Industrial development authority, economic development

Number: AGO 2013-12

Date: June 07, 2013

Subject:
Industrial development authority, economic development

Mr. Kenneth B. Evers
Hardee County Industrial
Development Authority
Post Office Drawer 1308
Wauchula, Florida 33873-1308

RE: INDUSTRIAL DEVELOPMENT AUTHORITIES – ECONOMIC DEVELOPMENT – COUNTIES – whether industrial development authority is authorized to enter into contracts to foster economic development aside from financing or refinancing projects. ss. 159.44-159.53, Fla. Stat.

Dear Mr. Evers:

On behalf of the Hardee County Industrial Development Authority, you have asked for my opinion on substantially the following question:

In light of the statutory mandate of liberal construction for the provisions of sections 159.44-159.53, Florida Statutes, does the Hardee County Industrial Development Authority created pursuant to Chapter 159, Florida Statutes, have the power to enter into contracts to foster the economic development of a county aside from, or without regard to, the financing or refinancing of a "project" as that term is defined?

In sum:

The Hardee County Industrial Development Authority would appear to be authorized to enter into contracts to foster the economic development of a county aside from, or without regard to, the financing or refinancing of a "project" within the scope of the act pursuant to the provisions of section 159.46, Florida Statutes.

According to your letter, the Hardee County Industrial Development Authority (IDA) was created pursuant to section 159.45, Florida Statutes, and through the adoption of Hardee County Resolution 84-10. The IDA entered into a contract for the overall purpose of fostering economic development in the county. You have specifically indicated that this contract "would not qualify as financing/refinancing of a project, as that term is defined in Chapter 159." In light of a statutory direction for liberal construction contained in section 159.53, Florida Statutes, you ask whether the IDA may enter into contracts which do not qualify as either the financing or refinancing of projects.

Initially, I must advise you that this office cannot pass on the validity of an existing contract and the discussion herein is not directed to any particular contract to which the IDA may be a party. Therefore, this discussion will be limited to a consideration of the powers and duties of industrial development authorities under Part III, Chapter 159, Florida Statutes, and other relevant legislative provisions.

Part III, Chapter 159, Florida Statutes, authorizing the creation of industrial development authorities, was enacted in 1970 as Chapter 70-229, Laws of Florida. The preamble to Chapter 70-229, Laws of Florida, expresses the concerns of the Legislature and sets forth the reasons necessitating the enactment of Part III, Chapter 159, Florida Statutes:

"Whereas, there is an immediate need for the development, construction, expansion and rehabilitation of industrial or manufacturing plants in Florida for the purpose of increasing opportunities for gainful employment, improving living conditions and otherwise contributing to the prosperity and general welfare of the state and its inhabitants; and

Whereas, Section 10 of Article VII of the Florida Constitution authorizes the legislature to enact laws providing for the issuance and sale by any county[,] municipality, special district or other local governmental body of revenue bonds to finance or refinance the cost of capital projects for industrial and manufacturing plants, when such revenue bonds are repayable solely from revenue derived from the sale, operation, or leasing of the capital projects; and

* * *

Whereas, the legislature by the enaction of chapter 69-104, Laws of Florida, known and cited as the Florida Industrial Development Financing Act, provided for the types of projects that may be so financed and criteria, terms and conditions under which such projects could be financed and refinanced by any county, municipality, special district or other local governmental body, but did not provide any method by which special districts or other local governmental bodies could be created for the issuance of such bonds; and

Whereas, many counties in Florida [do] not have in existence a local public industrial development authority having the power to promote the industrial development of the county through the issuance of industrial development bonds as authorized by the Constitution and are without funds to provide for industrial development and the acquisition and preparation of sites therefor and it is necessary and in the public interest to provide a method whereby such may be accomplished . . . ."

Each industrial development authority is created as a public body and "[e]ach of the authorities is constituted as a public instrumentality for the purposes of industrial development, and the exercise by an authority of the powers conferred by ss. 159.44-159.53 shall be deemed and held to be the performance of an essential public purpose and function."[1]

The statutory provision describing the purposes of the act is section 159.46, Florida Statutes, which provides:

"Industrial development authorities, as authorized by ss. 159.44-159.53, are created *for the*

purpose of financing and refinancing projects for the public purposes described in, and in the manner provided by, the Florida Industrial Development Financing Act and by ss. 159.44-159.53 and *for the purpose of fostering the economic development of a county*. Each industrial development authority shall study the advantages, facilities, resources, products, attractions, and conditions concerning the county with relation to the encouragement of economic development in that county, and shall use such means and media as the authority deems advisable to publicize and to make known such facts and material to such persons, firms, corporations, agencies, and institutions which, in the discretion of the authority, would reasonably result in encouraging desirable economic development in the county. In carrying out this purpose, industrial development authorities are encouraged to cooperate and work with industrial development agencies, chambers of commerce, and other local, state, and federal agencies having responsibilities in the field of industrial development." (e.s.)

It is a basic canon of statutory construction that identical terms within an act must bear the same meaning.[2] In light of the parallel language in the two "purpose" phrases italicized above, the statute appears to describe two designated purposes for industrial development authorities. They are created for the purpose of financing and refinancing projects and for the purpose of fostering economic development in their counties. Section 159.46, Florida Statutes, provides that an IDA shall study conditions in the county with relation to "the encouragement of economic development in that county" and shall "use such means and media as the authority deems" would "reasonably result in encouraging desirable economic development in the county."

In addition, section 159.53, Florida Statutes, requires that sections 159.44- 159.53, Florida Statutes, "shall be liberally construed to effect the purposes thereof." While this office will not read this language as a legislative authorization for the exercise of substantive powers not granted in Part III, Chapter 159, Florida Statutes,[3] it appears that the language of section 159.46, Florida Statutes, authorizes an industrial development authority to foster economic development in their counties without tying that authority to particular projects. Further, other statutory provisions appear to suggest that an industrial development authority may operate more generally as an economic development agency in the county.[4]

In sum, it is my opinion that the Hardee County Industrial Development Authority is authorized to enter into contracts to foster the economic development of a county aside from, or without regard to, the financing or refinancing of a "project" within the scope of the act.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 159.45(1), Fla. Stat.

[2] *See, e.g., Myers v. TooJay's Management Corp.*, 640 F.3d 1278 (C.A. 11 Fla. 2011); *Douglas v. Yates*, 535 F.3d 1316 (C.A. 11 Fla. 2008); *U.S. v. DBB, Inc.*, 180 F.3d 1277 (C.A. 11 Fla.

1999); *In re St. Laurent*, 991 F.2d 672 (C.A. 11 Fla. 1993), *corrected on rehearing*; *and see State v. Bradford*, 787 So. 2d 811 (Fla. 2001), *on remand*, 789 So. 2d 1206 (Fla. 2001); *Avila v. Miami-Dade County*, 29 So. 3d 401 (Fla. 3d DCA 2010).

[3] *See, e.g., State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. G.A.C. Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973) (an administrative agency or officer of the state possesses no power not granted by statute, and any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof).

[4] *See, e.g.,* s. 125.045, Fla. Stat., which states:

"For the purposes of this section, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community."

and provisions of Part I, Ch. 288, Fla. Stat., dealing with commercial development and capital improvements such as s. 288.075(1)(a)2., Fla. Stat., defining an industrial development authority created pursuant to Part III, Ch. 159, Fla. Stat., as an "economic development agency" for purposes of that act, and s. 288.106(2)(b), Fla. Stat., defining an "authorized local economic development agency" as an entity defined in s. 288.075, Fla. Stat.