

Use of Electric Utility Revenues A State Regulator's Perspective

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Use of Utility Revenues
A State Regulator's Perspective

To Set the Stage

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**How Did We Get
Here**

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Municipal Electric Plant Law of 1935

- Codified in Title 7, Chapter 52 of the *Tennessee Code Annotated (TCA)*
- In general, authorizes a Tennessee municipality to operate an electric plant - *TCA 7-52-103*
 - Currently there are sixty-one municipally operated electric systems in Tennessee along with twenty-three electric co-operatives

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- An electric utility's board of directors may authorize a round-up program whereby the customer rounds up their bill to the next dollar. *TCA 7-52-103(9)(e)(1)*
 - The electric utility's board of directors distributes the voluntary contributions for bona fide economic development or community assistance purposes pursuant to programs approved by the board

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- May use public rights-of-way with the consent of the municipality - *TCA 7-52-104*
- Has the power of eminent domain
 - In connection with the construction, operation and maintenance of an electric plant or
 - Improvements in the electric plant
 - *TCA 7-52-105*

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- The vast majority of electric systems in Tennessee are operated by a board of directors appointed by a municipal governing body – *TCA 7-52-107*
 - Generally either three or five members
 - If 60% of the electric utility's customers live outside of the county in which the municipality is located, two additional board members shall be appointed from such area served – *TCA 7-52-118*

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- A municipal governing body, by vote, may confer jurisdiction over a waterworks, sewerage works or gas system to the electric BOD – *TCA 7-52-111*
- Any member of the BOD may be removed from office for cause upon a vote of three fourths (3/4) of the members of the governing body of the municipality

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Some of the municipalities that have elected to operate all of their utilities under on board are:

- Athens
- Cleveland
- Clinton
- Columbia

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- Erwin
- Etowah
- Harriman
- Humboldt
- Jellico
- Knoxville
- LaFollette
- Lawrenceburg
- Lenoir city
- Loudon
- Memphis
- Milan
- Morristown
- Newport
- Paris
- Somerville
- Sparta
- Sweetwater
- Trenton
- Tullahoma

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- The electric board members appoint a superintendent who is responsible for the day to day operation of the system – *TCA* 7-52-114
- Important to remember that the BODs sets policy and the superintendent carries it out

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- A municipal governing body may vote to sell the electric plant – *TCA 7-52-132*
 - Such action must be approved by a vote of a majority of the citizens voting
- An electric system shall charge the municipality for services received at rates applicable to other similar customers - *TCA 7-52-116*
 - I bet the city's W&S system does not provide the electric system with free service

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- No **free** electricity for city hall or any other municipal building or operation
- No **free** stringing of Christmas lighting
- No **free** tree trimming
- No **free** use of bucket trucks or any other electric utility's equipment
- No **free** lighting at the local school's football/baseball/soccer fields

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To make it easy, for electric utilities, as
with any other municipally owned utility:

FREE

is a four letter word

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- Any municipal electric system is authorized to contract with TVA for the purchase of power – *TCA 7-52-201*

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Municipal Electric System
Tax Equivalent Law of 1987

In lieu of tax payments

- Defined – *TCA 7-52-303*
- Conditions and Limitations *TCA 7-52-304*
- Contracts for distribution of such –
TCA 7-52-306

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Telecommunications Services

- Authority to provide telephone, telegraph, and telecommunications services *TCA 7-52-401*
- Prohibition of subsidies *TCA 7-52-402*

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Cable Television, Internet and Related Services

- *TCA 7-52-601* authorizes an electric system to provide cable service, two-way video transmission, video programming, Internet services
- Public referendum shall be held regarding the providing of such service(s)

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- Separate division to provide services –
TCA 7-52-603
 - Any subsidization strictly prohibited
 - The electric system may lend funds to the cable operations provided that they charge the highest going interest rate earned by the electric system on their other invested funds
 - Must establish and charge rates to recover **all** costs of services

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- Required in lieu of tax payments

TCA 7-52-606

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Revenue Bonds

- All municipal electric systems issue revenue bonds under the provisions of *TCA Title 9, Chapter 21, Part 3, Revenue Bonds*

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- *TCA 9-21-308* requires systems to prescribe and collect reasonable rates so that the public works project shall be and always remain self-supporting
- The rates and fees shall be at least sufficient to produce revenue to:
 - Provide for all expenses of operations and maintenance

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- Payment of all bonds and notes and interest thereon
- Establishment of and funding of any reserves
- Payment of any in-lieu of ad valorem taxes (assuming funds are available)

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If a municipality violates the provisions of this section, it must repay any funds illegally transferred. If the municipality does not have sufficient funds to repay any funds illegally transferred, the municipality is required to submit a plan covering a period not to exceed five (5) years in

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....which to repay the funds.

The plan shall be submitted to and approved by the director of state and local finance in the Office of the Comptroller of the Treasury.

Upon discovery of such violation through an audit, any city official in violation of this section is subject to ouster.

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Bottom Line

Often time, especially in harsh economic times, Tennessee municipalities often look at their utilities, which often have large net assets/cash balances, as the goose with the golden egg

And they want it!

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- As a result, the in-lieu of tax payment will often be *whatever it takes* to balance the general fund budget without having a tax increase
- While staff often sees problems with municipally operated water/sewer and gas systems, I cannot recall a single problem in this area involving an electric system

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- I give TVA the credit in that they simply will not allow any excess in-lieu of tax payments to be made by a municipally operated electric utility
- They do pay their fair share of in-lieu of tax **but only their fair share**

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- Every municipal electric system in the State of Tennessee always pays the maximum in lieu of tax payment
- The same cannot be said for all municipally operated water-sewer and/or gas utilities

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Financial Report Reviews

- What we look for
- And if we find it, what we do

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To Summarize

- A municipally operated electric system must charge rates to be self supporting
- Such an electric system cannot subsidize any other activity operated by the power board

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- A municipality operated electric system may pay an in-lieu of tax but such payments cannot be excessive
- The municipality, of which the electric system is part of, must be charged the same rates as all other similar customers

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- Electric systems revenues cannot be used to subsidize the operations of the municipal government
- If done so illegally and discovered, all excess funds must be repaid within five (5) years
- Responsible officials are subject to ouster

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Tennessee Cities currently having to reimburse their utilities for illegal transfers:

- Spring Hill - \$4,000,000
- Bolivar - \$1,000,000
- Portland - \$1,300,000
- Somerville - \$1,053,000
- Morristown - \$1,242,000

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Because of the professionalism with which Tennessee's municipal electric systems are operated, combined with the oversight provided by TVA, I am only aware of a single system that is not financially sound, and for that all of you all are to be congratulated!

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**KEEP UP THE GOOD
WORK**

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Findings Related to Investigations of Municipal Electric Systems in Tennessee

Personal use of system equipment and supplies

- Manager used district backhoe, dump truck, and pole truck for his own personal benefit
- District cell phone used by manager's wife and a district consultant

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- Manager charged the system for \$441 of gravel he had delivered to his property
 - Reimbursed the district 35 months later, or right after we started our investigation

Contribution in aid of construction fee settled without documentation or board approval

- Developer was a power board member
- System did not collect fee in advance as normal

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- Charged the developer \$35,000
 - Almost three years later, the general manager accepted \$20,000 as payment in full without board approval

Unauthorized Negotiated Contract

- The system entered into a collective bargaining agreement with the International Brotherhood of Electric Workers. State statutes do not authorize such agreements

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- The Tennessee Court of Appeals has ruled that such agreements are unlawful
 - *Weakley County Municipal Electric System v. Vick*, 43 Tenn. App. 524, 309 S.W.2d 792 and *Local Union 760 of the Int'l Bhd. Of Elec. Workers v. City of Harriman*, No. E200-0367-COA-R3-CV, 2000 WL 1801856

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Personal use of vehicle is a fringe benefit that had not been adequately reflected on the manager's Form W-1

- The system provided the manager with a vehicle for both business and personal use
- For tax purposes, the system reported as if the vehicle was only used for business and commuting

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- IRS regulations state that the use of an employer-provided vehicle to be taxable as personal use of the vehicle unless personnel policies specifically prohibit such use
- IRS Publication 15-B states that the value of the fringe benefit is the annual lease value of the vehicle
- Unreported fringe benefits to the manager for the past year were \$6,452

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Nonmunicipal Travel Expenses

- A member of the board took his wife to a conference in Savannah, Georgia, at the system's expense. They arrived at the conference two days prior to it starting. In addition, the system paid for several meals for the commissioner's wife
 - Total costs for commissioner's wife - \$557

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The electric system had not adopted the city's more stringent travel policies

Delinquent customers were not treated uniformly

- System personnel did not consistently enforce the system's cutoff policy

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Improper disposal of scrap

- The system gave away used meters and electrical poles

Insurance

- The electric system purchased insurance from several companies. They contracted with an agent to handle the policies. The system did not independently verify the

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- fees on the policies. During an eight year period, the agent overcharged the system \$26,337

You, as members of the Electric Board, you are to be congratulated for your willingness to serve. You were appointed to represent the citizens of McMinnville and to protect the public assets which you have been entrusted with and to act with their best interest in mind.

To that degree, I encourage you to always be mindful of that responsibility when making decisions, regardless of the political consequences.

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Have A Great Day and
A Better Tomorrow