

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 18, 2021

Opinion No. 21-04

“Full-time purchasing agent” under Tenn. Code Ann. § 12-3-1212

QUESTION

Is the director of a county finance department who is appointed pursuant to Tenn. Code Ann. § 5-21-106 under the County Financial Management System of 1981 a “full-time purchasing agent” for purposes of Tennessee Code Ann. § 12-3-1212?

OPINION

No.

ANALYSIS

Under Tennessee law, local government contracts are generally required to be let by competitive bidding.¹ The General Assembly, though, has provided some exemptions from this general requirement. One such exemption is Tennessee Code Ann. § 12-3-1212, which authorizes certain local governmental entities to allow non-competitive bidding in an amount not to exceed \$25,000 for nonemergency, nonproprietary purposes:

Notwithstanding any charter provision, private act, or other law to the contrary, any county, municipality, utility district, LEA in accordance with § 49-2-203(a), or other local governmental entity having centralized purchasing authority with a full-time purchasing agent is authorized, by resolution or ordinance of its governing body, to increase the threshold over which public advertisement and sealed competitive bids or proposals are required to an amount not to exceed twenty-five thousand dollars (\$25,000) for nonemergency, nonproprietary purchases. . . .

Tenn. Code Ann. § 12-3-1212.

Pertinent here, this provision authorizes only those local government entities “having centralized purchasing authority with a full-time purchasing agent” to avail themselves of this exemption. Counties that operate under the County Financial Management System of 1981 do

¹ See, e.g., Tenn. Code Ann. §§ 5-14-101 to -116 (County Purchasing Law of 1957); 5-14-201 to -207 (County Purchasing Law of 1983); 5-21-101 to -130 (County Financial Management System of 1981); 6-56-301 to -307 (Municipal Purchasing Law of 1983).

have “centralized purchasing authority,”² but when the director of the finance department also serves as the county’s purchasing agent a county operating under such a system does not have “a full-time purchasing agent.”

Words used in a statute “must be given their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.” *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012). A dictionary is the usual and accepted source for the “natural and ordinary meaning” of statutory language when the General Assembly has not otherwise defined a statutory term. *State v. Clark*, 355 S.W.3d 590, 593 (Tenn. Crim. App. 2011).

“Full-time” is generally understood to mean “occupying or using the whole of someone’s available working time.” *New Oxford American Dictionary*, 3d ed. 2010. Thus, a “full-time purchasing agent” is someone who devotes the whole of his or her working time to the demands and duties of the office of purchasing agent.

The County Financial Management System of 1981 is a local option act that establishes a system of county fiscal management. *See* Tenn. Code Ann. §§ 5-21-101 to -130. In counties that adopt this system, the Act establishes a county finance department and a county financial management committee to administer the county’s finances, including purchasing, accounting, budgeting, payroll, cash management, and other financial matters. *Id.* §§ 5-21-103, -104.

The Act also provides for a finance director to oversee the county’s finance department. *Id.* § 5-21-107. The finance director is appointed by the county’s financial management committee, and he or she is responsible for the implementation of the policies and regulations adopted by the committee (or such special committees that are established by the county legislative body).³ *Id.* §§ 5-21-104, -106, -107. The finance director’s duties include the installation and maintenance of a “purchasing, payroll, budgeting, accounting, and cash management system for the county.” *Id.* § 5-21-107(b).

The purchasing system which the finance director must install and maintain is established by the financial management committee with the assistance of the county’s purchasing agent. *Id.* §§ 5-21-107(b), -118(a), -119(a). Under the Act, the finance director (or a deputy appointed by the finance director) serves as the county’s purchasing agent, *id.* § 5-21-118(a), unless the financial committee recommends—and the county legislative body authorizes—the establishment of a separate purchasing department with a person hired as purchasing agent for the county, *id.* § 5-21-118(c)(1). When a separate purchasing department is established and a purchasing agent is hired,

² An entity is described as having “centralized purchasing” authority when the entity has some form of centralized control over the purchasing function. *See* <http://eli.ctas.tennessee.edu/reference/centralized-purchasing-counties>. All county purchasing is handled centrally under the County Financial Management System of 1981. *See* <http://eli.ctas.tennessee.edu/reference/purchasing-system>; *see also* Tenn. Att’y Gen. Op. 89-76 (May 10, 1989) (discussing the County Financial Management System of 1981 and its “clear manifestation of an intent to establish uniform procedures and centralized responsibility”).

³ “The county legislative body may authorize the [financial management] committee to assume the functions of any or all of the following special committees or the county legislative body may by resolution create: (1) A budget committee; (2) An investment committee; or (3) A purchasing committee.” Tenn. Code Ann. § 5-21-105(e).

all duties and responsibilities relative to purchasing are removed from the finance director. *Id.* § 5-21-118(c)(2).

In short, a finance director under the County Financial Management System of 1981 is charged with overseeing the various financial functions of the county. The finance director oversees budgeting, accounting, payroll, and cash management. The finance director also has duties and responsibilities relative to purchasing unless the county establishes a separate purchasing department and hires a purchasing agent, which results in the removal of those duties and responsibilities from the finance director.

Accordingly, because a finance director's duties and responsibilities are not wholly or primarily dedicated to purchasing, the finance director is not a full-time purchasing agent for purposes of Tenn. Code Ann. § 12-3-1212. First, since the finance director does not have any duties or responsibilities relative to purchasing when a county forms a separate purchasing department with its own purchasing agent under Tenn. Code Ann. § 5-21-118(c), the finance director is not a "full-time purchasing agent." Second, even when there is no separate purchasing department and the finance director serves as the county's purchasing agent, the finance director is not a "full-time" purchasing agent because as finance director his or her available work time is not wholly devoted to the duties of purchasing agent but is divided among several duties and responsibilities pertaining to the financial functioning of the county. *See International Ass'n of Firefighters Local 3266 v. Department of Retirement Sys.*, 987 P.2d 715, 720-21 (Wash. App. 1999) (airport technicians who performed fire-fighting functions were not "full-time firefighters" even though they spent 40% of their time directly involved in fire prevention and preparedness, which constituted more time than they spent on any other task).

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