

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

March 12, 2004

Opinion No. 04-040

Negotiation of Payments in Lieu of Taxes by Local Industrial Development Boards

QUESTION

Pursuant to Tenn. Code Ann. § 7-53-305(g), if a municipal industrial development corporation (IDC) negotiates payments in lieu of taxes in an amount equal to or exceeding the county ad valorem taxes otherwise due, may the IDC do so without involvement or approval of the county?

OPINION

Yes. Tenn. Code Ann. § 7-53-305(g) does not require the county's involvement or approval when a municipal IDC negotiates payments in lieu of taxes in an amount equal to or exceeding the county ad valorem taxes otherwise due. The statute requires the county's involvement or approval only when the IDC negotiates payments that are less than the county ad valorem taxes otherwise due.

ANALYSIS

Pursuant to Tenn. Code Ann. § 7-53-305, a municipal IDC and its properties are "exempt from all taxation in the state of Tennessee." Tenn. Code Ann. § 7-53-305(a) (Supp. 2003). The municipality creating the IDC, however, may delegate to the IDC the authority to negotiate "payments in lieu of ad valorem taxes" by the IDC's lessees. Tenn. Code Ann. § 7-53-305(b) (Supp. 2003). As the name implies, "payments in lieu of taxes are intended to replace property tax revenues lost to a municipality as a result of the property becoming tax-exempt when it was acquired by the [IDC]." Op. Tenn. Att'y Gen. No. 96-083 (June 5, 1996).

Tenn. Code Ann. § 7-53-305(g) provides:

An [IDC] may not negotiate any payment in lieu of tax agreement for less than the county ad valorem taxes otherwise due unless:

(1) The [IDC] is a joint [IDC] organized by the county and one or more of the municipalities therein;

(2) The [IDC] has entered into an interlocal agreement with the county in regard to payments in lieu of ad valorem taxes; or

(3) The [IDC] has received written approval from the county mayor and the legislative body of the county regarding payments in lieu of ad valorem taxes.

Tenn. Code Ann. § 7-53-305(g) (Supp. 2003).¹ This provision effectively limits a municipal IDC's ability to negotiate payments in lieu of taxes in an amount less than the county ad valorem taxes that would otherwise be due unless the county has approved such an agreement.

On the other hand, Tenn. Code Ann. § 7-53-305 places no such restrictions on an IDC that chooses to negotiate payments in lieu of taxes that equal or exceed the county ad valorem taxes otherwise due. The limitations set forth in Tenn. Code Ann. § 7-53-305(g) apply only in the event the IDC negotiates a payment in lieu of taxes that is less than the county ad valorem taxes otherwise due. Moreover, the provisions of Tenn. Code Ann. § 7-53-305(g) do not require the municipal IDC to remit to the county any of the payments in lieu of taxes that it collects.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK
Assistant Attorney General

¹The limitations of Tenn. Code Ann. § 7-53-305(g) apply only in Shelby and Roane counties, as specified by population brackets. This Office has opined that the classifications created by Tenn. Code Ann. § 7-53-305(g) are constitutionally suspect under Article XI, Section 8 of the Tennessee Constitution. *See* Op. Tenn. Att'y Gen. No. 02-044 (Apr. 9, 2002).

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Requested by:

The Honorable Randy McNally
State Senator
307 War Memorial Building
Nashville, TN 37243-0205