



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2021-016

December 16, 2021

The Honorable Ronald Caldwell
State Senator
120 CR 393
Wynne, AR 72396

Dear Senator Caldwell:

This is in response to your request for an opinion on behalf of the Jackson County Judge concerning dissolution of the Jackson County Community and Economic Development Agency ("JCCEDA" or "the Agency"). In this regard, you have provide the following background information:

In 1990 the United State Department of Agriculture/Rural Development (USDA/RD) awarded a grant of approximately \$70,000 to fund the Jackson County Community and Economic Development Agency.... The grant was conditioned upon some local match of \$50,000 which was raised from three local independent industrial development groups.

JCCEDA was authorized by Jackson County Ordinance No. 1990-10 (copy attached). The organization came into being with a board appointed by the county judge and an executive director was employed. We believe the original grant had monies earmarked for payment of the salary of that director. The executive director stayed until salary played out and she quit.

At the outset, JCCEDA adopted a plan of operations captioned Official Plan (copy attached). JCCEDA, as established pursuant to USDA/RD guidelines, was designed to make loans to start-up businesses, required potential borrowers to provide business plans, and various documentation. The loans were documented and secured with mortgages and security interests where applicable.

By the terms of the USDA/RD grant, the organization had to operate under the eye of USDA/RD for several years. At the end of that term, USDA/RD conducted an audit and released the organization from further oversight by USDA/RD.

A new director was employed at a modest salary and JCCEDA continued to operate into the 2000's. Ultimately interest in the loan program began to wane. As of early 2020, JCCEDA had not had a loan application in over four years. JCCEDA holds \$77,552.18 remaining in its bank account.

In April, 2020 the board of JCCEDA met and adopted a resolution to dissolve in accordance with its original Official Plan (see page 5). A copy of the resolution is attached. The resolution provides for repayment of the original investments to the initial local independent industrial development groups and to share the excess pro rata among those same organizations.

Initially, the JCCEDA resolution was presented to the quorum court with a similar resolution for the quorum court to approve. The quorum court declined to adopt the resolution approving the dissolution.

The quorum court is now considering an amendment to the original ordinance (1990-10) which would refund the original local independent industrial development groups but retain the excess as an industrial development fund for future use at the pleasure of the quorum court. A copy of the ordinance, not yet adopted, is provided.

In light of the above background information, you have asked the following questions:

- 1) Can JCCEDA in following its official plan elect to dissolve without the concurrence of the quorum court, thereby dissolving and repaying the original investors and sharing the excess pro rata? Is the resolution adopted by JCCEDA sufficient without any further action by the quorum court?
- 2) Does the quorum court have standing to reject the JCCEDA board's plan of dissolution and make its own plan for dissolution?
- 3) Is it necessary for the quorum court to approve or reject the decision of the JCCEDA board?

- 4) Assuming the JCCEDA board and the quorum court are at odds, what is the method for determining the proper method for dissolving the revolving loan fund of JCCEDA?

RESPONSE

I read your first question as inquiring whether the JCCEDA may dissolve itself. It may not. The Agency's dissolution, like its creation, would have to be accomplished by county ordinance. Consequently, the answer to your second question is "yes." The answer to your third question is "yes" with respect to the dissolution of the agency, but "no" as to the disposal of the revolving loan fund's excess money. In response to your fourth question, the JCCEDA has the authority to dispose of the surplus in accordance with the terms of its Official Plan.

DISCUSSION

Question 1: Can JCCEDA in following its official plan elect to dissolve without the concurrence of the quorum court, thereby dissolving and repaying the original investors and sharing the excess pro rata? Is the resolution adopted by JCCEDA sufficient without any further action by the quorum court?

At its root, your first question is asking whether the JCCEDA may dissolve itself without the Jackson County Quorum Court's approval. The answer is no.

From the information you provided, it appears that the JCCEDA is a county administrative board that the quorum court created in 1990 consistent with state law.¹ This is evinced by Ordinance 1990-10 attached to your correspondence ("the Ordinance"). The Ordinance, in line with state statute, establishes the powers and duties of the Agency and its board of directors. It does not grant the Agency or its board the power to abolish itself. Thus, the Agency and board may only be dissolved or abolished by ordinance. Nothing in the "Official Plan" alters that analysis.

Question 2: Does the quorum court have standing to reject the JCCEDA board's plan of dissolution and make its own plan for dissolution?

Yes. See my response above.

¹ Ark. Code Ann. § 14-14-705(b)(2) (Repl. 2013).

Question 3: Is it necessary for the quorum court to approve or reject the decision of the JCCEDA board?

Yes, as explained above, the power to abolish the Agency rests with the quorum court. But to the extent you mean to ask about the continuation and balance of the revolving loan fund, that question is addressed below.

Question 4: Assuming the JCCEDA board and the quorum court are at odds, what is the method for determining the proper method for dissolving the revolving loan fund of JCCEDA?

Based on the limited facts before me, it appears likely that the Agency's board of directors has the authority to dissolve the revolving loan fund. Furthermore, it would appear to be the board's duty to disburse the remaining proceeds to the economic development entities listed in the Official Plan.

Your correspondence states that in 1990, the U.S. Department of Agriculture/Rural Development "awarded a grant of approximately \$70,000 to fund" the JCCEDA.² It is unclear from your correspondence or the attached documents to what entity the USDA/RD made the grant, Jackson County—which would have to appropriate those funds to the JCCEDA³—or directly to the JCCEDA itself. However, this may be a moot question, as the fund ultimately came under the authority of the JCCEDA, pursuant to the 1990 county ordinance.⁴ And it appears, based on your correspondence, that the USDA/RD grant was seed money for the JCCEDA's revolving loan fund. Moreover, the 1990 ordinance apparently authorized the JCCEDA to apply for (and presumably accept) grants or other sources of financing (presumably for the revolving loan fund, although the ordinance does not expressly state that). Thus, those funds are under the Agency's purview.

² A condition of this grant, you write, was a local match of \$50,000, a condition met with the cooperation of three local economic development entities.

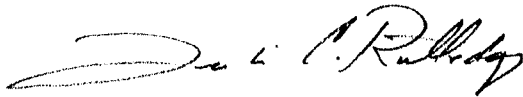
³ See Ark. Code Ann. § 14-14-801 (Repl. 2013). *Accord Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979) (stating that, as the legislative branch of county government, the quorum court makes the laws and appropriates public revenues).

⁴ Section 7 of that ordinance grants the Agency the authority to apply and enter into agreements for grants or other financial assistance "for the operation of the agency."

One significant factor that must be considered is that the JCCEDA's revolving loan fund also involves three local industrial development agencies that contributed the required local matching funds. The loan fund's Official Plan was promulgated by the JCCEDA "in cooperation with" these other three agencies and might be read as a quasi-agreement amongst the four entities with respect to the dispensation of the fund.⁵

In furtherance of that end, the Official Plan contemplates that the loan fund may be terminated by a simple majority vote of the JCCEDA's board of directors.⁶ In such a case, the Official Plan provides that the three local entities be repaid their initial contributions (exclusive of any interest). Furthermore, if there are additional funds in the loan fund, the Official Plan authorizes the board of directors, again by a majority vote, to dispose of the remaining funds with the proviso that the money be used for economic development purposes.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge", written in a cursive style.

LESLIE RUTLEDGE
Attorney General

⁵ For example, the Official Plan established a Loan Review Committee composed of members appointed solely by the four economic development entities.

⁶ The 1990 ordinance empowers the county judge to appoint the members of the board of directors, subject to confirmation by the quorum court.