S T A T E O F T E N N E S S E E
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Opinion No. 01-135

Corporate Agent for Housing Authority

QUESTIONS

1. Under Tenn. Code Ann. § 13-20-104(b), a local housing authority may designate an agent, including a corporate agent, to act on its behalf. Does this statute authorize a housing authority to designate a non-profit corporation as its corporate agent?

2. Does this statute require a corporate agent to be a stock-issued for-profit corporation?

OPINIONS

1. and 2. We think the statute is ambiguous on this issue, and that an argument could be made that the statute authorizes a housing authority to designate a non-profit corporation as its agent. This Office is unaware of any policy reason for prohibiting a housing authority from appointing a non-profit corporation as its corporate agent. Absent such a reason, and in light of the remedial purposes of the statute, we think a court would probably conclude that a housing authority may appoint a non-profit corporation as its agent.

ANALYSIS

This opinion concerns appointment of a corporate agent by a local housing authority under Tenn. Code Ann. § 13-20-104(b). Under Tenn. Code Ann. §§ 13-20-101, *et seq.*, local governments may create housing authorities. The statutory scheme empowers local housing authorities to engage in a wide variety of activities. The general powers of housing authorities are set forth in Tenn. Code Ann. § 13-20-104(a). Subsection (b) of this statute provides in relevant part:

> . . . An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to a specific housing project or projects through or by an agent or agents which it may designate, including *any corporations which are or shall be formed under the laws of this state,* and for such purposes, an authority may cause one (1) or more corporations to be formed under the laws of this state or may acquire the

> capital stock of any corporation or corporations. All housing project property owned by a corporate agent of a housing authority is subject to the control of and is deemed to be property of the housing authority. *Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may, to the extent permitted by law, exercise any of the powers herein conferred upon the authority.*

Tenn. Code Ann. § 13-20-104(b) (emphasis added). The question is whether, under this statute, a housing authority may designate a non-profit corporation as its corporate agent. The statute does refer to "any corporations . . . formed under the laws of this state." That phrase would certainly include a non-profit corporation formed under Tenn. Code Ann. §§ 48-51-101, *et seq.* On the other hand, the final sentence states that "[a]ny corporate agent, *all of the stock of which shall be owned by the authority or its nominee or nominees*, may, to the extent permitted by law, exercise any of the powers herein conferred upon the authority." This sentence has been in the statute since it was enacted in 1935.

The effect of this sentence on your question is not clear. Under state law, non-profit corporations do not issue stock. At least two interpretations are possible. First, it could be argued that, by including this sentence, the General Assembly intended to make it clear that only a corporation that issues stock may serve as a corporate agent for a housing authority. Under this interpretation, a non-profit corporation could not serve as a corporate agent. Second, it could be argued that this sentence does not prevent a housing authority from appointing a non-profit corporation as its agent; instead, it prohibits a housing authority from appointing as its corporate agent any corporation, all of the stock of which is not owned by the housing authority or the authority's nominees.

This Office is unaware of any policy reason for prohibiting a housing authority from appointing a non-profit corporation as its corporate agent. It is possible that the General Assembly was concerned that a housing authority might cede control of a non-profit corporation to other parties through the corporate charter, but this concern is nowhere clearly expressed. Absent a policy reason for prohibiting a housing authority from appointing a non-profit corporation as its agent, and in light of the remedial purposes of the housing authorities laws, we think a court would probably conclude that a housing authority may appoint a non-profit corporation as its agent.

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