community group qualifying as a nonprofit civic organization pursuant to § 5-9-109(a)(2)(B).

ROBERT E. COOPER, JR.
Attorney General and Reporter

CHARLES L. LEWIS
Deputy Attorney General

JEREMY E. PYPER
Assistant Attorney General

Requested by:

The Honorable Harry Brooks
State Representative
212 War Memorial Building
Nashville, TN 37243-0119