S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-146

Tennessee Technology Corridor Development Authority Act

QUESTIONS

1. Under the Tennessee Technology Corridor Development Authority Act, what are the proper procedures for expanding the Technology Overlay Zone along the Pellissippi Parkway in Knox County?

2. Is the Knox County Commission authorized to expand or change the Technology Overlay Zone and/or is action by the General Assembly necessary to make such a change?

3. What is the significance, if any, that the Tennessee Technology Corridor Development Authority (TTCDA) and the Technology Corridor along the Pellissippi Parkway were created and established by a private act instead of a public act?

4. Under the private act, the TTCDA must approve a certificate of appropriateness (CA) for any rezoning changes within the Technology Corridor. If the TTCDA fails to provide a CA because of a tie vote on a motion to approve a CA, can this lack of action be appealed to the Knox County Commission?

OPINIONS

1. A party seeking to expand the Technology Overlay Zone within the Technology Corridor in Knox County should submit its request to the Knoxville/Knox County Metropolitan Planning Commission. If the requested expansion requires a modification of the boundaries of the Technology Corridor itself, however, action by the General Assembly is required.

2. The Knox County Commission is authorized to expand or change the Technology Overlay Zone within the Technology Corridor by amending Knox County's zoning ordinances. Any expansion of or change to the boundaries of the Technology Corridor, however, requires a legislative amendment of the Tennessee Technology Corridor Development Authority Act.

3. This office is aware of no practical significance to the fact that the TTCDA and the Technology Corridor were created and established by a private act instead of a public act.

4. Yes, if the TTCDA fails to provide a CA because of a tie vote, the applicant may appeal the TTCDA's action to the Knox County Commission. Under the Act, a party aggrieved by any TTCDA action may appeal the TTCDA's decision to the Knox County Commission by filing an appeal within thirty days of the TTCDA's action.

ANALYSIS

The questions in your request require an interpretation of the Tennessee Technology Corridor Development Authority Act, a private act passed by the General Assembly in 1983. *See* 1983 Tenn. Priv. Acts 148. The General Assembly passed the Tennessee Technology Corridor Development Authority Act to support, promote, and expand high technology business development in Knox County. *See id*. § 2.a. To further the Act's purpose, the General Assembly created a Tennessee Technology Corridor in Knox County. *See id*. § 5.b. The Act described the geographic boundaries of the Corridor, and it provided that any modification of the boundaries would "be made by amendment of the act upon concurrence of the governing body [of Knox County] and the approval of the [TTCDA]." *Id*.

In passing the Act, the General Assembly also created the Tennessee Technology Corridor Development Authority. *See id*. §§ 2.b, 4.a. As an agency and instrumentality of Knox County, the TTCDA was charged with developing and administering a comprehensive development plan for the Technology Corridor. *See id*. §§ 2.b, 4.b, 7.i. To accomplish the Act's purpose, the General Assembly directed the governing body of Knox County to amend its zoning ordinances to establish a High Technology Overlay Zone within the Technology Corridor in Knox County. *See id*. § 5.a.

Among its other powers, the TTCDA serves "as a review board for the purpose of accepting, considering, approving or denying applications for 'certificates of appropriateness.'" *Id*. § 7.j. Without a certificate of appropriateness, or CA, an applicant cannot obtain a building permit for construction within the High Technology Overlay Zone. *See id*. § 8. Without a CA, an applicant likewise can neither rezone property within the Overlay Zone nor obtain a variance from the provisions of Knox County's zoning ordinances. *See id*.

Following the filing of an application, the TTCDA is required to grant or deny a CA within sixty days. *See id*. § 9.a. If the TTCDA fails to act on an application within the required time, the TTCDA's failure to act constitutes approval of the CA. *See id*. § 9.b. The Act permits "[a]ny interested party who is aggrieved by any action" of the TTCDA to appeal the decision to the Knox County Commission by filing an appeal within thirty days of the TTCDA's action. *Id*. §11. The Knox County Commission may affirm the TTCDA's action or it may overrule the action by a majority vote of the Commission. *See id*. If a party wishes to appeal the Knox County Commission's decision, the party may do so by filing a petition for writ of certiorari in the appropriate court. *See id*.

1. In order to accomplish its purpose, the Act requires the chief legislative body of Knox County to establish a High Technology Overlay Zone within the Technology Corridor in Knox County. *See* 1983 Tenn. Priv. Acts. 148, § 5.a. The Act directs the Knox County Commission to establish the Technology Overlay Zone by amending Knox County's zoning ordinances. *See id*. In light of this authority, any expansion of or change to the Technology Overlay Zone would require a further amendment of Knox County's zoning ordinances.

The amendment of county zoning ordinances is governed by Tennessee Code Annotated § 13-7-105, which authorizes a county's legislative body to "amend the number, shape, boundary, area or any regulation of or within any district or districts or any other provision of any [county] zoning ordinance." Tenn. Code Ann. § 13-7-105(a) (1999). The statute requires that any such proposed amendment shall first be submitted to the regional planning commission. *See id.* A party seeking to expand the Technology Overlay Zone within the Technology Corridor in Knox County, therefore, should submit its request to the regional planning commission for Knox County. The private act creating the TTCDA indicates that the regional planning commission for Knox County is the Knoxville/Knox County Metropolitan Planning Commission or any successor planning commission. *See* 1983 Tenn. Priv. Acts 148, § 3.g.

2. Although the Act does not expressly limit the location of the Technology Overlay Zone to the confines of the Technology Corridor, such a construction of the Act is logical because the authority granted the TTCDA under the Act extends only to the Overlay Zone and the Corridor. In accordance with this construction, the Knox County Commission has the authority to expand the Technology Overlay Zone as long as it does not extend the Overlay Zone beyond the boundaries of the Technology Corridor. On the other hand, the Knox County Commission does not have the authority to expand the Technology Overlay Zone beyond the boundaries of the Technology Corridor. An expansion of the Technology Overlay Zone beyond the boundaries of the Technology Corridor would require a corresponding expansion of the Corridor itself, and such an expansion would require action by the General Assembly. *See id*. § 5.b. To change the Technology Corridor boundaries, the General Assembly must amend the private act creating the TTCDA. *See id*.[1]

3. This office knows of no significance to the fact that the TTCDA and the Technology Corridor were created and established by a private act instead of a public act. The Constitution of Tennessee permits the General Assembly to pass a private act applicable to a particular county, provided "the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the . . . county, or requires approval in an election by a majority of those voting in said election in the . . . county affected." Tenn. Const. art. XI, § 9. In accordance with this constitutional provision, the private act creating the TTCDA provided that the Act would have no effect unless it was approved by a two-thirds vote of the governing body for Knox County. *See* 1983 Tenn. Priv. Acts. 148, § 15. Inasmuch as the

[1]In fact, the General Assembly modified the boundaries of the Technology Corridor within Knox County in 1984. *See* 1984 Tenn. Priv. Acts. 229.

private act subsequently was approved by the Knox County Commission, the Act is effective and has become the law of this state. *See id*. § 16.

As a general rule, where a conflict exists between the provisions of a public act and the provisions of a private act, the provisions of the public act control. *See Wilson v. Town of Greenville*, 509 S.W.2d 495, 496-97 (Tenn. Ct. App. 1973). The provisions of the private act creating the TTCDA are consistent with this general rule. The Act specifically provides that the limitations imposed by the Act shall not affect the powers conferred to any county by any other general, special, or local law. *See* 1983 Tenn. Priv. Acts 148, § 13.a.

4. The Act allows interested parties to appeal the TTCDA's decision to the Knox County Commission. The Act does not limit a party's right to appeal to situations where the TTCDA has denied or approved a CA. Instead, the Act permits a party who is aggrieved by "any action" of the TTCDA to appeal the TTCDA's decision. *Id*. § 11. Specifically, the Act provides that

> [a]ny interested party who is aggrieved by any action of the Board of Commissioners of the [TTCDA] including the approval or denial of a [CA] may appeal its decision to the governing body for Knox County by filing an appeal on the designated form and paying such filing fee as may be required within 30 days of the action of the Board of Commissioners. The action that is appealed may be overruled by an affirmative majority vote of the governing body of Knox County.

Id. Under the foregoing provision, an applicant for a CA may appeal the TTCDA's failure to provide a CA regardless of whether this failure was due to the TTCDA's denial of the applicant's request or the TTCDA's tied vote.

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PAUL G. SUMMERS
Attorney General and Reporter

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MICHAEL E. MOORE
Solicitor General

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MARY ELLEN KNACK
Assistant Attorney General

Requested by:

The Honorable Randy McNally
Senator, 5th Senatorial District
302 War Memorial Building
Nashville, TN 37243-0205