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Opinion No. 03-032

Action by the Four Lake Regional Industrial Development Authority

QUESTIONS

1. a. Is a vote of the entire voting membership of the Four Lake Regional Industrial Authority (the "Authority") necessary for all actions taken by or on the Authority's behalf?

b. Is the entire voting membership of the Authority authorized to delegate its powers and functions to the Authority's Executive Committee?

2. Should the sale of real property by the Authority be considered a "policy" upon which all members of the Authority must vote, or a "management decision" that may be made by the Executive Committee under Tenn. Code Ann. § 64-5-202?

3. Assuming that the Authority validly delegated its authority to act to the Executive Committee at the Authority's initial meeting in 1987, how long does that delegation remain in effect?

OPINIONS

1. a. No. Under Tenn. Code Ann. § 64-5-202, the Board of Directors of the Authority may invest the Executive Committee with managerial powers. Under the same statute, policy made by the Board of Directors of the Authority is to be implemented by the Executive Committee and the Executive Director, if the Board establishes this position.

b. Yes. Tenn. Code Ann. § 64-5-207 expressly authorizes the entire membership of the Board of the Authority to delegate any of the powers or functions that it may exercise as a whole.

2. Material received in connection with the request indicates that the Board of Directors voted "to have the Executive Committee act on behalf of the Board of Directors on all issues relating to the oversight and governance of the Four Lake Authority." We think this delegation would include the authority to sell Authority land. Assuming the Board of Directors has not revoked this authority, then the Executive Committee may carry out the sale without the approval of the entire Board of Directors. If the Board of Directors has revoked this authority, then the minutes of the Authority should be examined to determine whether the Board has invested the Executive

Committee with the authority to authorize this action under Tenn. Code Ann. § 64-5-202. Whether this particular decision falls within that express authority or has otherwise been delegated to the Executive Committee under this statute depends on the language of any resolution investing the Executive Committee with managerial authority as well as the practice of the Authority in the past. In addition, we think the Board itself could make the determination that approval by the full membership of the Board of Directors is required before this particular decision may be carried out. This determination could be made at a regular meeting or a special meeting called in accordance with Authority rules of order.

3. This delegation would remain in effect according to its terms. If the delegation specifies no period of duration, then the delegation would remain in effect until the Board of Directors rescinds it. Based on information received in connection with the request, the Board of Directors delegated general authority to the Executive Committee at its initial meeting in August 1987. The minutes of that meeting indicate that the delegation has no specific duration and, therefore, will remain in effect until the Board of Directors rescinds it. The Board itself could meet and revoke the resolution delegating the authority at a regular meeting or a special meeting called in accordance with Authority rules.

ANALYSIS

This opinion responds to a request to clarify an earlier opinion of this Office, Op. Tenn. Atty. Gen. 03-005 (January 17, 2003). That opinion, by its terms, addresses only the voting membership of the entire Board of Directors of the Four Lake Regional Industrial Development Authority (the "Authority") as set forth in Tenn. Code Ann. § 64-5-203. Additional information provided with this request indicates that an issue has arisen regarding whether the vote of the entire membership is required to approve the sale of land owned by the Authority to developers for a development project. This opinion is based on facts contained in the request and in other material received in connection with the request.

1. Requirement that the Entire Board of Directors Vote on All Authority Actions

The Authority was created and operates under Tenn. Code Ann. §§ 64-5-201, *et seq.* The Authority was created and established for the purpose of developing the resources of the region embracing the Tennessee counties of Macon, Smith, Sumner, Trousdale and Wilson, including the coordination of the Authority's development work with related activities and programs of the Tennessee Valley Authority and other federal, state, and local planning and development agencies. Tenn. Code Ann. § 64-5-201. That statute also provides:

> The authority is directed to focus its activity toward economic development and improving employment opportunities in the region in a manner consistent with the state policy of industrial development and in a manner consistent with the goal of maintaining a healthy environment or improving the same.

The Board of Directors of the Authority is required to hold a meeting at least annually at which members of the general public are allowed to address the Board. Tenn. Code Ann. § 64-5-203(d). The Authority is authorized to construct, operate, and maintain any public works project in the region. Tenn. Code Ann. § 64-5-209. That statute also contains a broad definition of the term "public works project."

The first question is whether the entire Board of Directors of the Authority must vote on all actions of the Authority. In Opinion 03-005, this Office stated that "[a]ll of the statutory members of the Authority, including the *ex officio* members, are authorized to vote on all issues, except with regard to the election of the four nonchair members of the Executive Committee." We did not intend to imply by this statement, however, that the entire Board of Directors of the Authority must approve every action connected with Authority affairs. Tenn. Code Ann. § 64-5-202 expressly provides:

> The authority shall be governed by a board of directors, hereinafter referred to as the "board," *which shall invest an executive committee with certain managerial powers.* The board shall make policy, which *shall be implemented by the executive committee and executive director, if such position is established.*

Tenn. Code Ann. § 65-4-202 (emphasis added). Under this statute, therefore, the entire Board of Directors of the Authority need not approve every action that implements policies that the Board has established.

In addition, statutes creating the Authority expressly authorize the Board of Directors to delegate any of the powers that the Board as a whole may exercise. Tenn. Code Ann. § 64-5-207 provides:

> The board may delegate, subject to recall, any of the powers or functions which the board as a whole may exercise, subject to such guidelines as the board may adopt to regulate the executive committee.

Under this statute, therefore, the Board of Directors may delegate any of its powers or functions to the Executive Committee of the Authority. The Executive Committee of the Board of Directors of the Authority is selected under Tenn. Code Ann. § 64-5-204. Once this delegation has taken place, subject to the terms of the delegation as well as guidelines to regulate the Executive Committee, the Executive Committee may exercise any power that may be exercised by the entire Board of Directors of the Authority.

2. Sale of Land

The next question is whether sale of Authority land to a developer may be carried out by the Executive Committee or must be approved by the entire Board of Directors. Material received in

connection with the request indicates that, at the initial meeting of the Board of Directors on August 21, 1987, a motion was made and passed "to have the Executive Committee act on behalf of the Board of Directors on all issues relating to the oversight and governance of the Four Lake Authority." We think this delegation is broad enough to include the sale of Authority land, especially if the Executive Committee has completed such transactions without the approval of the Board of Directors in the past. If the Board of Directors has not revoked this delegation, therefore, the Executive Committee may carry out the sale without the approval of the entire Board of Directors. If the Board has revoked this delegation, then the issue must be determined under Tenn. Code Ann. § 65-4-202. As cited above, that statute states:

> The authority shall be governed by a board of directors, hereinafter referred to as the "board," which shall invest an executive committee with certain managerial powers. The board shall make policy, which shall be implemented by the executive committee and executive director, if such position is established.

The second sentence of the statute provides a general description of the relationship between the entire Board of Directors and the Executive Committee that is contemplated by the statute.

When the House passed the original act creating the Authority on April 24, 1985, the House Calendar for that day contained a general explanation of the bill. The explanation in part provided:

> . . .The authority would consist of a board of directors consisting of various public officials of the region who through their appointed executive committee would be authorized to do all things necessary to secure construction and /or operation of public works projects and regional educational and recreational facilities in the region . . ..

House Calendar, Summary of Bills, April 24, 1985 (describing House Bill 820, slightly amended by the Senate and enacted as 1986 Tenn. Pub. Acts Ch. 789). The General Assembly, therefore, apparently intended that the Executive Committee would carry out the actual transactions necessary to establish a public works project. We do not think this statement, however, directly answers the question whether the Board of Directors must, or may, play an active role in a sale of Authority land to be used for a particular project.

Whether the sale of land for a project may be carried out by the Executive Committee or must be approved by the Board of Directors depends, first, on the extent to which the Board of Directors has expressly invested the Executive Committee with this authority. The minutes of the Board of Directors should be examined to determine this issue. The term "manage" means "[t]o direct or administer (a business, for example)." *The American Heritage Dictionary*, 761 (2d College Ed. 1985). As a general matter, the purchase and sale of Authority land would, therefore, be included within the term "managerial powers," and the Board of Directors of the Authority could explicitly invest the Executive Committee with this power.

Even if the Board of Directors has expressly invested the Executive Committee with the authority to purchase and sell land, it is not clear that the decision to sell land for this particular project is itself a "policy" that must be approved by the entire Board of Directors under the statute, or merely implements a policy established by the Board of Directors. The statute provides no further definition of "policy." According to *The American Heritage Dictionary*, "policy" in this context appears to mean "[a] course of action, guiding principle, or procedure considered to be expedient, prudent, or advantageous: *Honesty is the best policy." The American Heritage Dictionary*, 959 (2d College Ed. 1985). In this context, "implement" means "[t]o put into practical effect; carry out; *implement the new procedure." Id.* at 646. Under the statute, therefore, the Board of Directors may establish guiding principles and procedures to be carried out by the Executive Committee.

This statute authorizes the Board of Directors to determine general guidelines and procedures, in the first instance, to be put into practical effect by the Executive Committee. We think the Board of Directors could decide, as a policy, to delegate virtually every major decision to the Executive Committee, or to play a more active role in some decisions, while leaving day-to-day matters to the Executive Committee. Whether, in this case, the sale of land is a "policy" that must be approved by the Board of Directors or a matter implementing the policy that has been delegated to the Executive Committee depends, first, on the policies and guidelines that the Board of Directors has already established. The Board's course of action in dealing with other Authority projects would be relevant to this determination. If, for example, the Board has played no major role in the purchase and sale of land for development of a project, then it could be argued that the Board of Directors has delegated these matters to the discretion of the Executive Committee. It could also be argued that, depending on the facts and circumstances, this particular project is so different from other Authority projects that it does not fall within matters previously delegated to the Executive Committee. We think the Board itself could make the determination that approval by the full membership of the Board of Directors is required before this particular decision may be carried out. This determination could be made at a regular meeting or a special meeting called in accordance with Authority rules of order. Tenn. Code Ann. § 64-5-206.

3. Delegation of Authority

Assuming the Authority delegated all its power and authority to the Executive Committee under Tenn. Code Ann. § 64-5-207, the last question asks how long that delegation lasts. The statute provides:

> The board may delegate, subject to recall, any of the powers or functions which the board as a whole may exercise, subject to such guidelines as the board may adopt to regulate the executive committee.

As discussed above, the minutes of the initial meeting of the Board of Directors reflect that the Board voted "to have the Executive Committee act on behalf of the Board of Directors on all issues relating to the oversight and governance of the Four Lake Authority." According to the minutes, the

delegation has no specific duration and, therefore, will remain in effect until the Board of Directors rescinds it. We think the Board itself could meet and revoke the resolution delegating the authority at a regular meeting or a special meeting called in accordance with Authority rules.

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