

STATE OF TENNESSEE

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Opinion No. 05-038

Ability of Judicial District Drug Task Force to Own Real Property

QUESTION

Whether a drug task force, created under the laws of the State of Tennessee via a Board of Directors under the authority of the District Attorney General, may own and/or enter a lease purchase agreement to own real property as a legal entity separate and distinct from the county government in which the drug task force operates.

OPINION

Yes. Drug task forces established under Tenn. Code Ann. §12-9-104 are able to own real property in their own name as long as this is allowed by the particular interlocal agreement establishing the task force. Whether the task force will be considered a separate legal entity will depend on the provisions and language in the agreement and how the task force is structured.

ANALYSIS

It is understood that the 21st Judicial District Drug Task Force was created pursuant to Tenn. Code Ann. §12-9-104, which allows for public agencies to enter into agreements allowing for joint or cooperative actions. The statute generally allows the public agencies to determine what type of entity is to be created by the agreement and allows for both “legal entities” or “administrative entities.” Tenn. Code Ann. §12-9-104(c)(2) and (d). The precise nature of the entity is to be stated in the agreement. Tenn. Code Ann. §12-9-104(c)(2). While the statute refers to a nonprofit corporation as being a type of legal entity that can be created, the agencies are not limited to this type of legal entity. Tenn. Code Ann. §12-9-104(c)(2). A court may look at various aspects of the agreement to determine whether or not the public agencies intended to create a separate legal entity. *Timberlake v. Benton*, 786 F.Supp.676, 682-83 (M.D. Tenn. 1992).

It appears the statute allows the created entity to own real property regardless of whether it is a legal or administrative entity. While legal entities such as nonprofit corporations would be expected to be able to purchase and own real property, the statute appears to anticipate the administrative entities owning property as well. The entities created under the statute can generally be given the powers of the participating public agencies, which should have the ability to purchase real property. Tenn. Code Ann. §12-9-104(a). There are three specific limitations on the powers of the created entity, including a bar on exercising eminent domain, but no restriction on owning real

property. Tenn. Code Ann. §12-9-104(e)(2)(A). Additionally, under Tenn. Code Ann. §12-9-104(d)(2), interlocal agreements establishing administrative entities are to contain the “manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.” Of course, the interlocal agreement itself could put limits on the ability of the entity to own property.

While a drug task force or other interlocal agency may own real property, it would not be fully “separate and distinct” from the county or other participants in the agreement unless a nonprofit corporation is created. The existence of a corporation is “separate and distinct” from that of its owners and governmental agencies are generally shielded from liability for actions and obligations of nonprofit corporations created by interlocal agreements. *Foster Wheeler Energy Corp. v. Metro Knox Solid Waste Authority, Inc.*, 970 F.2d 199, 202-204 (6th Cir. 1992). Without the creation of such a clearly separate legal entity, a lawsuit concerning task force real property could be maintained against the agencies participating in the task force. *See Timberlake*, 786 F. Supp. at 683.

As stated, these opinions are based on the understanding that the task force was created pursuant to Tenn. Code Ann. §12-9-104. If the task force was created in some other manner, the opinions and analysis here may not be applicable.

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