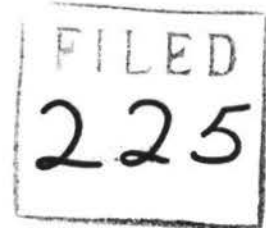


STATE AGENCY: The Environmental Improvement Authority (EIA), created by House
CONSTITUTIONAL LAW: authority (EIA), created by House
ENVIRONMENTAL PROTECTION AGENCY: Bill No. 1041, 76th General Assembly, is not a "state agency" within
the meaning and operation of Sections 13, 23, 24, and 27 of Article IV of the Constitution of the state of Missouri and that the revenues of the Authority are not within the meaning of "state funds" as used in Article IV, Section 15.

OPINION NO. 225

November 19, 1973

Honorable James R. Strong
Representative, District 119
1006 Fairmount Boulevard
Jefferson City, Missouri 65101



Dear Representative Strong:

This opinion is in response to your request for an official opinion on the question of whether the State Environmental Improvement Authority is a state agency within the context of Sections 13, 15, 24, and 27 of Article IV, Constitution of Missouri.

The State Environmental Improvement Authority (EIA) was created by House Bill No. 1041, 76th General Assembly, Second Regular Session, 1972. It became effective on January 22, 1973. The basic purpose of the Authority is summarized in Section 3 of the bill, as follows:

"The authority is authorized to provide for the conservation of the air, land and water resources of the state by the prevention or reducing the pollution thereof and proper methods of disposal of solid waste and to further such programs the authority is authorized to acquire and construct projects and to issue bonds and notes as herein provided to pay the costs thereof. Any such projects shall be in furtherance of applicable federal and state standards and regulations."

As we understand the reason for your inquiry, you are specifically interested in whether the revenues collected from the sale of bonds, and fees connected thereto, are revenues of the state,

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and must go into the state treasury, and therefore must also be appropriated to the Authority before they can be expended or utilized under the act.

Article IV, Section 15, states that the State Treasurer shall be custodian of "all state funds." It further requires that ". . . All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, . . ."

Article IV, Section 13 requires the State Auditor to post-audit the accounts of all "state agencies." Article IV, Section 23, states that the fiscal year of the state "and all its agencies" shall begin on the first day of July in each year and that the General Assembly shall make appropriations for one or two fiscal years.

Article IV, Section 24, requires, among other things, that the Governor submit to the General Assembly a complete and itemized plan of proposed expenditures of the state and "all its agencies." Article IV, Section 27, gives the Governor the power to reduce the expenditures of the state "or any of its agencies" in certain circumstances.

It is clear, then, that the General Assembly's responsibility with regard to appropriations for the State Environmental Improvement Authority hinges on the issue of whether the Authority is an "agency" within the scope of Sections 13, 23, 24, and 27 of Article IV. If the Authority is an "agency" of the state, in that sense, revenues so collected by it would clearly be "state funds" required by Article IV, Section 15, to be deposited in the state treasury, which would make the Authority dependent upon legislative appropriations in order to carry out its functions.

However, for the reasons outlined below, we are of the opinion that the State Environmental Improvement Authority is not an "agency" within the purview of Sections 13, 23, 24, and 27 of Article IV and that the revenues collected by it are not "state funds" as the term is used in Article IV, Section 15.

Upon examining the provisions of the State Environmental Act, it seems clear that the legislature intended to create a self-sufficient, independent instrumentality, invested with specific powers and authority to perform a specific function.

Section 1(3) of the act, for example, indicates that the EIA is to be self-sustaining. It reads, in pertinent part:

"(3) 'Cost', the expense of the acquisition of land, rights-of-way, easements and

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other interests in real property and the expense of acquiring or constructing buildings, improvements, machinery and equipment relating to any project . . . all of which are to be paid out of the proceeds of the bonds authorized by this act;" (Emphasis added)

Section 11 reiterates this directive. It provides, in pertinent part:

"Any resolution authorizing any notes or bonds may contain such provisions, covenants and agreements subject to any provisions, covenants and agreements with the holders of bonds or notes then outstanding as the authority determines necessary. Such provisions, covenants and agreements may include but shall not be limited to:

* * *

(3) The fixing of rents, fees and other charges and the pledging of the same and of the revenues of the authority so that the same will be sufficient to pay the cost of operation, maintenance and repair of any project and the principal of and interest on notes or bonds secured by the pledge of such revenues;" (Emphasis added)

Section 7 of the act grants the EIA the authority to, among other things, adopt an official seal; to sue and be sued; to make and execute leases and contracts; to acquire, hold and dispose of real and personal property; and to hire employees and contract for services.

Section 13 stipulates that the notes and bonds issued by the EIA shall not constitute an indebtedness of the state and exempts the state from liability thereon. Section 15 provides that any projects acquired or maintained by the Authority shall be subject to real and tangible personal property taxes of the state or any of its subdivisions. Section 17 provides, in effect, that all rights and properties of the Authority remain vested in the Authority until its termination or dissolution. Only then do they pass to the state.

An examination of the foregoing provisions supports the conclusion that the EIA is not a "state agency" within the context under

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consideration. Rather, the EIA is similar to a quasi-public corporation or quasi-corporation. It has precise duties which may be enforced and privileges which may be maintained by suits at law.

Examine, too, the language of Section 2 of the EIA Act:

"There is hereby created and established as a governmental instrumentality of the state of Missouri, the 'State Environmental Improvement Authority' which shall constitute a body corporate and politic." (Emphasis added)

Furthermore, we take notice of the fact that the phrase is used several times to describe the Municipal Land Clearance for Redevelopment Authorities which are authorized and created by Sections 99.300 et seq., RSMo 1969. These authorities possess duties and powers similar to the EIA. We take note of the fact that these authorities have never been considered "agencies" for purposes of Sections 13, 23, 24, and 27 of Article IV.

Nor have these authorities been assigned to a department pursuant to Article IV, Section 12, which requires that all ". . . boards, bureaus, commissions and other agencies of the state . . . be assigned . . . to the office of administration or to one of the fourteen administrative departments to which their respective powers and duties are germane. . . ." (Emphasis added) And while this may not necessarily be conclusive as to the EIA, it is certainly relevant.

Equally relevant is a decision of the Superior Court of New Jersey in Tumulty v. Jersey City, 155 A.2d 148 (Super.Ct. N.J. 1959). In Tumulty the court held that a municipal housing authority, authorized by state law, was a separate independent entity, "a body corporate and politic," and was an "instrumentality" of the municipality or county, exercising public and essential governmental functions. Thus, the court ruled that the housing authority was not a subordinate municipal agency which must be assigned to any one department, or whose powers and duties could be said to be appropriate to one or the other departments.

The court said, at pages 152-153:

"The Local Housing Authorities Law clearly indicates that a local housing authority is not a municipal function, but is a separate independent entity which is 'a body corporate and politic' created by the governing body of a municipality or county. It is an instrumentality of the municipality or county, exercising public and essential governmental functions, with, among other powers, power to sue

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and be sued; to have perpetual succession; to make and execute contracts and other instruments necessary and convenient to the exercise of its powers; . . . to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement, in property or securities that are legal investments, etc. N.J.S.A. 55:14A-7. Thus, a local housing authority is not a subordinate municipal agency which must be assigned to any one department under the Walsh Act, or whose powers and duties can be said to be appropriate to one or the other department, within the meaning of R.S. 40:72-5, N.J.S.A. To the contrary, the Legislature did not want the Authority dominated by the governing body. It was to remain a separate corporate entity."

Although the decision dealt with an instrumentality performing governmental functions on a municipal level, it would seem clear that the court's reasoning would apply equally as well to an instrumentality performing governmental functions on a state-wide level, such as the EIA.

As pointed out previously, the EIA was created as a self-sustaining, independent entity, created for a particular purpose and vested with specific legally enforceable powers and duties to carry out that purpose. And while the word "agency" has various meanings according to context, we feel the above-mentioned characteristics of the Authority irreconcilably conflict with intended meaning of the word "agency" as used in Sections 13, 23, 24, and 27 of Article IV.

CONCLUSION

It is the opinion of this office that the Environmental Improvement Authority (EIA), created by House Bill No. 1041, 76th General Assembly, is not a "state agency" within the meaning and operation of Sections 13, 23, 24, and 27 of Article IV of the Constitution of the state of Missouri and that the revenues of the Authority are not within the meaning of "state funds" as used in Article IV, Section 15.

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The foregoing opinion, which I hereby approved, was prepared by my assistants, Walter W. Nowotny, Jr., and Philip M. Koppe.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General