S T A T E O F T E N N E S S E E
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Opinion No. 02-103

Construction of a Bridge on a State Road by a Non-Profit Foundation

QUESTION

May a non-profit foundation may build a bridge on a state road and, if so, what procedures must be followed?

OPINION

Yes. Under the facts provided with the opinion request,[1] and assuming that the terms of TENN. CODE ANN. § 54-5-109 are satisfied, the State of Tennessee, through the Department of Transportation, has the authority to make contracts for the building of any road or bridge to be constructed under the department's direction.

ANALYSIS

It is understood that a non-profit foundation owns and wishes to develop a 420-acre parcel of land located in Wayne County, Tennessee, near the city of Clifton, Tennessee. The proposed development, which would be accomplished after the non-profit foundation conveys the deed to the parcel of real property to the State of Tennessee, is anticipated to include a public park facility, a marina on the Tennessee River, and a bridge which will permit access to the marina. Pursuant to TENN. CODE ANN. § 12-2-116, the State of Tennessee has the authority to enter into a development agreement with the non-profit foundation.

TENN. CODE ANN. § 12-2-116(a)(1) provides that:

[1] We have been provided with copies of an unexecuted draft of an agreement between the Department of Transportation and the non-profit foundation, as well as an unexecuted draft of an agreement between the Department of Finance and Administration, the Department of Environment and Conservation, and the non-profit foundation. These documents are the primary sources of our understanding of the facts that form the background of this question.

> (a)(1) Notwithstanding any other provisions of this part, the commissioner of finance and administration, with the approval of the state building commission and subject to the policies and procedures of the commission, may in order to provide utilization of state-owned lands and facilities in the public interest, enter into agreements for the private development, redevelopment, construction and operation of facilities on lands owned by or under the control of the state.

The proposed agreement also contemplates that the non-profit foundation will build a bridge to permit access to the proposed marina. While there is an existing bridge at the site, its height is not sufficient to provide clearance to the boats that are expected to use the proposed marina. It is expected that the plans and specifications for the bridge, as well as a budget, will be determined by the Department of Transportation. The non-profit foundation would be responsible for purchasing the right-of-way for the property, as well as undertaking the actual construction of the bridge in accordance with the plans and specifications as determined by the Department of Transportation. The proposed bridge would serve to connect sections of an existing state road, as does the current bridge. After completion of the proposed bridge, the existing bridge would be dismantled at a later date.

TENN. CODE ANN. § 54-5-109 provides, with respect to the Department of Transportation, that:

> The department has full power, in conformity with the rules and regulations made or to be made by any officer or agency of the federal government authorized to make rules under any act of congress granting funds for the construction of roads, or rules made or to be made by the department, *to make all plans and specifications for the building of each particular road or bridge* to be constructed under its direction, *to make all contracts therefor*, and to supervise and superintend the construction of such road or bridge.

(Emphasis added).

The proposed agreement between the non-profit foundation and the State of Tennessee further contemplates that the bridge, after completion pursuant to the plans and specifications provided by the Department of Transportation, would be given to the State of Tennessee by the non-profit foundation. The State of Tennessee then would have sole responsibility for the maintenance of the bridge.

TENN. CODE ANN. § 12-1-101 provides that:

> The *governor is authorized to accept*, on behalf of the state, *gifts of real estate* or personal property *upon such terms and conditions and for such uses and purposes as may be agreed upon* by the grantor or donor thereof and the governor.

(Emphasis added).

Based on the facts of the proposed agreement between the non-profit foundation and the State of Tennessee, as understood, there would be no legal prohibition against the building of the bridge by the foundation, provided that there were a prior contract between the Department of Transportation and the non-profit foundation, pursuant to TENN. CODE ANN. § 54-5-109. Moreover, upon completion of the bridge by the non-profit foundation, the planned conveyance of the bridge to the state could be accomplished pursuant to TENN. CODE ANN. § 12-1-101, assuming the governor and the non-profit foundation agree as to terms and conditions of the transfer, as well as to uses and purposes of the donated property.

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