

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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December 13, 2005

Opinion No. 05-176

Joint Economic Development Board of Weakley County

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**QUESTIONS**

1. The Joint Economic Development Board of Weakley County (the “Board”) was created by the governing bodies of Weakley County and several cities within the county under Tenn. Code Ann. §§ 6-58-114 and 5-1-113. Does the Board have the authority to construct a manufacturing building, which it will offer for sale or lease to businesses considering locating or expanding operations in Weakley County?

2. Does the Board have the authority to lend or grant funds contributed to the Board by the participating local governments to an industrial development corporation created under Tenn. Code Ann. §§ 7-53-101, *et seq.*? The industrial development corporation would use the funds to construct a manufacturing building to be offered for sale or lease to businesses.

**OPINIONS**

1. Neither the agreement creating the Board nor Tenn. Code Ann. § 6-58-114 explicitly grants this power to the Board. An organization formed under Tenn. Code Ann. § 5-1-113 or Tenn. Code Ann. §§ 12-9-101, *et seq.*, may be authorized to exercise on behalf of its constituent members any authority that each member may exercise separately. Under Tenn. Code Ann. §§ 7-37-101, *et seq.*, cities and counties may build or acquire industrial buildings and lease them to private businesses. If a city or county issues bonds to finance the purchase or construction of industrial buildings under this statute, the bond issue must be approved by a three-fourths majority vote of the registered voters under Tenn. Code Ann. § 7-37-110. But, in the absence of any express provision in the agreement, the Board is not authorized to exercise the power to acquire an industrial building and lease it to a private business on behalf of all of its constituent members. Further, this Office is unaware of any statutory authority under which the agreement could be amended to authorize the Board to issue bonds on behalf of all its members.

2. a. Neither the agreement nor Tenn. Code Ann. § 6-58-114 authorizes the Board to exercise this power. But we think it can be argued that, under Tenn. Code Ann. § 6-54-118, both the cities and counties may lend funds at reasonable interest to an industrial development corporation in the county. For this reason, the agreement could be amended to grant this authority to the Board.

b. Neither the agreement nor Tenn. Code Ann. § 6-58-114 explicitly authorizes the Board to exercise this power. Neither the City of Martin nor the City of Sharon is clearly authorized to donate city funds to any industrial corporation except to one that it has created. For this reason, it does not appear that the agreement could be amended to authorize the Board to donate funds it has received from its constituent local governments to an industrial development corporation except one created by both cities. But the county and the other cities may do so independently.

### ANALYSIS

#### 1. Authority of Board to Build Manufacturing Building

This opinion concerns the authority of the Joint Economic Development Board of Weakley County (the “Board”). The Board was created by Weakley County and the cities of Dresden, Martin, Greenfield, Gleason, and Sharon. The request includes a copy of the agreement among the county and the cities creating the Board. The agreement recites that it is authorized under Tenn. Code Ann. § 5-1-113 and intended to comply with the participating governments’ obligations under Tenn. Code Ann. § 6-58-114. Under Tenn. Code Ann. § 6-58-114, local governments within a county must create a joint economic and community development board by interlocal agreement under Tenn. Code Ann. § 5-1-113. Tenn. Code Ann. § 6-58-114(b). The board must be jointly funded by the participating governments, under a formula set forth in Tenn. Code Ann. § 6-58-114(g)(1). Under Tenn. Code Ann. § 6-58-114(g)(3), the joint board may accept and expend donations, grants, and payments from persons and entities other than the participating governments. Tenn. Code Ann. § 6-58-114(g)(3). Tenn. Code Ann. § 5-1-113 provides:

The county legislative body of any county and the chief legislative body of any one (1) or more municipalities lying within the boundaries of the county are authorized and empowered to enter into any such agreements, compacts or contractual relations as may be desirable or necessary *for the purpose of permitting the county and the municipality or municipalities to conduct, operate or maintain, either jointly or otherwise, desirable and necessary services or functions*, under such terms as may be agreed upon by the county legislative body and the chief legislative body of the municipality or the chief legislative bodies of the municipalities.

(Emphasis added). In addition, under Tenn. Code Ann. §§ 12-9-101, *et seq.*, local governments are authorized to enter into an interlocal agreement creating an entity to exercise on behalf of all the participating governments any power that each can exercise independently. A board created under this statute, therefore, could be authorized to exercise any of the powers all of its constituent governing bodies may exercise independently. Tenn. Code Ann. § 12-9-104(a)(1). But, while the agreement establishing the Board provides it with general authority to further economic development within the county, it does not give the Board explicit authority to enter into the transactions listed in the request. Nor does Tenn. Code Ann. § 6-58-114 expressly provide for such authority.

The first question is whether the Board has the authority to construct a manufacturing building, which it will offer for sale or lease to businesses considering locating or expanding operations in Weakley County. The agreement does not give this authority to the Board. Under Tenn. Code Ann. §§ 7-37-101, *et seq.*, cities and counties may build or acquire industrial buildings and lease them to private businesses. If the city or county issues bonds to finance the purchase or construction of industrial buildings under this statute, the issue must be approved by a three-fourths majority vote of the registered voters under Tenn. Code Ann. § 7-37-110. In the absence of any express provision in the agreement, however, the Board is not authorized to exercise the power to acquire an industrial building and lease it to a private business on behalf of all of its constituent members. Further, this Office is unaware of any statutory authority under which the agreement could be amended to authorize the Board to issue bonds on behalf of all its members. Op. Tenn. Att’y Gen. 77-418 (December 8, 1977).

2. Authority of Board to Loan or Donate Funds to Industrial Development Board

a. Authority to Loan

The next question is whether the Board is authorized to make a loan or grant of funds contributed to the Board by the constituent local government to an industrial development corporation created under Tenn. Code Ann. §§ 7-53-101, *et seq.* The industrial development corporation would use the funds to build a manufacturing building for sale or lease to businesses. Neither the agreement nor Tenn. Code Ann. § 6-58-114 expressly authorizes the Board to exercise this power. Under Tenn. Code Ann. § 6-54-118, a “municipality” may make a loan with reasonable interest to an industrial development corporation incorporated in the county in which such municipality is located for the purpose of economic development or industrial development, or both. Clearly, under this provision, cities are expressly authorized to lend funds to an industrial development corporation in which the municipality is located for the purposes of economic development or industrial development, or both. The statute does not define the term “municipality” to include counties. In general, Title 6 defines the powers of cities, as opposed to counties. We think it can be argued, however, that the statute incorporates the definition of “municipality” as used under the industrial development statutes. Under that statutory scheme, “municipality” includes a county with respect to which a corporation may be organized and in which it is contemplated the corporation will function. Tenn. Code Ann. § 7-53-101. For this reason, it can be argued that both counties and cities may lend funds on hand at reasonable interest to an industrial development corporation within the county. The agreement, therefore, could be amended to authorize the Board, on behalf of its constituent members, to lend funds to an industrial development corporation within the county.

b. Authority to Donate

The next question is whether the Board may donate funds from the constituent local governments to an industrial development corporation to build an industrial building and rent it to businesses. Neither the agreement nor Tenn. Code Ann. § 6-58-114 expressly authorizes the Board to exercise this power. This Office has concluded that a county is authorized to donate available

county tax funds to an industrial development corporation. Op. Tenn. Att’y Gen. 92-67 (November 23, 1992). This Office has also concluded that a city is authorized to donate funds to an industrial development corporation that it has created. Op. Tenn. Att’y Gen. 93-18 (March 4, 1993). Further, several of the cities within the Board have the charter power to authorize the expenditure of city funds for any municipal purpose. Dresden City Charter, § 4(d); Greenfield City Charter, § 4(d); Gleason City Charter, § 4(d). Under Tenn. Code Ann. § 7-53-102, economic development is clearly declared to be a public purpose. A court would probably conclude, therefore, that donating funds to an industrial development corporation serves a valid municipal purpose. Neither the Martin City Charter nor the Sharon City Charter, however, contains the broad power to expend city funds for any municipal purpose. Neither city, therefore, is clearly authorized to donate city funds to any industrial corporation except to one that it has created. For this reason, the agreement could not be amended to authorize the Board to donate funds it had received from its constituent local governments to an industrial development corporation except one created by both the City of Martin and the City of Sharon. But the county and the other cities may do so independently.

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