

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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June 28, 2002

Opinion No. 02-077

Carroll County Watershed Authority Liability

QUESTION

Is the Carroll County Watershed Authority (CCWA) a state agency for liability purposes?

OPINION

Yes, for liability purposes the CCWA is a state agency.

ANALYSIS

The Office of the Attorney General has opined that Watershed Development Authorities are state agencies for some purposes but not for others. Op. Tenn. Atty. Gen. 84-113 (April 4, 1984). Whether a Watershed Development Authority is a “state agency” depends upon the language of its enabling legislation and the purpose for which the “state agency” characterization is made. The Court of Appeals has listed factors used in determining if an entity is a state agency. *Hastings v. So. Central Human Resource Agency*, 829 S.W.2d 679, 682 (Tenn. App. 1991). These are: (1) whether the enabling statute exhibits a legislative intent to regard the entity as a state agency; (2) whether the State or political subdivision thereof is directly involved in the operation, supervision and control of the entity; (3) whether the entity serves as a conduit through which the State acts to carry out a public or governmental function; and (4) whether the State appropriates funds to the entity. *See also Austin v. City of Memphis*, 684 S.W.2d 624, 637-38 (Tenn. App. 1984). Even though an entity is established as a corporate body, that does not exclude it from being a state agency. *Id.* It is the nature and character of the corporation, as evidenced by its purpose and the type of business it transacts, that is determinative.

The CCWA was created by the General Assembly in 1984. It is a close question whether it should be considered a state entity. The purpose of the Authority is to do “any and all things necessary or desirable in forming and executing a plan for the comprehensive development of the resources of Carroll County, including but not limited to action in cooperation, when necessary or desirable, with appropriate

local, state, and federal agencies, in the fields of agriculture, forestry, drainage and flood control, land reclamation, electric power utilization, irrigation, water conservation and supply, recreation, public health, education, manufacturing and trade.” Tenn. Code Ann. §64-1-804(a). The CCWA is governed by a board of directors consisting of six (6) members appointed by the governor. Tenn. Code Ann. §64-1-802. The Authority reports to the governor on “plans that may be developed for constructing, operating, and maintaining its projects [for comprehensive development of the streams and rivers of Carroll County], including recommendations for further legislation to put such [plans] into effect.” Tenn. Code Ann. §64-1-808(4). It is permitted to enter into contracts with “other public agencies” for the sale of water. Tenn. Code Ann. §64-1-804(a). It is the understanding of this Office that all monies for the development process were appropriated by the State. The Authority may receive additional monies from the federal and local governments. Local governments are authorized to levy and collect ad valorem taxes for the purpose of contributing to the work of the Authority. Tenn. Code Ann. §64-1-809. The Authority is exempt from all state and local taxes. Tenn. Code Ann. §64-1-806. This Office has been informed that the Authority is audited by the Comptroller and complies with the state purchasing statutes. On balance it appears that the General Assembly intended, at least for liability purposes, that the CCWA be considered a state entity. Clarifying legislation would be desirable.

The members of the Board of Directors of the CCWA are state officials. An official has been defined as “an incumbent of a public office, an individual who has been appointed or elected in a manner prescribed by law, who has a designation or title given him by law, and who exercises the functions concerning the public assigned to him by law.” *Sitton v. Fulton*, 566 S.W.2d 887, 889 (Tenn. App. 1978). The CCWA is governed by a board of directors consisting of six (6) members, residents of Carroll County, appointed by the governor to carry out the purposes of the Authority described above. Tenn. Code Ann. §64-1-802. This Office has been told that the directors are unpaid and not compensated for travel expenses.

The CCWA does not have any employees at the present time. Any future employees will only qualify as state employees if they meet the definition of Tenn. Code Ann. §8-42-101(3).

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