STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 14-04

Government-Owned Convention Centers

QUESTION

Is a convention center owned by a nonprofit organization that is created by a government entity considered a "government-owned convention center" within the meaning of Tenn. Code Ann. § 67-4-1425(c)(2)?

OPINION

Yes. Tenn. Code Ann. §§ 7-89-101 *et seq*. allows municipalities to create public nonprofit corporations for the purpose of owning, operating, promoting, and maintaining convention center facilities. These corporations operate as an instrumentality and solely for the benefit of the organizing municipality. Tenn. Code Ann. § 7-89-109. Any convention center owned by such a nonprofit corporation would be considered a government-owned convention center within the meaning of Tenn. Code Ann. § 67-4-1425(c)(2).

ANALYSIS

The Convention Center Authorities Act of 2009, Tenn. Code Ann. §§ 7-89-101 *et seq*. (the "Act"), deals with the establishment of local convention center authorities "to plan, promote, finance, construct, acquire, renovate, equip and enlarge convention center facilities." Tenn. Code Ann. § 7-89-102(b). Convention center authorities are public nonprofit corporations. Tenn. Code Ann. §§ 7-89-109, -118.

Tenn. Code Ann. § 67-4-1425 imposes limitations on the ability of local governments to levy occupancy taxes on hotels within their jurisdictional boundaries pursuant to a private act. *See* Tenn. Code Ann. §§ 67-4-1425(a)(1)-(3). However, the statute contains exceptions to its provisions, including the following:

> This section does not apply in any county, excluding any county with a metropolitan form of government, that:
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> > (1) Contains or borders a county that contains an airport designated as a regular commercial service airport in the

> international civil aviation organization (ICAO) regional air navigation plan; and
>
> (2) Contains a *government-owned convention center* of at least fifty thousand square feet (50,000 sq. ft.) with an attached, adjoining, or adjacent hotel or motel facility; or
>
> (3) Contains an airport with regularly scheduled commercial passenger service, and the creating municipality of the metropolitan airport authority for the airport is not located within such county. The tax levied on occupancy of hotels by cities located within such a county may only be used for tourism as defined by § 7-4-101.

Tenn. Code Ann. § 67-4-1425(c) (emphasis added).

The instant question is whether a convention center owned by a nonprofit corporation that is created by a local municipality in accordance with the Convention Center Authorities Act of 2009 should be considered a government-owned convention center for purposes of the exception found in Tenn. Code Ann. § 67-4-1425(c).

Tenn. Code Ann. § 7-89-109 provides that "each convention center authority created pursuant to this chapter shall be a public nonprofit corporation and a public instrumentality [1] of the municipality with respect to which the authority is organized." The statute specifically declares the authority "to be performing a public function on behalf of the municipality with respect to which it is organized and to be a public instrumentality of the municipality." Tenn. Code Ann. § 7-89-113. The public corporation does not operate for the benefit for any private individual or entity, and any net earnings must be paid to the organizing municipality. Tenn. Code Ann. § 7-89-118. Because the General Assembly has declared that the convention center authority is performing a public function on behalf of the municipality, "the authority and all properties at any time owned by it and the income from the properties and all bonds issued by the authority and the income from the bonds, shall be exempt from all taxation in the state." Tenn. Code Ann. § 7-89-113. While the authority may own property, upon dissolution of the authority, title to all funds and properties vests with the organizing municipality. Tenn. Code Ann. § 7-89-119.

While no appellate court has addressed the question posed here, a number of cases provide guidance. In one such case, *Garner, et al., v. Blount County and the*

[1] The Act does not define the term "instrumentality." However, the Black's Law Dictionary definition of that term includes "a means or agency through which a function of another entity is accomplished." *Black's Law Dictionary* 814 (8th ed. 2004).

Public Bldg. Auth. of Blount County, No. E1999-02525-COA-R3-CV, 2000 WL 116026 (Tenn. Ct. App. Jan. 28, 2000), the Tennessee Court of Appeals considered whether the Public Building Authority of Blount County, a separate nonprofit entity created by a municipality under the Public Building Authorities Act of 1971,[2] was an independent corporate entity or an agency or instrumentality of its municipality for purposes of a contract dispute. The Court of Appeals concluded in that case that, although the building authority was created as a separate corporate entity, it was nevertheless an agency of Blount County.[3] In so ruling, the court examined the authority's stated purpose in conjunction with the language of the Public Building Authorities Act.

> [The Authority's] Certificate of Incorporation states that the purposes of the Authority are "to make possible the construction, acquisition or enlargement of public buildings, structures and facilities to be made available for the use by the County . . . ." The Public Building Authorities Act clearly contemplates that an authority will be "a public instrumentality of the municipality," T.C.A. § 12-10-109(a), and that the Authority will perform "a public function in behalf of the municipality with respect to which it is organized . . . ." T.C.A. § 12-10-113(a).

Garner, 2000 WL 116026, at *3.

"[C]onsidering the purpose and context of the statute," the court thus determined that the Authority was a "division or arm of the government." *Id.* The court further noted decisions in cases under analogous circumstances, which supported its conclusion:

> [T]he Supreme Court found that the "Health and Educational Facilities Board of the County of Knox," a board organized as a non-profit, public corporation, was an agency or instrumentality of Knox County. *Fort Sanders Presbyterian Hosp. v. Health and Educ. Facilities Bd.*, 453 S.W.2d 771, 774 (Tenn. 1970) ("The Health and Educational Facilities Board, while it is a separate corporate entity, is merely an agency or instrumentality of Knox County . . . ."); *West v. Industrial Development Bd.*, 332 S.W.2d 201, 202 (Tenn. 1960) ("Even though the Industrial Board is a separate corporate entity, the pleadings show that it is a mere agency or instrumentality of the municipality."); *see also Johnson v. Chattanooga-Hamilton County Hosp. Auth.,* 749 S.W.2d 36, 37 (Tenn.

[2] Tenn. Code Ann. §§ 12-10-101 *et seq.*

[3] As used by the Court of Appeals in *Garner*, the term "agency" refers to "a division or arm of government, and not as a term describing a principal-agent relationship." *See Garner,* 2000 WL 116026, at *3.

1988) (holding that hospital authority was a "subdivision of the state and county" for the purposes of workers' compensation law).

Id.

The Convention Center Authorities Act of 2009 is similar to the Public Buildings Authority Act of 1971 in a number of respects, including the creation by a municipality of a public nonprofit corporation for the express purpose of serving a public interest, the prohibition that the corporation does not operate for the benefit of any private individual or entity but rather for the sole benefit of the municipality, and the requirement that upon dissolution of the corporation all funds and properties of the corporation shall vest with the organizing municipality. *Compare* Tenn. Code Ann. §§ 12-10-102, -118, -119 *with* Tenn. Code Ann. §§ 7-89-102, -118, -119. Given the similarities between the two acts and the reasoning of the above-cited decisions, a court would likely find that a public nonprofit corporation created under the Convention Center Authorities Act of 2009 is an "arm of the government" for which the corporation was created. Thus, a convention center owned by such a corporation should be considered a government-owned convention center for purposes of the exception found in Tenn. Code Ann. § 67-4-1425(c).

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