

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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January 29, 2009

Opinion No. 09-08

Grant Contract Between the State of Tennessee and the Town of Erwin

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**QUESTIONS**

1. Can the three (3) million dollars provided for in the attached grant agreement (“the grant”) be released to the grantee in one lump sum before the projects have been approved or even begun?
2. Can the grantee give the grant to someone else?

**OPINIONS**

1. No.
2. No.

**ANALYSIS**

Your questions concern a Grant Contract between the State of Tennessee, Department of Finance and Administration (“Grantor”), and the Town of Erwin (“Grantee”), in addition to a number of associated documents, for the construction of an assisted living facility for senior citizens. You have asked this Office to review the provisions of the grant agreement in order to determine the answers to the questions set forth above. The law governing interpretation of contracts is well settled — absent ambiguity, plain language controls. *Campana v. Ford*, 124 S.W.3d 624, 629 (Tenn. Ct. App. 2003). Our review of this Grant Contract, however, reveals no ambiguities regarding the issues on which you have sought our opinions.

1. The Grant Contract expressly sets forth the methodology by which grant funds will be paid to the Grantee:

- C.3. The Grantee shall be compensated for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in Section C.1. **Upon progress toward the completion of the work as described in Section A of this Grant Contract, the Grantee shall submit invoices in form and substance acceptable to the State, with all the necessary supporting documentation prior to any reimbursement of allowable costs.** Such invoices shall be submitted no

more often than monthly and indicate at a minimum the line item budget, the amount charged by line item for the period invoiced, the amount charged to date by line item, the total amount charged under this Grant Contract for the period invoiced, and the total amount charged to date.

(Emphasis added).

This paragraph makes clear that payment of grant funds may not be in the form of a lump sum of the total amount of the grant before the projects have been either approved or commenced. Rather, as costs are incurred during the project, the Grantee must submit invoices for the specific costs, and must maintain a current accounting of totals billed and paid. Other provisions of the Grant Contract that reinforce this interpretation provide that the State must approve all costs as allowable expenditures (Sections C.5. and C.7.) Further, the State reserves the right in Section C.6. to object to expenditures even after invoices regarding those expenditures have been paid. Accordingly, the payment of the maximum grant amount of three million dollars may not be in the form of a lump sum of three million dollars, paid prior to project approval or the commencement of construction.

2. At least two (2) separate provisions of the Grant Contract prohibit the Grantee from giving the Grant to some other party. Section D.2. states: "This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate State officials in accordance with applicable State laws and regulations." Section D.5., in turn, states in pertinent part:

The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. . . .

The Grant Contract clearly provides that the Town of Erwin is the Grantee. The two provisions discussed above therefore prohibit the Town of Erwin from giving or transferring the grant to some other party or entity, absent the prior approval of an amendment to the Grant Contract to that effect by the State.

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Requested by:

The Honorable Kent Williams  
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