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Opinion No. 09-14

“Qualified Public Use Facility” under Tenn. Code Ann. § 7-88-103(7)(A)(i)

QUESTION

The Mid-South Fairgrounds Redevelopment (the “Project”) is anticipated to cost from seventy-five million to ninety million dollars in public funds, and from fifty million to seventy-five million dollars in private funds. The City of Memphis has not given its final approval. Under Tenn. Code Ann. § 7-88-103(7)(A)(i), the term “qualified public use facility” includes a project that, among other specifications, requires:

(a) On or after January 1, 1998, a local investment of public funds in excess of seventy-five million dollars (\$75,000,000), and is reasonably anticipated to attract private investment in the tourism development zone of more than fifty million dollars (\$50,000,000) after January 1, 1998; *or*

(b) On or after January 1, 2007, a local investment of public or private funds of not less than two hundred million dollars (\$200,000,000)[.]

(Emphasis added). Is the Project a “qualified public use facility” under Tenn. Code Ann. § 7-88-103(7)(A)(i)(a)?

OPINION

The legislative history of Tenn. Code Ann. § 7-88-103(7) indicates that the higher investment threshold in subdivision (b) that began January 1, 2007, was not intended to limit or affect the availability of the lower threshold in subdivision (a). For this reason, the Project meets the investment threshold for a “qualified public use facility” in Tenn. Code Ann. § 7-88-103(7)(A)(i)(a).

ANALYSIS

This opinion addresses whether the proposed Mid-South Fairgrounds Redevelopment (the Project”) meets the definition of a “qualified public use facility” under Tenn. Code Ann. § 7-88-103(7)(A). Our opinion is based on the facts presented in material included with the request. Further, our opinion is confined to whether the Project satisfies the definition of “qualified public use facility” to the extent it meets the public and private investment threshold

set forth in Tenn. Code Ann. § 7-88-103(7)(A)(i)(a). We emphasize that this is not an opinion on any particular arrangement under which the City of Memphis may own or operate the Project. Moreover, this is not an opinion on the validity of bonds issued to finance the Project. Such an opinion must be issued by bond counsel after reviewing all the applicable facts and the documentation evidencing the transaction. This Office does not provide advice on federal tax law, including whether the interest on bonds is exempt from federal income tax.

The project comprises about 170 acres in Memphis. Located on the land are the Liberty Bowl and the Mid-South Coliseum. The Project would include redevelopment of this site, including renovations to the Liberty Bowl, renovation or demolition of the Coliseum, or construction of a new public use facility with about 400,000 square feet of retail development and one or more hotels. About three-fourths of the budget for the Project will be spent on renovations and new improvements; remaining funds will be spent on infrastructure improvements to support new development. Total costs for public portions of the Project are estimated between seventy-five million and ninety million dollars. Total costs for private portions of the Project are estimated between fifty million and seventy-five million dollars.

The Memphis City Council may decide to create and charter a not-for-profit corporation called the Mid-South Fairgrounds Commission to lease the Project from the City and develop it. The corporation would then sublease private parts of the development to private businesses and individuals consistent with the approved master plan. Proposed improvements to the Project include development of a Salvation Army Community Center paid for through a private grant. The City may relocate a city school adjacent to the Project.

The City intends to finance its costs for the Project by using incremental sales and use taxes under the Convention Center and Tourism Development Financing Act of 1998, Tenn. Code Ann. §§ 7-88-101, *et seq.* Under Tenn. Code Ann. § 7-88-106, increased state and local sales and use tax revenues within a tourism development zone are distributed to a municipality that has financed, built, or acquired a qualified public use facility within a tourism development zone. This revenue must be used to pay the cost of the facility, including debt service on any indebtedness related to the facility. The request asks whether, based on the facts presented, the Project meets the definition of “qualified public use facility” under Tenn. Code Ann. § 7-88-103(7)(A)(i)(a) of this statutory scheme. That definition provides:

(7)(A) “Qualified public use facility” includes:

(i) Any building, complex, center, facility or any two (2) adjacent buildings, complexes, centers or facilities containing at least two hundred fifty thousand square feet (250,000 sq. ft.), in the aggregate, inclusive of exhibit halls, ballrooms, meeting rooms, lobbies, corridors, service areas and other building areas, or areas enclosed thereby, constructed, leased, equipped, renovated, acquired or expanded after January 1, 1998, as a project meeting the requirements of title 9, chapter 21, title 12, chapter 10 or chapter 53 of this title, by a public authority or municipality for purpose of furnishing economic development centers, renovated or new or expanded community facilities for conventions, meetings, exhibitions, trade shows, sports events or other events for educational,

entertainment, business, association, cultural, public interest, public service and common interest groups, organizations and entities and that requires:

(a) On or after January 1, 1998, a local investment of public funds in excess of seventy-five million dollars (\$75,000,000), and is reasonably anticipated to attract private investment in the tourism development zone of more than fifty million dollars (\$50,000,000) after January 1, 1998¹; or

(b) On or after January 1, 2007, a local investment of public or private funds of not less than two hundred million dollars (\$200,000,000)[.]

Material included in the request focuses on the question whether, even though it will be approved on or after January 1, 2007, the Project will meet the definition of “qualified public use facility” under this statute because it meets the lower public and private investment threshold in subsection (A)(i)(a) of this statutory definition. We assume, therefore, without discussing the matter further, that the Project, when finalized, will satisfy the substantive requirements contained in the first part of this definition, subsection (A)(i).

The current definition of “qualified public use facility” was enacted when the General Assembly rewrote the definition in 2007. 2007 Tenn. Pub. Acts Ch. 593, § 1. That act became effective June 28, 2007.² In 2006, before it was rewritten in 2007, Tenn. Code Ann. § 7-88-103(7) provided in relevant part:

“Qualified public use facility” includes any building, complex, center or facility . . . that requires, on or after January 1, 1998, a local investment of public funds in excess of seventy-five million dollars (\$75,000,000), and is reasonably anticipated to attract private investment in the tourism development zone of more than fifty million dollars (\$50,000,000) after such date.

This investment threshold, along with the effective date of January 1, 1998, has been in the act since it was first enacted in 1998. 1998 Tenn. Pub. Acts Ch. 1055, § 4. The General Assembly left this threshold in the 2007 amendment, placing it in a separate subdivision from the higher threshold in (b). The General Assembly also added two additional and independent definitions of “qualified public use facility,” now codified at Tenn. Code Ann. § 7-88-103(7)(A)(ii) and (iii).

No statutory language clearly indicates that the threshold in (a) was intended to expire January 1, 2007. For example, the language does not provide that (a) applies only between January 1, 1998, and January 1, 2007. Nor does the statute provide that only (b) applies on or after January 1, 2007. Each threshold sets a date when it becomes effective, and provides no date when its availability expires. At the same time, however, each threshold is separated by the disjunctive “or”. It could be argued, therefore, that the lower investment threshold in (a) does

¹ 2007 Tenn. Pub. Acts Ch. 593 § 1 provided the phrase “after such date” instead of the phrase “after January 1, 1998” at the end of (a).

² The General Assembly also rewrote this definition in 2007 Tenn. Pub. Acts Ch. 524, § 3. That law was finally approved and became effective June 26, 2007. The rewritten definition is identical in both acts. Technically, since Chapter 593 was approved and became effective two days later, the definition in that act controls.

not apply to a project approved on or after January 1, 2007, that is, that projects approved on or after that date must meet the higher investment threshold in (b).

Where the plain language of a statute does not clearly resolve an issue, it is appropriate to consider the history and purpose of legislation in order to ascertain legislative intent. *In re C.K.G.*, 173 S.W.3d 714 (Tenn. 2005). The act was Senate Bill No. 2084/ House Bill No. 1587. Senator Burchett, who sponsored the bill, introduced Amendment 1 entirely rewriting the bill before the Senate Finance, Ways & Means and Tax Subcommittee on May 9, 2007. Senator Burchett explained the amendment as follows:

I'll just read you what I've got, 'this amendment would make it possible for the City of Memphis to use tourism development zone tax increment financing to redevelop public property including the Liberty Bowl and the Coliseum. This amendment expands the definition of qualified public use facility to include facilities for sports events and schools and to provide that municipal leases may be considered qualified associated development which qualifies as a local investment of public funds under this chapter. It expands the number of counties eligible to have more than one tourism development zone to include Shelby County in addition to Metro/Davidson.'

Senate Finance, Ways & Means and Tax Subcommittee May 9, 2007 (remarks of Senator Burchett). Section 1 of Amendment 1 rewrote the definition of "qualified public use facility" to read as follows:

"Qualified public use facility" includes any building, complex, center, facility or any two (2) adjacent buildings, complexes, centers or facilities containing at least two hundred fifty thousand (250,000) square feet, in the aggregate, inclusive of exhibit halls, ballrooms, meeting rooms, lobbies, corridors, seating areas, service areas and other building areas or areas enclosed thereby, constructed, leased, equipped, renovated, acquired or expanded after January 1, 1998, as a project meeting the requirements of Title 9, Chapter 21, or Title 12, Chapter 10, by a public authority or municipality for purpose of furnishing economic development centers, renovated or new or expanded community facilities for conventions, meetings, exhibitions, trade shows, sports events or other events for educational, entertainment, business, association, cultural, public interest, public service and common interest groups, organizations and entities and that requires on or after January 1, 1998, a local investment of public funds in excess of seventy-five million dollars (\$75,000,000), and is reasonably anticipated to attract private investment in the tourism development zone of more than fifty million dollars (\$50,000,000) after such date. "Qualified public use facility" also includes "qualified associated development." An investment in qualified public use facilities required by a lease from a municipality shall be considered a local investment of public funds for the purposes of this chapter.

Section 1, Amendment 1 to SB2084 drafting code SA055500805672. Thus, this amendment does not include the language that now appears in Tenn. Code Ann. § 7-88-103(7)(A)(i)(b), (ii), and (iii). Clearly, under Senate Amendment 1, the lower investment threshold remains

indefinitely in effect. The Senate passed the bill with this language and sent it to the House. The House added the higher investment threshold in (A)(i)(b), along with the independent criteria in (ii) and (iii) in House Amendment 6, drafting code HA083700996996. Representative Fitzhugh explained the amendment as follows.

This sets forth the proper definitions for qualified associated development and sets forth the actual procedure for the adoption of a tourism development zone in this particular property. As you know, we've had these across the state at this time, *and this one works out the differences between these and the other ones but at the same time makes them consistent with the other tourism development zones that we've gotten.*

House Session June 7, 2007, Tape 103 (remarks of Rep. Fitzhugh) (emphasis added).

Representatives Fitzhugh and Kelsey had the following discussion:

Rep. Kelsey: Could you just explain to us briefly how this is going to be different from the Senate version that passed? How is this different from that version?

Rep. Fitzhugh: It should not be in any form different, it makes some changes to conform it with the other tourism development zones in the state, it makes them consistent.

Rep. Kelsey: Is there a reason that we can't go along with the Senate version so we can get this legislation passed at this time?

Rep. Fitzhugh: Yes, because we have these other zones that we're aware of that, Representative Odom had one earlier, and I think there's another one for Graceland in Shelby County and there's one for southern middle Tennessee, and there was a thought that we need to make sure that they're all consistently done, we don't want to run into problems with that, *it has nothing to do with this particular project, it doesn't change that part of it in any manner.*

Id. (remarks of Representatives Kelsey and Fitzhugh) (emphasis added).

Thus, the legislative history indicates that the higher investment threshold beginning January 1, 2007, was not intended to limit or affect the availability of the lower threshold now in Tenn. Code Ann. § 7-88-103(7)(A)(i)(a). For this reason, the Project meets the "qualified public use facility" investment threshold in Tenn. Code Ann. § 7-88-103(7)(A)(i)(a).

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