

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**April 30, 2015**

**Opinion No. 15-43**

**City's Use of Payments Received Through Industrial Development Corporation to Fund Workforce Training Programs**

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**Question**

Can an industrial development corporation use payments collected as receipts for farm rent from its agricultural lessees to fund workforce training and education programs administered by local schools?

**Opinion**

An industrial development corporation may donate funds to a local board of education<sup>1</sup> pursuant to Tenn. Code Ann. § 7-53-302(a)(8), which authorizes industrial development corporations to donate rental revenues when such a donation is consistent with the corporation's purpose. Pursuant to Tenn. Code Ann. § 7-53-308(a), an industrial development corporation is required to pay its net earnings to the municipality with respect to which the corporation was organized. The municipality receiving the corporation's net earnings may appropriate these funds for use by local education agencies.

**ANALYSIS**

You have asked us about the powers of a city's industrial development corporation ("City IDB"), organized under Tenn. Code Ann. § 7-53-101, *et seq.* (the "Act"), which leases to farmers for agricultural purposes certain undeveloped land acquired for future industrial use. According to information provided, lessees pay rent directly to the City IDB, and this rental income is not pledged as security for any outstanding debt, or reserved for any other purpose. The city would like to use the City IDB's income from farm rent to fund a leadership development program administered by local schools in order to cultivate communication and other "soft skills" in the local workforce.

Industrial development corporations ("IDBs") are public nonprofit corporations created by municipalities in Tennessee. In authorizing the creation of IDBs, the legislature intended to allow municipalities to create public corporations to "finance, acquire, own, lease, and/or dispose of properties" in hopes of, *inter alia*, creating employment opportunities, and stimulating industry

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<sup>1</sup> The terms "local board of education" and "local education agency" are defined in Tenn. Code Ann. § 49-1-103. A local board of education is the board of education that manages and controls the respective local public school system. Tenn. Code Ann. § 49-1-103(1). A local education agency includes a county or city school system, a special school district, and other local public school system or district created by the general assembly.

and commerce. Tenn. Code Ann. § 7-53-102(a). The IDB is a public instrumentality of the municipality forming it. Tenn. Code Ann. § 7-53-305(a).

First, we address the question of whether an IDB may donate monies it receives from farm rent directly to a local board of education<sup>2</sup> for use in administering workforce development programs. An IDB may “[s]ell, exchange, donate and convey any or all of its properties, including, without limitation, all or any part of the rents, revenues and receipts of the corporation from its projects” whenever such action is “in furtherance of the purposes for which the corporation was organized.” Tenn. Code Ann. § 7-53-302(a)(8). An IDB’s purpose may be found in its charter or certificate of incorporation, as required under Tenn. Code Ann. § 7-53-202(a)(5). IDBs may own, lease, and finance a wide variety of projects, including land that can be used in industry,<sup>3</sup> or in nearly any type of commercial enterprise.<sup>4</sup> Further, IDBs may acquire or lease real property in connection with “projects” anticipated for the future.<sup>5</sup> Hence, the City IDB’s current practice of leasing vacant land suitable for industrial purposes to farmers qualifies as a “project” under the Act.

A factual determination would have to be made as to whether a particular IDB’s contemplated action is in furtherance its purpose. However, it should be noted that Tenn. Code Ann. § 7-53-102(b) directs that the Act be construed liberally. Provided an IDB has been formed for sufficiently broadly defined purposes and has not been formed to accomplish some specific and narrowly defined goal, using an IDB’s rents to fund workforce training programs designed to develop skills attractive to local employers would likely be consistent with an IDB’s purpose.

This Office has previously opined that Tenn. Code Ann. § 7-53-302(8) authorizes an IDB to donate its rental revenues to a separate nonprofit corporation, when the purposes of that corporation are consistent with the public purposes of the IDB. *See* Tenn. Att’y Gen. Op. 97-049 (April 15, 1997). Additionally, the donation must not violate Tenn. Code Ann. § 7-53-308(a), which provides that no part of the industrial development corporation’s net earnings shall inure to the benefit of any individual, firm or corporation except for payments to the municipality with respect to which the corporation was organized.

Next, we turn to the question of whether an industrial development corporation can transfer or donate payments collected from agricultural lessees to its organizing municipality, so that the municipality may, in turn, distribute these monies to local schools to fund development and administration of workforce training programs.

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<sup>2</sup> Tenn. Code Ann. § 49-1-103(2).

<sup>3</sup> Tenn. Code Ann. § 7-53-101(13)(A)(i).

<sup>4</sup> Tenn. Code Ann. § 7-53-101(13)(A)(ii).

<sup>5</sup> Tenn. Code Ann. § 7-53-302(a)(4) states in relevant part that industrial development corporations may: “[a]cquire, whether by purchase, exchange, gift, lease, or otherwise, and improve, maintain, equip and furnish one (1) or more projects, including all real and personal properties the board of directors of the corporation may deem necessary in connection with the projects and *regardless of whether or not any such projects shall then be in existence.* (Emphasis added).

Tenn. Code Ann. § 7-53-308(a) addresses the disposition of an IDB's net earnings and provides that if the IDB's board of directors finds that "sufficient provision" has been made for the full payment of expenses, bonds, and other obligations, "any net earnings of the corporation thereafter *shall* be paid to the municipality with respect to which the corporation was organized." (Emphasis added). Accordingly, an IDB is obligated to transfer back to its organizing municipality funds not being used for its operating purposes or held in reserve to pay other obligations. To effectuate a transfer of surplus funds to the city under this provision, the IDB's board must find that the monies to be transferred are net earnings in accordance with Tenn. Code Ann. § 7-53-308(a). After making this finding, the IDB should pay its net earnings to the city. Once these surplus funds are paid over to the city by the IDB, the city may then allocate them from its general fund for any use or purpose to which general fund monies may be properly put, at the discretion of the City's legislative body.

This Office has previously opined that a municipality may use payments paid to it in lieu of taxes ("PILOTS") pursuant to an agreement between an IDB and its lessee under Tenn. Code Ann. § 7-53-305(b) for any use to which property tax revenues may be properly put. *See* Tenn. Att'y Gen. Op. 96-083 (June 5, 1996). We reasoned that PILOTS reaching the municipality's general fund in this manner are not required to be put to any particular use because the PILOTS were intended to replace property tax revenues lost to a municipality as a result of the property becoming tax exempt. Likewise, the Act does not appear to limit a municipality's use of funds paid to it as net earnings from an IDB.<sup>6</sup> Accordingly, the city's contemplated use of an IDB's net earnings for nonindustrial purposes is permissible.

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<sup>6</sup> The Alabama Attorney General reached a similar conclusion in analyzing statutory language virtually identical to the relevant portion of Tenn. Code Ann. § 7-53-308(a) regarding an organizing municipality's use of funds received as net earnings from an IDB. *See* Ala. Op. Atty. Gen. No. 96-00248 (July 2, 1996).