

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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July 22, 2009

Opinion No. 09-126

Authority of Development District to Issue Revenue Bonds

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**QUESTIONS**

1. Is the South Central Tennessee Development District a public body?
2. Does the South Central Tennessee Development District have the authority to issue revenue bonds?

**OPINIONS**

1. Yes.
2. No.

**ANALYSIS**

This opinion concerns the nature of development districts organized pursuant to the Development District Act of 1965, codified at Tenn. Code Ann. §§ 13-14-101, *et seq.*, and the authority of such districts to issue revenue bonds. We begin by examining the nature of development districts. The legislature authorized the creation of development districts to provide “the various counties and cities . . . the most effective and efficient means of organizing themselves on a regional basis for the purpose of carrying on general and comprehensive planning and development activities” and to assist local governments “in making the maximum use of federal, state and local programs designed to stimulate economic development and utilization of resources.” Tenn. Code Ann. § 13-14-103(a). There are nine development districts.<sup>1</sup> Each of the nine districts encompasses one or more counties or parts of counties so as to be conducive to efficient planning and orderly economic development of the state. *See* Tenn. Code Ann. § 13-14-102(a).

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<sup>1</sup> Governor Ellington originally established the nine development districts by virtue of Executive Order No. 17 (October 14, 1968), as amended on June 23, 1970. The South Central Tennessee Development District is one of the nine development districts established by Executive Order No. 17.

Each development district is governed by a board of directors that consists of the county executive of each county within the district, the mayor of each municipality within the district, the chief executive officer of any metropolitan government within the district, one representative from a local agency in each county dealing with problems of industrial development or promotion appointed by the county executive, and one state senator and state representative whose senatorial or representative districts lie wholly or in part within the development district. Tenn. Code Ann. § 13-14-104. The powers of the board are set forth in Tenn. Code Ann. § 13-14-106(a) and include, among others, the power to “organize itself into a public body.” Tenn. Code Ann. § 13-14-106(a)(1). Accordingly, this Office has previously stated that development districts created pursuant to Tenn. Code Ann. §§ 13-14-101, *et seq.*, are public bodies and arms or instrumentalities of the counties and municipalities that such districts encompass. Op. Tenn. Att’y Gen. 80-95 (February 14, 1980); Op. Tenn. Att’y Gen. 77-135A (April 27, 1977); Op. Tenn. Att’y Gen. 77-102 (April 5, 1977). Consistent with the foregoing, we think the South Central Tennessee Development District is a public body.

We now turn to your second question as to whether the South Central Tennessee Development District may issue revenue bonds. This question requires us to examine the authority of development districts. Since development districts are created by statute, they may exercise only those powers granted by the legislature expressly or by necessary implication. *Tennessee Public Service Comm’n v. Southern Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977); *Pharr v. Nashville, C. & St. L. Ry.*, 208 S.W.2d 1013, 1016 (Tenn. 1948). No administrative agency may exercise control over matters the legislature has not delegated to it, and actions beyond the authority of the agency have no force or effect. *Pharr*, 208 S.W.2d at 1016; *Faust v. Metropolitan Gov’t of Nashville*, 206 S.W.3d 475, 498 (Tenn. Ct. App. 2006). As referenced above, the powers of development district boards are set forth in Tenn. Code Ann. § 13-14-106(a), which provides:

(a) Each board created under this chapter has the authority to:

(1) Organize itself into a public body, elect its officers, and adopt bylaws for purposes of carrying out functions authorized under this chapter;

(2) Receive and expend funds from any sources for staffing, for research, planning, coordination, economic development, demonstration projects, and other activities deemed necessary to promote the efficient, harmonious and economic development of the district; and receive grants from private foundations for purposes of research and for demonstration projects oriented to human, physical and natural resources utilization;

(3) Contract with local, state and federal agencies, and with consultants for services to be provided;

(4) Prepare broad plans for the economic development of the district, including, but not limited to, comprehensive land use and plans for physical development. Such plans shall be made with the purpose of guiding and accomplishing a

coordinated, adjusted, efficient and economic development of the district which will, in accordance with present and future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and welfare of the citizens, as well as efficiency and economy in the process of development, including distribution of population, urbanization, and the uses of land and resources for trade, industry, recreation, forestry, agriculture and tourism, and will tend to create conditions favorable to transportation, health, safety and otherwise promote the general welfare of the citizens. Such plans may include the design and layout of industrial parks and feasibility studies for extension of utilities and services to areas deemed suitable for industrial development;

(5) Cooperate and coordinate its activities with local and state planning agencies and other districts in developing and implementing plans for development;

(6) Cooperate and coordinate its activities with the federal agencies responsible for developing natural, human and physical resources of the district; recommend projects which will enhance the development of all resources, to be carried out through existing governmental units or through a combination of these as applicable under state laws, including, but not limited to, the area redevelopment program, the Appalachian program and the Economic Opportunity Act;

(7) Cooperate with local and regional finance companies in assembling financial resources for commercial, industrial and other development;

(8) Compile, prepare, publish and disseminate information about the economic resources of the district and about sub-areas;

(9) Encourage and assist in the creation of private and semipublic, nonprofit organizations as needed and under existing laws of the state for carrying out specific projects and programs initiated under federal and state laws;

(10) Enter into compacts or contractual arrangements with planning agencies of other adjoining or neighboring states, for the purpose of preparing joint-comprehensive plans for development of a broader area or region. Boards are hereby expressly authorized to expend funds for interstate planning, notwithstanding the fact that in doing so portions of such funds may be used for planning work outside of the state boundary;

(11) Contract with the commission on aging to operate the program established by title 34, chapter 7; and

(12) Have and exercise other authority as deemed necessary to further and promote the orderly and economic development of the state.

A review of these powers reveals that a development district board does not have express or implied authority to issue revenue bonds. We also do not think that the issuance of revenue bonds falls within “other authority as deemed necessary to further and promote the orderly and economic development of the state” under subsection (a)(12). While development districts are given the responsibility for area-wide planning in their respective districts pursuant to Tenn. Code Ann. § 13-14-102(b), the legislature left “to existing county, municipal and state governments and their instrumentalities the *carrying out* of all plans for physical, economic and resource development, as provided under existing laws.” Tenn. Code Ann. § 13-14-103(a) (emphasis added). We are of the opinion that the issuance of revenue bonds furthers the carrying out of development plans. Thus, we do not think that Tenn. Code Ann. § 13-14-106(a)(12) provides development districts with any authority to issue revenue bonds.

Finally, we have considered the Local Government Public Obligations Act, codified at Tenn. Code Ann. §§ 9-21-101, *et seq.*, which authorizes a “local government” to issue revenue bonds for certain purposes. While a development district is a public body, it is not a “local government” as that term is defined in Tenn. Code Ann. § 9-21-105(16).<sup>2</sup> Thus, we find no authority for a development district to issue revenue bonds.

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<sup>2</sup> Tenn. Code Ann. § 9-21-105(16) provides:

- (A) “Local government” means any county, municipality or metropolitan government in this state; and
- (B) “Local government” also means any separate legal or administrative entity duly created by interlocal agreement between two (2) or more political subdivisions of the state acting pursuant to the provisions of title 12, chapter 9, part 1, IF AND ONLY IF:
  - (i) Such political subdivisions retain at least secondary liability for the debts of such legal entity;
  - (ii) The terms of such interlocal agreement authorize the entity to exercise powers actually conferred upon such political subdivisions by the provisions of this chapter; and
  - (iii) The terms of such interlocal agreement conform to the restrictions set forth in § 12-9-104(e)(2)(A)(i), (ii) and (iii)[.]

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