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Opinion No. 08-111

Funding Budget of Joint Economic and Community Development Board

QUESTIONS

1. Under Tenn. Code Ann. § 6-58-114(h), the Joint Economic and Community Development Board (the "Joint Board") is to set an annual budget that is to be funded by participating governments as set forth by the funding formula in the statute. Is it unconstitutional or otherwise contrary to law for the Joint Board, which includes unelected members, to mandate expenditures for a participating county without the approval of the county legislative body?

2. Are there any limits to the budget that may be set by a Joint Board?

3. Is a local government member of a Joint Board ineligible for state grants if it has fully funded its portion of the Joint Board's budget for the prior year but declines to fund its portion of a mandated budget increase from one budget year to the next?

4. Subsection (h) of Tenn. Code Ann. § 6-58-114 provides: "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." What sanctions or conditions may a Joint Board impose under this provision?

OPINIONS

1. The statute does not give the Joint Board any power to mandate expenditures by a participating local government without the approval of its legislative body. Under the statute, the local legislative body retains full authority to approve or disapprove its contribution to the Joint Board's budget.

2. The statute does not contain any limits to the budget that may be set by a Joint Board.

3. If a participating government member has not funded its full share of the Joint Board's budget, including any increase over the prior year's budget, the participating government is rendered ineligible for state grants from the beginning of the fiscal year for which that budget was adopted and may be sanctioned by the Joint Board.

4. A Joint Board may prevent a local government that has failed to fund its portion of the joint budget from voting at meetings. A Joint Board may also prevent representatives of a local government that has failed to fund its portion of the budget from serving as Joint Board officers.

ANALYSIS

1. Funding a Joint Economic and Community Development Board

This opinion concerns the operation of a joint economic and community development board established under Tenn. Code Ann. § 6-58-114 (a "Joint Board"). This statute provides in relevant part:

> (a) It is the intent of the general assembly that local governments engage in long-term planning, and that such planning be accomplished through regular communication and cooperation among local governments, the agencies attached to them, and the agencies that serve them. It is also the intent of the general assembly that the growth plans required result from communication and cooperation among local governments.
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> (b) There shall be established in each county a joint economic and community development board, which shall be established by interlocal agreement pursuant to § 5-1-113. The purpose of the board is to foster communication relative to economic and community development between and among governmental entities, industry, and private citizens.
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> (c) Each joint economic and community development board shall be composed of representatives of county and city governments, private citizens, and present industries and businesses. The final makeup of the board shall be determined by interlocal agreement but shall, at a minimum, include the county mayor and the city mayor or city manager, if appropriate, of each city lying within the county and one (1) person who owns land qualifying for classification and valuation under title 67, chapter 5, part 10; provided, that in cases where there are multiple cities, smaller cities may have representation on a rotating basis as determined by the interlocal agreement.
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> (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.
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> (g)(1) The activities of the board shall be jointly funded by the participating governments. The formula for determining the amount of funds due from each

> participating government shall be determined by adding the population of the entire county as established by the last federal decennial census to the populations of each city as determined by the last federal decennial census, or special census as provided for in § 6-51-114, and then determining the percentage that the population of each governmental entity bears to the total amount.
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> (3) The board may accept and expend donations, grants and payments from persons and entities other than the participating governments. The board is authorized to transfer or to donate funds from participating governments or outside sources to other public or nonprofit entities within the county to be used for economic or industrial development purposes.
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> (4) If, on May 19, 1998, a county and city government have a joint economic and community development council that has an established funding mechanism to carry out a unified economic and community development program for the entire county, such funding mechanism shall be utilized in lieu of the formula established in this subsection (g).
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> (h) An annual budget to fund the activities of the board shall be recommended by the executive committee to the board, which shall adopt a budget before April 1 of each year. The funding formula established by this act shall then be applied to the total amount budgeted by the board as the participating governments' contributions for the ensuing fiscal year. The budget and a statement of the amount due from each participating government shall be immediately filed with the appropriate officer of each participating government. 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.
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> (i) When applying for any state grant a city or county shall certify its compliance with the requirements of this section.

The first question is whether the act is unconstitutional because it authorizes a Joint Board to mandate expenditures by a county without the authority of the county commission. This is not the effect of the statute. Under the statute, the Joint Board sets a budget, with contributions allocated among the member local governments. The county commission must still appropriate the county's contribution. The statute penalizes a local government that does not contribute by making it ineligible for state grants. Op. Tenn. Att'y Gen. 05-109 (July 11, 2005). As discussed in Question 4 below, the statute also authorizes the Joint Board to limit that government's right to vote and have its representatives serve as officers. The same statutory scheme provides that the local governments in a county that has not adopted a growth plan are disqualified from receiving certain state grants. Tenn. Code Ann. § 6-58-110. Our Office has concluded that this penalty is within the General Assembly's authority and is supported by a rational basis. Op. Tenn. Att'y Gen. 98-239 (December 28, 1998). Similarly, there is a rational basis for withholding state grants from a city or county that is not funding its share of a Joint Board's budget. That local government is not cooperating with

other local governments within the county to engage in long-term planning. The General Assembly, therefore, may decide to treat them differently when they apply for state grants.

The request notes that at least some of the members of a Joint Board are not elected. The request suggests that allowing this body to mandate expenditures by a county is unconstitutional. As discussed above, the local legislative body must still approve its contribution to the Joint Board, although it faces a penalty if it refuses to do so. Further, the General Assembly approved the entire statutory scheme. This body, of course, is comprised of elected representatives from across the state. For these reasons, the funding mechanism described in the statute is constitutional.

2. Limits on the Budget of a Joint Economic and Community Development Board

The next question is whether there are any limits to the budget that may be set by a Joint Board. As a practical matter, the Joint Board must set a budget that most or all of its members are willing and able to fund. The statute, however, sets no limit on the budget that may be established by the Joint Board.

3. Refusal to Fund Budget Increase

The next question is whether a local government member of a Joint Board is ineligible for state grants if it has fully funded its portion of the Joint Board's budget for the prior year but declines to fund its portion of a mandated budget increase from one budget year to the next. Tenn. Code Ann. § 6-58-114(h) provides:

> An annual budget to fund the activities of the board shall be recommended by the executive committee to the board, which shall adopt a budget before April 1 of each year. The funding formula established by this act shall then be applied to the total amount budgeted by the board as the participating governments' contributions for the ensuing fiscal year. The budget and a statement of the amount due from each participating government shall be immediately filed with the appropriate officer of each participating government. 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.

We assume the purpose of the April 1 deadline is to give the legislative body of each of the local members three months to include its contribution in its budget for the next fiscal year, which begins July 1. Under the statute, each local government member must fund its full share of the new budget, including an increase over the prior fiscal year, if it is to avoid the sanctions authorized by the statute and is to maintain its eligibility for state grants.

4. Sanctions for Failure to Fund Budget

The last question concerns the meaning of the final sentence in Tenn. Code Ann. § 6-58-114(h), which provides: "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." The question is what sanctions or conditions the board may impose under this sentence.

Senator Rochelle, who sponsored the Growth Law in the Senate, made the following remarks about this provision on the Senate floor:

> Then it says over here that they [a Joint Board] will fix them up a budget. First off, I'd say to you it's the governmental representatives primarily who compose the majority of it. They're the ones that fix up the budget. Then it says everybody is supposed to fund it according to the funding formula. And then, oh the terrible language here, it says in the event a participating government does not fully fund its contribution, the board may establish and impose such sanctions and conditions as it deems proper. Now, that sounds like a mandate, but think for a minute. *What sanctions does this board have authority to levy? The only sanction really that they have is to . . . declare that the city X over here that didn't fund their part can't vote at the council meetings. That's in essence the only sanction there is.* We wanted city and county officials to read that like Sen. Gilbert read it, and to think this is something we have to participate in. If we can ever get them hooked to talking to each other, a lot of Tennessee's problems at the local level will get solved. So there's no state mandate involved. *It says they be sanctioned, and the only power they have to sanction is powers within their own organization. And the only power within their organization is to recognize who can vote or who can serve as an officer. If the county doesn't pay its share, then the county's representatives can't serve as an officer of the organization.* Now, that's fair, that's reasonable, and that's what it does.

Senate Session April 27, 1998 (remarks of Senator Rochelle) (emphasis added). This explanation is consistent with the language of the statute. For this reason, a Joint Board may prevent a local government that has failed to fund its portion of the joint budget from voting at meetings. A Joint Board may also prevent representatives of a local government that has failed to fund its portion of the budget from serving as Joint Board officers.

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