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October 23, 2019

\*Tennessee Rule 31  
Listed Mediator

VIA EMAIL (Original by US Mail)  
Union County Financial Management Committee  
c/o Jason Bailey, EdD  
Union County Mayor  
901 Main Street, Suite 100  
Maynardville, Tennessee 37807

Re: Supervisory Authority and Communications with County Employees by Third Parties

Dear Mayor Bailey:

I appreciated the opportunity to meet with the Union County Financial Management Committee on October 16 in regard to our research into the issue for Union County involving the supervisory authority, chain of command and streamlining of communications involving the finance director for Union County, communications with county employees of departments outside the normal supervisory chain and off the record, and the potential negative effects of not following a standard. I wanted to state below some of the positions I discussed on October 16 based on my research.

## **Finance Director**

T.C.A. §5-21-101-5-21-130, known as the "County Financial Management System of 1981," governs the establishment of county finance departments to administer the finances of a given county for all funds of the various departments, agencies and boards that are handled by the county trustee, the establishment of the county position of finance director and how the director should be supervised in their role as an employee of the county. In the event the finance director has an issue, she would take such up with the financial management committee. It is my position that the finance director is essentially an employee like any other employee when it comes to supervision and other incidents of employment of which the employee handbook for the County would be applicable. T.C.A. §5-21-106 requires that the county finance committee "shall appoint the director." Further, "the committee may dismiss the director, subject to the approval of the county legislative body."

The approval of the county legislative body, in this instance, is a check and balance on the committee rather than establishing some direct supervisory authority or independent hiring or firing power over the finance director. T.C.A. §5-21-106 goes on to make this clear, stating “the director for *all purposes* shall be an employee of the county (emphasis added)”. The compensation for the director is further established under this statute by the finance committee subject to the approval of the county legislative body.

Pursuant to T.C.A. §5-21-104, the financial management committee shall consist of the county mayor, supervisor of highways, director of schools, and four (4) members elected by the county legislative body at its regular session of each year. The committee elects its own chair and shall meet from time to time as it may deem necessary for the discharge of its duties as provided in this section. The finance director shall serve as the *ex officio* secretary of such committee. T.C.A. §5-21-104(e)(1) states that the committee shall establish and approve policies, procedures, and regulations in addition to the specific provisions of the statutes above, implementing a sound and efficient financial system for administering the funds of the county. The employees of the finance department, of course, are supervised by the finance director who is then supervised by the financial management committee.

It is my legal opinion that the above statutes make it clear that the financial management committee is the supervisor of the finance director for all purposes, including incidents of employment, oversight, direction, and implementation of job duties. The point of contact, if not the entire committee, would be the acting chairperson for the committee. The decision to terminate and amount of compensation are also decisions made exclusively by the financial management committee, although subject to approval by the county legislative body as an oversight measure rather than an initiation measure. It is my opinion that this approval is a check or balance upon the committee and does not establish any direct or indirect supervisory powers of the county legislative body or its members other than those serving on the financial management committee over the finance director. This would generally be the same with any other employee of the county as supervised by their own department within the county. This is especially true in the instance of a county commissioner or other elected official acting alone, without the approval of the legislative body at large, and off the record of a regularly conducted meeting with correct protocol and procedures. In fact, informally splintering the direction and supervision of the finance director to include county officials that are not on the financial management committee creates mixed signals and directives for the finance director and would appear to destroy the intent of the County Financial Management System of 1981 as amended since its implementation. The Act is clear that it restricts those duties to the financial management committee other than oversight by the entire county legislative body in the two instances of termination or compensation. It is important to note that T.C.A. §5-21-125 states that “any official or employee of the county, or of any institution or agency thereof, who fails or refuses to perform the duties required by this chapter or who fails or refuses otherwise to conform to this chapter commits a Class C misdemeanor, and is subject to removal from office or position.”

It is my opinion that in the event members of the county legislative body who do not serve on the financial management committee have questions, complaints or oversight-like comments or inquiries regarding the finance director, it would be best to pose those to the financial management committee or in open meetings where the finance director is present and engaged in such questioning on the public record. If such inquiries come up outside a public meeting setting, it would be best that such inquiries be made to the membership of the financial management committee or to the acting chairperson of such committee to then be taken up by the committee with the financial director and/or her staff so that there is a clear communication and documentation trail regarding the issue after it has been properly considered.

T.C.A. §5-21-107(c) states that the finance director “shall assist other county officials and employees in achieving the efficient financial management system for the county.” This broad mandate for the financial director appears aimed to allow the financial director to assist in the implementation of the budget in discussion with other county officials and employees, but does not offer specifics as to what that cooperation entails. It would appear specific to the implementation of the budget in place for the county rather than a general “question and answer” session that would appear supervisory in nature (or in the worst instance, political in nature) if not in regard to something specific in the budget and centered on implementation. I would feel that this broad mandate provides the financial director discretion in determining what she can accomplish or communicate without the involvement of the committee at large and involving the committee in such communication when there is doubt would seem to be a best practice. Certainly, and in addition to this more specific mandate, there is certain information that is public record that can be disseminated to any citizen in the county upon request and the financial director must comply accordingly through whatever system is in place to allow such dissemination.

As to the employees of the finance department, it is clear from the statutes that those employees are supervised by the finance director who is supervised by the financial management committee and other than public information requests in accordance with the regulations set up to make them, those employees should only communicate through the director or the committee. This is especially true so that there is no misinformation or a lack of a unified position that has been confirmed by the committee or the committee through the director.

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I have reviewed a great deal of statutes regarding county legislative bodies and county mayors and I have not found anything contradicting the statutes under the County Financial Management statutes discussed above. Further, I have reviewed the Employee Handbook for the County and I have not found anything that contradicts the statutes in this regard.

### **Other County Employees/Employees of County Agencies**

My legal opinion has been centered currently on the finance director as that position is the one that has had issues that need to be addressed in regard to communication with third parties and supervisory authority. I would posit that absent statutory requirements to the contrary, it would be best that in the event citizens or elected officials in the county are attempting to meet off the record with employees of the county that those employees communicate those requests to their superiors for their approval so that there is a clear line of communication within each department when someone involved is attempting to garner positions, directives, or opinions off the record about that particular department and especially where they then may publicly disseminate the information. There is certainly a reason that departments have spokespersons and/or directors and they would seem to be in the best position to have those meetings or determine the necessity of entertaining them. There is no better way for a citizen, elected official or member of the county government to determine information than to ask such in an open meeting to the elected head of the department or agency that the information is being requested from. I believe the employees of particular departments or agencies of the county should not be forced to and should not discuss policy, directives of the agency, or political or performance questions about the agency or department as a whole without sending the request to the person in that department designated to do so. This includes requests from commissioners who only provide a general supervisory vote in county meetings limited to their vote, not supervising a particular department directly in any way, shape or form.

### **Public Dissemination of Communications with County Employees or Officials**

It is my understanding that there have been complaints made to the County regarding publishing of information, documentation or discussions with such employees by elected officials with no supervisory authority over those employees and that in some instances through social media or other means. Further, there have been complaints that false or misleading information has been communicated.

As we discussed, employees of the county enjoy the same rights as other citizens. Elected officials enjoy the same rights, albeit with a few less protections as a public figure. Communicating publicly about discussions off the record with county employees or county officials is dangerous to individuals as those persons have right as any other citizen to take action if they are cast in a false light or false allegations are communicated about them. Actions for defamation could be brought which endangers both the individual communicating the information and potentially the County as a whole. Harassment actions are also a risk. Finally, Tennessee recognizes the tort of false light invasion of privacy as a tort distinct from defamation. It is possible that a statement published about a county employee or public official, while not defamatory, can place them in a false light. Our Tennessee Supreme Court has held that "the facts may be true in a false light claim. However, an angle from which the facts are presented, or the omission of certain material facts, results in placing the plaintiff in a false light." In many cases, the literal truth of publicized facts is not a defense in a false light case. In other words, the falsehood involved in a false light action may consist in dissemination of matters which, while maybe even technically true, give an objectionably false impression where the communicator fails to modify the basic statement with amplifying facts which modify the statement to create a less objectionable impression corresponding to full reality.

Social media is a false light invasion of privacy claim waiting to happen. For hypothetical example, communicating with an employee about a host of information, obtaining certain facts, and then communicating only part of the facts to create the assumption or suggestion that said employee is corrupt or taking money from the county or their department is corrupt could be an actionable false light invasion of privacy claim for monetary damages against the person making the communication. Communicating private information about an employee obtained off the record, like health information or social security information, could also expose the communicator to a major lawsuit under state and Federal jurisprudence. It could extend to and involve the County. This is why it is vital, in my opinion, that county officials, employees and other elected officials should communicate only with the officials or designated officials in a department regarding the subject matter of that department or office and then discuss those communications in an open meeting setting if appropriate. Discussions in writing would be best, either by letter or email. Off the record communications otherwise, especially then disseminated through social media, are reckless and exposes the communicator to the danger of a claim of defamation, harassment or false light invasion of privacy for potentially communicating false or misleading facts that could have been prevented by communicating with the county official directly, the county department head directly, and on the record. At worst, it may involve the communicator and the County in a lawsuit. At best, it may make the communicator appear unprepared and unprofessional when it is determined that the information they communicated in not accurate.


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**Conclusion**

For the reasons stated above, I think it best for the County to communicate the above information to county department heads, the commission and elected officials in the county so that these best practices can be followed. In the event that an individual does not heed the above advice and adverse action is taken against them, they should recognize the County's position that it does not endorse taking action in contravention of what the County has suggested and the County will not defend such actions as such actions are being taken as an individual and not with the approval of the County. It is my hope that this would limit the liability of the County to third parties and create notice of the County's position well in advance of continued behavior incongruent with the above.

Please let me know if I may provide any further assistance.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'H. Stephen Gillman', with a long horizontal flourish extending to the right.

H. Stephen Gillman

HSG/sdg