S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 2, 2006

Opinion No. 06-151

Compliance with Tenn. Code Ann. § 6-58-114

QUESTIONS

1. May the entire membership of a joint economic and community development board created under Tenn. Code Ann. § 6-58-114 serve as its own executive committee?

2. If the answer to Question 1 is yes, must the board produce separate minutes of each entity in order to certify compliance with Tenn. Code Ann. § 6-58-114(f)?

3. If the answer to Questions 1 and 2 is yes, may the board amend its minutes retroactively to reflect that its meetings are to be regarded as meetings of the board and the executive committee?

4. If the agency determines that a board has not complied with Tenn. Code Ann. § 6-58-114(f), when will the board be eligible to receive grant funds by complying with this section?

OPINIONS

1. Yes.

2. No, the board may meet in a dual capacity.

3. Yes, the Board may amend its minutes retroactively to reflect that all its meetings were in a dual capacity as board and executive committee if this is necessary to accord with the facts.

4. We think a local government may certify that it is in compliance with Tenn. Code Ann. § 6-58-114(f) if it has met the requirements in the calendar quarter when it is applying for a grant.

ANALYSIS

This opinion concerns compliance with Tenn. Code Ann. § 6-58-114. Under that statute, local governments in each county are required to have a joint economic and community development board, established by interlocal agreement under Tenn. Code Ann. § 5-1-113. The purpose of the board is to foster communication about economic and community development between and among

governmental entities, industry, and private citizens. Tenn. Code Ann. § 6-58-114(b). The statute provides in relevant part:

> (d) There shall be an executive committee of the board, which shall be composed of members of the joint economic and community development board selected by the entire board. The makeup of the executive committee shall be determined by the entire joint economic and community development board but shall, at a minimum, include the county mayor and the city mayors or city managers of the larger municipalities in the county.
>
> * * * *
>
> (f) The board shall meet, at a minimum, four (4) times annually, and the executive committee of the board shall meet at least four (4) times annually. An executive committee meeting shall be held once each calendar quarter. Minutes of all meetings of the board and the executive committee shall be documented by minutes kept and by certification of attendance. Meetings of the joint economic and community development board and its executive committee are subject to the open meetings law.

Tenn. Code Ann. § 6-58-114(d) & (f).

Subsection (g) of the statute establishes a funding mechanism for the joint board. Subsection (h) provides that the executive committee recommend an annual budget to fund the activities of the board, which must adopt a budget before April 1 of each year. In the event a participating government does not fully fund its contribution, the board may establish and impose such sanctions or conditions as it deems proper. Tenn. Code Ann. § 6-58-114(h).

1. The first question is whether the entire membership of the Board may act as the executive committee under Tenn. Code Ann. § 6-58-114. In construing a statute, a reviewing court must ascertain and give effect to the legislature's intent and purpose. *Freeman Industries, LLC v. Eastman Chemical Co.*, 172 S.W.3d 512 (Tenn. 2005). The statute provides that the members of the executive committee must be selected by the entire board and must, at a minimum, include the county mayor and city mayors of the larger municipalities in the county. It imposes no other restrictions on membership. Under the statute, therefore, the board may provide that the executive committee will include all board members.

2. The next question is whether a joint board may meet in a "dual capacity" as both the board and its executive committee. Technically, the statute appears to require separate meetings. Where the makeup of the entire board and its executive committee is identical, however, this requirement seems pointless. The only function that the separate executive committee must perform is to recommend the board's budget to the entire board. Where the membership of the executive committee is the entire board, this step seems needlessly duplicative. In ascertaining the legislature's intent, the courts must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning. *Sallee v. Barrett*, 171 S.W.3d 822 (Tenn. 2005). The legislature is not presumed to have intended an absurdity, *Epstein v. State*, 211 Tenn. 633, 366 S.W.2d 914 (Tenn. 1963), or a vain and useless thing. *Texas Gas Transmission*

Corp. v. Atkins, 205 Tenn. 495, 327 S.W.2d 305 (Tenn. 1959); *Maury County v. Tennessee State Board of Equalization*, 117 S.W.3d 779 (Tenn. Ct. App. 2003), *p.t.a. denied* (2003). As noted above, the purpose of Tenn. Code Ann. § 6-58-114 is to foster communication about economic and community development between and among governmental entities, industry, and private citizens. Tenn. Code Ann. § 6-58-114(b). This purpose is clearly met whether a board whose executive committee includes the same members holds separate meetings or not. Where the membership of the board and its executive committee is identical, therefore, we think Tenn. Code Ann. § 6-58-114 does not require separately convened meetings of the executive committee. It follows, therefore, that the board and executive committee need not produce separate minutes reflecting separate meetings.

3. The next question is whether a joint board may amend its minutes retroactively to reflect that all its meetings were in a dual capacity as board and executive committee. Public agencies are generally authorized to correct or amend their records and minutes to accord with the facts where no intervening vested rights are involved, and the amendment relates back to the original entry. 20 C.J.S. *Counties* § 85 (2006); 62 C.J.S. *Municipal Corporations* § 244 (2006); 73 C.J.S. *Public Administrative Law and Procedure* § 39 (2006). A joint board, therefore, may amend its minutes retroactively to reflect that all its meetings were in a dual capacity as board and executive committee if this is necessary to accord with the facts.

4. If a joint board has not complied with Tenn. Code Ann. § 6-58-114(f) regarding meetings, the last question asks when the local governments that formed the board will again be eligible for a state grant. The statute provides in relevant part:

> (i) When applying for any state grant a city or a county shall certify its compliance with the requirements of this section.
>
> (j) If there exists within a county a similar organization on May 19, 1998, that organization may satisfy the requirements of this section. The county mayor shall file a petition with the committee, which shall make a determination whether the existing organization is sufficiently similar to the requirements of this section. When the committee has made its determination, an affected municipality or county may rely upon that status of the existing organization to satisfy the certification requirements of subsection (i).

Tenn. Code Ann. § 6-58-114(i) & (j). We do not think the certification requirement was intended to pose a major obstacle to a local government's ability to qualify for a grant. Under Tenn. Code Ann. § 6-58-110, certain grants, including industrial infrastructure grants, are not available to local governments in counties for which the Local Government Planning Advisory Committee has not approved a countywide growth plan. By contrast, Tenn. Code Ann. § 6-58-114 does not contain this provision. For this reason, we think a local government may certify that it is in compliance with

Tenn. Code Ann. § 6-58-114(f) if it has met the requirements in the calendar quarter when it is applying for a grant.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Matthew Kisber
Commissioner, Tennessee Department of Economic and Community Development
312 Eighth Avenue North, 11th Floor
Nashville, TN 37243