STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 13-102

Authority Over Doe Mountain Recreation Authority

QUESTION

Does either the Tennessee Department of Environment and Conservation or any other Tennessee governmental entity have specific authority to manage the land owned by the Doe Mountain Recreation Authority?

OPINION

No. In 2012, the State acquired an 8,600-acre tract of Doe Mountain and conveyed the entire tract to the Doe Mountain Recreation Authority ("the Authority"). The Authority was created by an enactment of the General Assembly that specifically vests land management jurisdiction over the property in the Authority. The only exception to the Authority's land management jurisdiction is that any sale or disposal of the property by the Authority must be approved by the State Building Commission. Other than this requirement, neither the Tennessee Department of Environment and Conservation nor any other Tennessee governmental entity has land management jurisdiction over the Authority's property.

ANALYSIS

In 2011, the General Assembly in appropriations legislation authorized the State Building Commission to consider a project to acquire property in Tennessee for land conservation and recreational use. See 2011 Tenn. Pub. Acts, ch. 473, § 75. The State Building Commission's Executive Subcommittee in exercising this delegated authority for land acquisition/transfer, on April 23, 2012 approved the acquisition of an 8,600-acre tract of property known as Doe Mountain from the Nature Conservancy. Recognizing that the proper development and use of the property would require a "new mechanism to manage [the] lands for multi-use outdoor recreation opportunities," the General Assembly created the Doe Mountain Recreation Authority under the Doe Mountain Recreation Authority Act of 2012, 2012 Tenn. Pub. Acts, ch. 1106, § 1

(codified at Tenn. Code Ann. §§ 11-25-101 to -119),[1] and the property was deeded from the State of Tennessee to the Authority on March 25, 2013.[2]

Through the aforementioned legislation, the General Assembly recognized "an immediate need to conserve Doe Mountain" but also noted that conservation efforts and proper development of Doe Mountain had been hindered in the past by "inadequate statutory authority and management expertise." Tenn. Code Ann. § 11-25-102(a)(1), (4). As a result, the General Assembly established the Authority with the express legislative purpose that the Authority would "protect and conserve the natural resources of Doe Mountain through planning, promoting, financing, constructing, managing, and developing multi-use recreational opportunities" and vested the Authority with the power to:

> prepare comprehensive, long-range, site-specific master plans and to ensure compliance with such plans; to conserve the land, waters, and wildlife of Doe Mountain in a manner protective of the resource, including, where applicable, transfer of lands management for natural area and/or wildlife management areas; and to foster economic development for the people by the development and operation of multi-use, family-oriented outdoor recreation opportunities.

Tenn. Code Ann. § 11-25-102(a)(5), (b). The Authority possesses broad management powers with respect to the use of the Doe Mountain property, including, but not limited to, the power to purchase and hold land; conserve natural resources, including the land, timber, and water, of the real property owned and managed by the Authority; construct improvements and recreational facilities on the property; acquire water rights and sell or distribute water for irrigation; and enter into agreements with other private non-profit corporations and/or federal, state, and local entities for the promotion and protection of the environment within the boundaries of the Authority's land ownership. Tenn. Code Ann. § 11-25-107. Additionally, the Authority is authorized to promulgate rules and regulations and has the power to take whatever actions are necessary to effectuate the purposes of the Authority. Tenn. Code Ann. § 11-25-108. The only limitation on the Authority's land management power is that any "sale or disposal of land must have the approval of the state building commission." Tenn. Code Ann. § 11-25-107(a)(9).

The appropriations legislation and the plain statutory language of the Doe Mountain Recreation Authority Act of 2012 make clear the General Assembly's intent that the Authority be the primary steward of the Doe Mountain property. The broad management powers specifically vested in the Authority provide it with land management control, limited only by the requirement

[1] The Authority is governed by a 15-member board of directors that includes local governmental officials, as well as officials from the Tennessee Department of Economic and Community Development, the Tennessee Department of Tourist Development, the Tennessee Department of Environment and Conservation, and the Tennessee Wildlife Resources Agency. Tenn. Code Ann. § 11-25-106(a).

[2] The minutes from the March 2013 Executive Subcommittee meeting approving the transfer of property ownership from the State of Tennessee to the Authority, which were reviewed by this Office, reflect the Executive Subcommittee's acknowledgement that the intent of the land acquisition was always to transfer the property to the Authority once it was established.

of approval from the State Building Commission of any sale or disposal of the land. Other than this limitation, neither the Tennessee Department of Environment and Conservation nor any other Tennessee governmental entity has land management jurisdiction over the Doe Mountain property.[3]

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[3] The Authority, just as any other entity or individual, must act within its statutory authorization and comply with all other applicable statutes, rules, and regulations of the State. The Tennessee Department of Environment and Conservation maintains jurisdiction over the Authority regarding compliance with all state environmental statutes, rules, and/or regulations and may take enforcement action against the Authority for any violations.