AG Opinion: Administrative Hearing Officer Act

Reference Number: MTAS-1108

Administrative Hearing Officer Act Provides Adequate Due Process

An opinion by the Tennessee Attorney General alleviates the primary concern of cities waiting to implement an administrative hearing officer program. The crux of opinion, No. 12-78, can be found in its last paragraph where the Attorney General states:

[I]n the absence of actual bias being demonstrated in a particular case, an alleged violator's due process rights are not violated merely because an administrative hearing officer reviews the citation, makes a determination that a violation exists, and then conducts a hearing on the citation. [1]

The Municipal Administrative Hearing Officer Act (the act) was passed in 2010 as Public Chapter No. 1128 and subsequently codified at *Tennessee Code Annotated*, Title 6, Chapter 54, Part 10, now codified at T.C.A. § 6-54-1001. This TML-sponsored legislation was passed to offer municipalities another tool in enforcing building and property maintenance codes. As the Tennessee Constitution limits judicial fines to $50 where no jury is sitting, cities were severely limited in code enforcement efforts, especially in large commercial projects. The act, relying on cases suggesting that the $50 fine limitation did not apply to administrative bodies, created an administrative hearing procedure that cities can adopt by ordinance. Such programs grant cities the authority to levy fines of up to $500 per day.

Pursuant to the act a municipal employee such as a building inspector issues a citation to the alleged violator. The citation is then remitted to the administrative hearing officer who makes an initial determination as to whether a violation exists and, when applicable, levies a fine and sets a time period for remediation. The alleged violator can then pay the fine, correct the violation within the allotted time frame, or request an administrative hearing on the matter. It is the latter option that gave rise to concern – specifically, whether the same hearing officer making the initial determination also conducting the subsequent administrative hearing is, in and of itself, a violation of due process.

Due process, the opinion says, is essentially "the opportunity of the party charged to be heard at a meaningful time and in a meaningful manner, before an impartial tribunal." [2] A tribunal does not have to be completely uninformed of the matter at hand to be impartial. In fact, it is common for an administrative tribunal to serve in an investigatory and an adjudicative role. This dual role poses no problem unless "the risk of actual bias is intolerably high." [3] Such a threshold is high and only met in extraordinary circumstances such as a hearing officer with a financial interest in the outcome or direct participation in the matters at hand. The act, however, contains numerous procedural safeguards to guard against bias or the appearance thereof. Furthermore, the outcome of the hearing has no bearing on the hearing officer's compensation.

In light of these procedural safeguards an alleged violator must demonstrate an actual bias to make a successful due process claim against a municipal hearing officer program.

This opinion should provide cities so inclined with the confidence to move forward with an administrative hearing officer program. However, it should also be fair warning to participating cities that strict compliance with the statutory safeguards is imperative to keeping a hearing officer program impartial and constitutionally sound.

A copy of the opinion can be found at http://www.tn.gov/attorneygeneral/op/2012/op12-78.pdf [1]

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[1] Op. Tenn. Atty. Gen., No. 12-78 (July 27, 2012)

[2] *Id*. quoting *Cooper v. Williamson County Bd. Of Educ.*, 803 S.W.2d 200, 202 (Tenn. 1990)

[3] *Id*. citing *Withrow v. Larkin*, 421 U.S. 35 and *Martin v. Sizemore*, 78 S.W.3d 249

Links:

[1] http://www.tn.gov/attorneygeneral/op/2012/op12-78.pdf