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Opinion No. 01-070

Authority of Beech River Watershed Development Authority to Contract with Henderson County for use of County Equipment in Road and Subdivision Development

QUESTION

Does Tenn. Code Ann. § 64-1-101, *et seq*. authorize the Beech River Watershed Development Authority to contract with Henderson County for the use of county equipment in developing roads and subdivisions on lands owned by Beech River Watershed Development Authority?

ANSWER

Assuming that your reference to subdivisions and roads means subdivisions consisting of private residences and the private roads within the subdivisions, the answer is no. While the statute empowers the Beech River Watershed Development Authority (Watershed Authority) to make contracts with the county as is proper in the exercise of the powers conferred upon it by the statute, the statute does not make any authorization for residential development by the Watershed Authority.

ANALYSIS

The Watershed Authority is created by Tenn. Code Ann. § 64-1-101, *et seq*. There its purposes, powers and duties are stated. In Tenn. Code Ann. § 64-1-101 (a)(1)(B) the legislature declares that:

> Determination and effectuation of the best means for control of the flood waters of those tributaries and subtributaries, development of their full potential as a domestic, municipal, industrial, and agricultural water source, and use of their waters and shoreline lands for recreation and industrial development are public purposes essential to the integrated economic development of the areas drained by these streams and to the future economic welfare of the entire state;

For that stated reason, the legislature created the Watershed Authority.

The powers and duties of the Watershed Authority are spelled out in Tenn. Code Ann. § 64-1-102. Among other powers and duties listed in this section, subsection (a)(10) states that the

Watershed Authority "may develop reservoirs and shoreline lands for recreational use and provide for their operation or use for this purpose...." Tenn. Code Ann. § 64-1-102 (a)(10).

The statute does not mention residential development as a purpose for the creation of the Watershed Authority. Instead, the language is focused on the Watershed Authority providing flood control information, developing a water source for domestic, municipal, industrial and agricultural use, and developing the shorelines for industrial and recreational use.

The language of the Beech River Watershed Development Authority statute may be contrasted with the language of the statute creating the Tellico Reservoir Development Agency (Development Agency). While the two instrumentalities have very similar purposes, Tenn. Code Ann. § 64-1-706 specifically gives the Development Agency the power to "develop, or provide for the development of, the development lands for recreational, residential, commercial and industrial purposes...." Since development for "residential purposes" is specifically listed as a power of the Development Agency, it should not be assumed that residential development is an implied power of the Watershed Authority.

The Watershed Authority was created by statute and only has the power and authority which is conveyed to it either directly or by implication in the statute. It is our opinion that there is neither direct nor implied authority for the Watershed Authority to engage in any development of its property for residential use. Therefore, the Watershed Authority may not contract with Henderson County for use of county equipment for the development of subdivisions and the private roads thereon.

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