STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-137

May 20, 2016

The Honorable Brandt Smith
State Representative
3501 Ridgeway Circle
Jonesboro, AR 72404-5005

Dear Representative Smith:

This is in response to your request for an opinion regarding the administration of General Improvement Fund grants by planning and development districts. Your specific issue is whether a planning and development district has authority to require a successful grant recipient of General Improvement Funds to pay an administrative fee to the district upon award of the grant.

Your specific questions are as follows:

1. Can a planning and development [district] charge a four percent (4%) administrative fee to the successful grant applicant?

2. If you conclude that a four percent (4%) fee cannot be charged, can a reasonable fixed fee be charged to the successful grant applicant instead?

3. If you conclude that a planning and development district cannot charge any such fee, then can the planning and development district apply for a General Improvement Fund grant from the General Improvement Funds that it receives and administers in order to pay the cost and expenses it incurs with respect to the administration of such grant funds?

323 CENTER STREET, SUITE 200 · LITTLE ROCK, ARKANSAS 72201
TELEPHONE (501) 682-2007 · FAX (501) 682-8084
ARKANSASAG.GOV

## RESPONSE

The answer to each of your first two questions is "no," in my opinion. The applicable state statutes do not expressly authorize multi-county economic planning and development districts to charge a grantee an "administrative fee," nor is such authority necessarily implied under the statutes. I take your third question to be asking whether a planning and development district can allocate to itself a portion of the general improvement funds it receives from the State via legislative appropriation. In my opinion, the answer to that question is "no," unless the appropriation expressly permits using a portion of its share of the general improvement fund for administrative overhead costs.

## DISCUSSION

***Question 1: Can a planning and development [district] charge a four percent (4%) administrative fee to the successful grant applicant?***

***Question 2: If you conclude that a four percent (4%) fee cannot be charged, can a reasonable fixed fee be charged to the successful grant applicant instead?***

The eight economic planning and development districts ("Districts") in the State were established by the legislature,[1] in part, "to assist local governments and private organizations in obtaining federal grants and loans," and "to coordinate private and public programs in the multi-county districts."[2] In order to encourage these organizations in their efforts, the General Assembly established "a program of providing financial assistance to the associations to enable them to continue and expand their activities in furtherance of the purposes of this subchapter."[3]

Thus, it is unquestionable that the Districts are creatures of statute. As such, following well-established law, the Districts have no inherent powers, but only powers expressly conferred upon them by statute or necessarily implied from statute.[4] Any substantial doubt concerning the existence of a District's power

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[1] Ark. Code Ann. § 14-166-201 *et seq.* (Repl. 1998 and Supp. 2015).

[2] Ark. Code Ann. § 14-166-201(a)(1) (Repl. 1998).

[3] *Id.* at § 14-166-201(a)(2).

[4] *Cf. Philips v. Town of Oak Grove*, 333 Ark. 183, 189, 968 S.W.2d 600, 603 (1998).

must be resolved against it.[5] Furthermore, generally speaking, "a 'legislative affirmative description' [of powers] implies denial of the non-described powers."[6]

I can find no express or necessarily implied power in the governing statutes that would support a District charging a grantee of funds an administrative fee. That being said, in order to receive payments from the State pursuant to an appropriation, a District's governing board, among other requirements, has to certify to the Department of Finance and Administration's Disbursing Officer that the District has established a proposed budget for the expenditures of State and local funds.[7] It is my understanding that such budgets take into account all sources of a District's income (including federal government sources pursuant to the Public Works and Economic Development Act[8]). Accordingly, because a District has no express or necessarily implied statutory power to charge an administrative fee, as stated above, prudence would suggest that a District's budget include appropriate amounts for operational expenses from all permissible sources, keeping in mind all relevant State and federal laws regarding the use of the funds it receives.

***Question 3: If you conclude that a planning and development district cannot charge any such fee, then can the planning and development district apply for a General Improvement Fund grant from the General Improvement Funds that it receives and administers in order to pay the cost and expenses it incurs with respect to the administration of such grant funds?***

I take this question to be asking whether a District may allocate to itself a portion of the State general improvement fund—which it receives via legislative appropriation—to cover such administrative costs. If this interpretation of your question is correct, it is my opinion that the answer is "no," unless the District's appropriation specifically allows for such.[9] Any use of appropriated general

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[5] *Cf. City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982).

[6] *Cook v. Ark.-Mo. Power Corp.*, 209 Ark. 750, 192 S.W.2d 210 (1946).

[7] Ark. Code Ann. § 14-166-205(a)(2)(B).

[8] 42 U.S.C. § 3121 et seq.

[9] *See* Ark. Const. art. V, § 29 ("[N]o money shall be drawn from the treasury except in pursuance of specific appropriation made by law, the purpose of which shall be distinctly stated in the bill…."). *Accord* Code Ark. R. 006.09.2 (Department of Finance and Administration Rule 2005-

improvement funds for reasons other than to foster economic development within the District—which is the legislative intent of the governing statutes[10]—without specific authority, could put that District's continued State support at risk.[11]

Sincerely,

LESLIE RUTLEDGE
Attorney General

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3 "Implementation of Accountability Provisions for Disbursements from the General Improvement Fund by the Department of Finance and Administration Disbursing Officer") (defining "appropriation" as "a legislative act authorizing the expenditure of a designated amount of public funds *for a specific purpose*.") (emphasis added).

[10] *See* Ark. Code Ann. § 14-166-201(a)(1).

[11] *See id.* at § 14-166-203(c)(2) ("Continued state financial support of organizations as provided in this subchapter shall terminate with respect to any organization that uses state funds for any purpose not within the intent and purposes of this subchapter until the organization shall make restitution for any misused funds and furnishes proof of compliance with respect to future operations.").