

STATE OF TENNESSEE

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Opinion No. 03-020

Joint Development of Industrial Park by Contiguous Counties

QUESTIONS

1. Is Tenn. Code Ann. § 5-1-114 sufficient to allow for joint development of industrial parks with contiguous counties?
2. May counties involved in such interlocal cooperative agreements share property taxes generated by such development?

OPINIONS

1. Tenn. Code Ann. § 5-1-114 is sufficient to allow for joint development of industrial parks by contiguous counties through an interlocal agreement.
2. We have found no statutory authority for counties to share property taxes. Counties may, however, use tax revenues to satisfy some term or condition of the interlocal agreement negotiated by the contiguous counties.

ANALYSIS

1. Authority of Counties to Join Efforts to Develop Industrial Park

Under Tenn. Code Ann. § 5-1-114(a), two or more contiguous counties may agree to undertake jointly any project a county has authority to undertake by itself. The county legislative bodies enter into an agreement setting the terms and conditions of the project. Tenn. Code Ann. § 5-1-114(c). To enter into the agreement, the county legislative bodies must find that the agreement is necessary and desirable to provide for the joint conducting or financing of any function or service provided by or through county government. Tenn. Code Ann. § 5-1-114(a). Thus, in this instance, if each individual county has the authority to develop an industrial park, then the counties may join to undertake the project jointly.

A county may develop an industrial park. Under Tenn. Code Ann. § 13-16-203, cities, towns and counties may develop, maintain and operate industrial parks. They may sell or lease plots of

land and may charge and collect fees for services made available in industrial parks. Tenn. Code Ann. § 13-16-203(3). Thus, under Tenn. Code Ann. § 5-1-114(a), contiguous counties may cooperate to develop an industrial park through an interlocal agreement.

2. Sharing Property Tax Revenues Generated by the Joint Project

Counties possess those taxing powers granted to them by the General Assembly. They have no inherent powers of taxation. Tenn. Const., Art. II, § 29. A county's power to tax is thus a delegated power and is strictly limited to the scope of the delegation. *See State ex rel. Anderson County v. Aycock*, 193 Tenn. 157, 160, 245 S.W.2d 182 (1951); Op. Tenn. Atty. Gen. 92-03 (January 14, 1992).

The courts have interpreted Article II, Section 29, of the Tennessee Constitution to prohibit counties and cities from appropriating funds for anything besides county or public purposes. *See, e.g., Metropolitan Development and Housing Agency v. Leech*, 591 S.W.2d 427, 429 (Tenn. 1979) (appropriation of county funds to a municipal housing agency to improve blighted urban areas serves a legitimate county purpose under Article II, Section 29). There is no precise definition of what constitutes a public or corporate purpose. "The courts generally recognize that a public or corporation purpose is incapable of an exact or all inclusive definition and that each case must turn on its own facts." *See Smith v. City of Pigeon Forge*, 600 S.W.2d 231, 232 (Tenn. 1980); Op. Tenn. Atty. Gen. 95-38 (April 18, 1995). Generally, a public purpose is anything that promotes the public health, safety, morals, general welfare, security, prosperity and contentment of the residents within the municipal corporation. *See Hays v. City of Kalamazoo*, 316 Mich. 443, 25 N.W.2d 787, 790 (Mich. 1947); *Shelby County v. Tennessee Centennial Exposition Co.*, 96 Tenn. 653, 36 S.W. 694, 695 (1896); Op. Tenn. Atty. Gen. 99-097 (April 27, 1999).

As noted above, under Tenn. Code Ann. § 67-5-102, counties may impose an ad valorem property tax for county general purposes. You specifically ask whether the counties may share property tax revenues from the jointly developed industrial park. We have found no general statute authorizing a county to "share" property taxes, nor does the statute authorizing interlocal agreements grant this specific authority.

On the other hand, if the terms "county general purpose" and "public purpose" include the development of an industrial park with a contiguous county, then it follows that a county legislative body could allot tax revenues to this purpose. The statute defines "county general purposes" as all county purposes except roads, bridges, schools, debt service, sinking funds and levies pursuant to special tax laws. Tenn. Code Ann. § 67-5-103(a)(3). Thus, development of an industrial park could be a "county general purpose." Further, the development of an industrial park serves a public

purpose. *See* The Industrial Park Act, Tenn. Code Ann. §§ 13-16-201, *et seq.*¹

We conclude, therefore, that contiguous counties have the authority to enter into an interlocal agreement to develop an industrial park. We have found no authority for counties to share property taxes. We conclude, however, that because development of an industrial park could be a “county general purpose” and a “public purpose,” counties may use property tax revenues generated by the industrial park to fulfill terms and conditions of their interlocal agreement.²

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¹ Tennessee Code Annotated, Compiler's Notes. Section 2 of Acts 1959, ch. 169 read: "Declaration of policy. - The future growth of population in this state, the employment of its people, the proper utilization of its natural resources, and the strengthening of its economy will depend in large measure on growth of industry and related activities. In recent years, increasing numbers of plants seek location in industrial parks or districts where, in company with other plants, utilities and services may be jointly supplied, and in which suitable restrictions and standards of construction and performances may be applied. It is the intent of this act to facilitate the assembly of lands and the development of such industrial parks where feasible and necessary."

² The interlocal agreement, however, could not include a term or condition providing for a specific sharing of property tax revenues.