STATE OF TENNESSEE
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Opinion No. 11-41

Tennessee Executive Residence Preservation Foundation

QUESTION

What is the impact of legislative actions taken by the General Assembly on the "Tennessee Executive Residence Preservation Foundation"?

OPINION

The Tennessee Executive Residence Preservation Foundation is a Tennessee non-profit corporation that, according to its charter, has the purpose of acquiring items of art, furniture and historic significance to enrich the Tennessee Executive Residence and to improve and enhance the physical appearance and habitability of the Tennessee Executive Residence. In 1974, the General Assembly granted to the Foundation certain statutory duties and responsibilities with respect to the Tennessee Executive Residence, but in 1999, the General Assembly divested the Foundation of all such duties and responsibilities. Any continuing relationship between the Foundation and the Tennessee Executive Residence must be conducted in accordance with the master plan, rules and policies established by the Tennessee Residence Commission as set forth in the Tennessee Residence Commission Act of 2010.

ANALYSIS

The Tennessee Executive Residence Foundation, Inc. ("the Foundation") was incorporated as a Tennessee non-profit public benefit corporation in May 1971. The Foundation's charter originally provided that the purpose of the Foundation was "to acquire by means of loan and/or gift items of art, furniture and historic significance to enrich the Tennessee Executive Residence, with particular emphasis on things of Tennessee provenance." The charter was subsequently amended in December 1971 to provide that the Foundation's purpose is "to acquire by means of loan, gift, purchase or any other method items of art, furniture and historic significance to enrich the Tennessee Executive Residence, with particular emphasis on things of Tennessee provenance." The Foundation's charter was amended a third time in March 1987 and currently provides as follows:

> The purpose for which the corporation is organized is to acquire by means of loan, gift, purchase or any other method, items of art, furniture and historic significance to enrich the Tennessee Executive Residence with particular

> emphasis on things of Tennessee provenance; to improve and enhance the physical appearance and habitability of the Tennessee Executive Residence; and to accept gifts, devises and bequests so as to carry out these purposes.

The Foundation's charter further provides that upon dissolution or final liquidation of the Foundation, "its assets will be distributed and turned over to the State of Tennessee or some agency thereof."

In 1974, the Legislature passed Public Chapter 443, which granted statutory authority to the Foundation to acquire or dispose of furnishings, fixtures, works or art and other articles for the executive residence. Chapter 443 further provided that any such furnishings and other articles could only be placed and retained in the Executive Residence, as well as sold or otherwise disposed of, by the Foundation with the approval of the current Governor. Any items not in use or display in the Executive Residence were to be transferred on loan to the State Museum or to an appropriate historical site or location for restoration, exhibition or storage. This Act was subsequently codified at Tenn. Code Ann. §§ 4-23-101, *et seq*.

Since the creation of the Foundation and the enactment of Public Chapter 443, the Legislature has enacted subsequent legislation concerning the furnishings in the Executive Residence and in light of that legislation, you have inquired as to the status of the Foundation's relationship with the Executive Residence.

In 1999, the Legislature passed Public Chapter 212, which divested the Foundation of all of the statutory duties and responsibilities that had been conveyed to it by 1974 Public Chapter 443. Tenn. Code Ann. § 4-23-103(e).[1] In its place, Public Chapter 212 established a board of directors for a new entity that was to exercise all of the statutory duties and responsibilities of the Tennessee Executive Residence Preservation Foundation. *Id*. § 4-23-103(a). The Act directed this newly created board to prepare the appropriate filings and bylaws to create a new foundation. *Id*. § 4-23-103(f). The Act further provided the new board of directors, on behalf of the Foundation, with the authority to receive and expend funds, including funds appropriated by the General Assembly. *Id* § 4-23-103(d).[2]

Pursuant to the provisions of the Act, the new board of directors filed the necessary documents to incorporate the Tennessee Executive Residence Preservation Foundation II ("Foundation II") in December 2000 as a Tennessee nonprofit public benefit corporation. Foundation II continues to operate at present pursuant to its statutory authority and to the provisions of its charter, which authorizes Foundation II to:

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[1] The language reads "The foundation established pursuant to Chapter 443 of the Public Acts of 1974 shall no longer have any duties or responsibilities with regard to the executive residence."

[2] The same provision of the 1999 Act also contained the following language: "To this end, all funds held by the Foundation established pursuant to Chapter 443 of the Public Acts of 1974 on the effective date of this act shall be transferred to the control of the Board of Directors established pursuant to this section." In 2005, the Legislature amended the Act to delete this provision. *See* 2005 Tenn. Pub. Acts 267, § 1.

> [P]urchase, receive through loan, or otherwise acquire or dispose of furnishings, fixtures, works of art and other articles which are of Tennessee origin or of particular historic or artistic interest to the citizens of Tennessee, or which are otherwise needed to furnish and to permanently enhance the interior décor of the public reception and formal entertainment areas within the Tennessee executive residence. The purpose of the Corporation shall be to exercise such enumerated powers and otherwise to provide for the preservation, protection, maintenance and enhancement of the artistic, historic and architectural value of the public and formal areas of the Tennessee Executive Residence by all reasonable means.

The General Assembly expanded the statutory authority of Foundation II in 2005 to include the power "to raise and spend funds for the renovation, restoration, reconstruction, expansion and upkeep of the executive residence." 2005 Tenn. Pub. Acts 267, § 2 (codified at Tenn. Code Ann. § 4-23-103(g)).[3]

In 2004, the General Assembly amended Section 4-23-103 to refer to Foundation II in 2005 as the "Tennessee Residence Foundation," 2004 Tenn. Pub. Acts 548, and Foundation II subsequently filed the necessary documents to amend its charter and change its name.

In 2010, the General Assembly enacted the Tennessee Residence Commission Act of 2010. *See* 2010 Tenn. Pub. Acts 1111. This Act creates the Tennessee Residence Commission ("Commission"), which consists of the governor, the first spouse, the Commissioner of General Services, the state architect, the chair of the Tennessee Historical Commission and the executive director of the Tennessee State Museum, or their respective designees. This Commission is given the following powers and duties:

> (1) *Formulate and develop a plenary master plan and program for the adaptive restoration and preservation of the Tennessee residence*, including the building and contiguous grounds;
>
> (2) Consistent with the master plan required in subdivision (a)(1), *establish policies governing any improvements, alterations, repairs, replacements, or reconstruction of the residence*, *its appurtenant buildings, and its grounds*, *including furniture and fixtures*;
>
> (3) *Establish rules and policies governing the acquisition of furniture and fixtures, including but not limited to, carpets, rugs, paintings, draperies, and objects of art, for the public quarters of the residence*;

[3]In 2005, the Tennessee Code Commission "deemed obsolete" the provisions of Tenn. Code Ann. §§ 4-23-101 – 102, which concerned "the Tennessee Executive Residence Preservation Foundation and its powers, placement of articles and approval of the governor." Tenn. Code Ann. §§ 4-23-101 – 102, Code Commission Notes. As these two code sections describe the powers of the Foundation that were transferred to Foundation II by the 1999 Act and are still exercised by Foundation II, it is not clear that the sections should be deemed obsolete. For clarity, references in those two code sections to the "Tennessee Executive Residence Preservation Foundation" should be changed to "Tennessee Residence Foundation" to conform to the revised nomenclature used in § 4-23-103 pursuant to 2004 Tenn. Pub. Acts 548.

(4) Establish rules and policies to ensure that the private quarters of the executive residence are maintained appropriately;

(5) *Establish rules and policies governing maintenance of the Tennessee residence*; and

(6) Establish rules and policies governing the use of the Tennessee residence for any nongovernmental activities.

Id. (emphasis added).

While the Foundation created in 1971 continues to exist as a Tennessee non-profit corporation and, according to its charter, continues to have the purpose of acquiring items of art, furniture and historic significance to enrich the Tennessee Executive Residence and to improve and enhance the physical appearance and habitability of the Tennessee Executive Residence, it has been divested of any statutory authority relative to the executive residence and may take any action relative to the residence only in accordance with the master plan, rules and policies established by the Tennessee Residence Commission as set forth in the Tennessee Residence Commission Act of 2010.

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