



JOINT DEVELOPMENT AUTHORITIES EVERYTHING YOU NEED TO KNOW

Daniel M. McRae, Partner
Seyfarth Shaw LLP
1075 Peachtree St., N.E., Ste. 2500
Atlanta, GA 30309
404.888.1883
404.892.7056 fax
dmcrae@seyfarth.com
dan@danmcrae.info

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THE ORIGINS OF JOINT DEVELOPMENT AUTHORITIES (JDAs)

- “Statutory”
 - ▶ Single County/City Development Authorities (DAs) Created by General Assembly under Development Authorities Law (DAL)
 - 1969 and later
 - ▶ JDAs required special amendment of DAL (Op. Ga. Att’y Gen. 80-158, December 5, 1980)
 - have been authorized since 1981 (O.C.G.A. Sec. 36-62-5.1)
 - ▶ Statewide pattern: DA and JDA
 - ▶ Activation by Local Government required: DA and JDA (all participating local governments must act)
- “Constitutional”
 - ▶ Pursuant to Local Constitutional Amendment (“LCA”)
 - ▶ 1987 and earlier
 - ▶ each LCA is different
 - ▶ referendum was required
- Local Act (of General Assembly, not under home rule powers)
 - ▶ Prior to 1981
 - ▶ no referendum required
 - ▶ each Local Act is different



JDA EXPLOSION

- In 1994, Governor Zell Miller created the Governor's Development Council (Mac Holladay, COO)
 - ▶ Pushed “regionalism”
- Regionalism incentive: increase in job tax credit (JTC) for projects that locate within the area of a JDA among contiguous counties
 - ▶ Result: explosion in creation of JDAs
 - ▶ county originally could belong to only one JDA among contiguous counties
 - In 2004, DAL amended to remove this restriction
 - Result: even more JDAs created
 - There is no upper limit to the number of counties that may participate in a joint development authority



THE ROLE OF THE JDA

- EARLY DAYS- MANY COMMUNITIES LIMITED THEIR JDA'S ROLE
 - ▶ PROHIBITION ON JDA ISSUING BONDS
 - EXAMPLE: JDA of METROPOLITAN ATLANTA
 - ▶ PROHIBITIONS ON COMPETING WITH MEMBER COUNTY FOR PROJECT OR ASSISTING EXISTING INDUSTRY TO RELOCATE OUTSIDE OF MEMBER COUNTY
 - EXAMPLE: JDA OF NE GA
 - ▶ LIMITATION OF PURPOSE TO OBTAINING JTC INCREASE
 - EXAMPLE: JDA OF METROPOLITAN ATLANTA
- PRECEDENT: Op. Ga. Att'y Gen. No. U96-24 (November 26, 1996): In activating a joint authority, the governing bodies of Cairo and Grady County may agree with one another not to appoint elected officials to the new entity.
- TODAY- TREND IS NOT TO RESTRICT NEW JDAs.



MANDATES

- A JDA SHOULD BE A “REAL” DEVELOPMENT AUTHORITY.
- 1995 AMENDMENT TO DAL IMPOSES THESE REQUIREMENTS ON A JDA AMONG CONTIGUOUS COUNTIES :
 - ▶ It must be an "active, bona fide" joint authority.
 - ▶ It must have a board of directors.
 - ▶ It must meet at least quarterly.
 - ▶ It must develop an operational business plan (there is no requirement for a paid staff).
- THE REQUIREMENTS LISTED ABOVE DO NOT APPLY TO OTHER TYPES OF AUTHORITIES, OR EVEN OTHER TYPES OF JOINT AUTHORITIES.



WHAT IS “REAL” FOR YOUR COMMUNITY?

- MORE IS EXPECTED OF A JDA THAN JUST TO INCREASE JTC LEVELS.
- WHAT ROLE SHOULD THE JDA FILL?
- ACCORDING TO THE COMMISSION FOR A NEW GEORGIA:
 - ▶ “Many of Georgia’s counties do not possess the resources essential for broad scale economic development. For them, regionalism must become fundamental and essential.
 - ▶ Georgia must do more to encourage regional economic development efforts; counties should be encouraged to work together on economic development opportunities.
 - ▶ Georgia’s Joint Development Authority laws provide a good basis...”

Commission for a New Georgia, Strategic Industries Task Force, Executive Summary (2004)



WHAT ARE YOUR OPTIONS?

THE AREA OF OPERATION OF A SINGLE COUNTY/SINGLE CITY DEVELOPMENT AUTHORITY-

- **Sec. 36-62-4(a)** There is created in and for each county and municipal corporation in the state a public body corporate and politic to be known as the "development authority" of such county or municipal corporation,
- **O.C.G.A. Sec. 36-62-6(16)** To expend for the promotion of industry, agriculture, and trade within its area of operations any funds of the authority determined by the authority to be in excess of those needed for the other corporate purposes of the authority;
- **O.C.G.A. Sec. 36-62-9** "...No bonds or bond anticipation notes, except refunding bonds, shall be issued by an authority under this chapter unless its board of directors adopts a resolution finding that the project for which such bonds or notes are to be issued will promote the foregoing objectives and will increase or maintain employment in the territorial area of such authority."
- **§ 36-82-62. Additional powers**
 - (a) In addition to the other powers which it may have, any governmental body shall have power under this article:
 - (1) To acquire, by gift, purchase,, and to construct, to reconstruct, to improve, to better, and to extend any undertaking wholly within or wholly outside the governmental body or partially within and partially outside the governmental body;



A JDA IS A REGIONAL OPTION

- A JDA HAS THE SAME POWERS AND LIMITATIONS AS A SINGLE COUNTY/CITY DEVELOPMENT AUTHORITY.
- IMPORTANT EXCEPTION- THE AREA OF OPERATION OF A JDA COVERS THE TERRITORY OF ALL PARTICIPATING LOCAL GOVERNMENTS.
- ALSO- THE GENERAL ASSEMBLY ALLOWS THE PARTICIPANTS A LOT MORE LATITUDE IN CUSTOM-TAILORING HOW A JDA IS GOVERNED.



CREATING A JOINT DEVELOPMENT AUTHORITY

- The participating local governments adopt concurrent activating resolutions.
- Following are the variations that are possible in the creating and activating resolution:
 - ▶ The number of members (directors) of the joint development authority (this can range from one to any number of directors);
 - ▶ The number of members to be appointed by the governing bodies of each city or county, respectively;
 - ▶ The terms of office of the members of the joint development authority; and
 - ▶ The residency requirements for the members of the joint development authority.
- **Can elected officials self-appoint themselves to a JDA's board?**
 - ▶ Per O.C.G.A. Sec. 36-62-5(a): “The governing authority of a county or municipality may appoint no more than one member of the governing authority as a director [of a statutory development authority.]”



CHANGING A JOINT DEVELOPMENT AUTHORITY

- O.C.G.A. SEC. 36-62-5.1 ALLOWS THE PARTICIPATING LOCAL GOVERNMENTS TO ADOPT CONCURRENT RESOLUTIONS AMENDING THE JDA'S ACTIVATING RESOLUTION.
- EXAMPLES OF CHANGES MADE IN RELIANCE ON THIS-
 - ▶ RE-NAME THE JDA
 - ▶ ADD PARTICIPATING LOCAL GOVERNMENT
 - ▶ DROP PARTICIPATING LOCAL GOVERNMENT
 - ▶ SOMETHING TO CONSIDER: EFFECT OF ADD/DROPS ON
 - ASSETS AND LIABILITIES OF JDA
 - BEST TO COVER IN ADVANCE THROUGH ACTIVATING RESOLUTIONS OR INTERGOVERNMENTAL AGREEMENTS (IGA)
 - BOARD OF JDA



GETTING RID OF A JDA

- A provision of the DAL (O.C.G.A. Sec. 36-62-14) prevented dissolution of a statutory development authority like a JDA by the parent local government(s).
- This Section of the Development Authorities Law was amended by the General Assembly in 2000 to allow the parent local government(s) to dissolve a statutory development authority if it did not have bonds (or bond anticipation notes) outstanding.



GETTING RID OF THE JDA DIRECTORS?

- STATUTORY DEVELOPMENT AUTHORITIES, INCLUDING JDAs- NO REMOVAL PROVISION.

“The City takes the position that because the Act is silent as to removal, it must be presumed that the directors who are appointed by the City serve at the City's pleasure. We do not agree. The fact that the legislation provides specified terms for the office of director is inconsistent with the idea of tenure at the pleasure of the City.”

... “Because the matter is not before us, we express no opinion as to whether directors may be removed for cause, or under what procedures that might be done.” *Hernandez v. Downtown Development Authority of the City of St. Marys*, 56 Ga. 356, 349 S.E.2d 449 (1986).



JDA EXAMPLE- REGIONAL INDUSTRIAL PARK

- Project- Multicounty industrial park serving Jasper County, Morgan County, Newton County and Walton County
- Benefits- Job creation for entire four county area through location of new industries
- Needs-
 - ▶ Issue bonds to take out original Development Authority of Walton County, Georgia Revenue Bond Anticipation Note, Series 1998
 - ▶ Better economics so that cash flow needs are reduced.
- Issues:
 - ▶ The bond markets require credit enhancement such as bond insurance or a letter of credit from a bank.
 - ▶ An insurance company or a bank won't provide credit enhancement without a "guaranty" from a creditworthy source.
 - ▶ The credit exposure was more than any one county was willing to assume by itself.



JDA EXAMPLE- REGIONAL INDUSTRIAL PARK

- Solution- In connection with the issuance of the bonds, the Joint Development Authority of Jasper County, Morgan County, Newton County and Walton County (JDA) entered into four separate Intergovernmental Agreements (IGAs), one with Jasper County, one with Morgan County, one with Newton County, and one with Walton County. The original IGA was used in 2000 to support bonds that were credit enhanced by bond insurance. It was amended in 2009 to support bonds that were credit enhanced by a direct pay letter of credit from a bank.
- Structure: Under the terms of the IGA, the JDA agreed to acquire the park and issue the bonds, and each County agreed-
 - ▶ to pay the JDA certain amounts (Jasper County 10%, Morgan County 15%, Newton County 37.5% and Walton County 37.5%) sufficient in the aggregate to repay the bonds (when bond insurance used) or to reimburse the letter of credit bank for draws on the letter of credit (when direct pay letter of credit used).
 - ▶ to levy an ad valorem property tax, not to exceed one mill, upon the assessed value of the taxable properties in the County subject to such tax in order to make the required payments.



FINANCIAL ASSISTANCE

- O.C.G.A. SEC. 48-5-350 AUTHORIZES A CITY TO LEVY *AD VALOREM* TAXES OF UP TO THREE MILLS TO “ITS DEVELOPMENT AUTHORITY OR A JOINT COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITY FOR THE PURPOSE OF DEVELOPING TRADE, COMMERCE, INDUSTRY, AND EMPLOYMENT OPPORTUNITIES.”
- THE PARALLEL PROVISION FOR COUNTIES IS O.C.G.A. SEC. 48-5-220(20), WHICH ALLOWS A COUNTY TO PROVIDE SIMILAR FINANCIAL ASSISTANCE FOR SIMILAR PURPOSES UP TO 1 MILL.
- THIS IS IN ADDITION TO MILLAGE AUTHORIZED BY OTHER LAWS.
 - ▶ “OTHER LAWS” INCLUDES A CONSTITUTIONAL DEVELOPMENT AUTHORITY’S LOCAL CONSTITUTIONAL AMENDMENT.



INTERGOVERNMENTAL AGREEMENTS (IGAs)

- BECAUSE A DEVELOPMENT AUTHORITY IS A SEPARATE ENTITY, IT CAN ENTER INTO CONTRACTS WITH THE CITY OR COUNTY, OR OTHER DEVELOPMENT AUTHORITIES.
- CONTRACTS MUST OTHERWISE BE PROPER.
- THE LEGAL BASIS FOR INTERGOVERNMENTAL AGREEMENTS-ART. IX, SEC. III, PARA. I (A) OF THE CONSTITUTION
“The state, or any institution, department, or other agency thereof, and any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding fifty years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized to provide * * *.”



JDA EXAMPLE- REGIONAL INDUSTRIAL PROJECT

- Project- Foreign automotive manufacturer has project that will create over 400 jobs and involve more than \$200 million in investment.
- Benefits- The host community is a Tier 1 county that badly needs jobs and investment.
- Need- Strong incentives, including lengthy property tax savings, site work, land provided without charge, payment of Foreign Trade Zone establishment costs, etc.
- Solution- Negotiate and document a Memorandum of Understanding (MOU) and implement incentives without violating Constitutional prohibition on “gifts and gratuities” while legally providing property tax savings.
- Structure- Use a bond-financed sale-leaseback structure (“bonds for title”). The county development authority plans to issue the bonds.



JDA EXAMPLE- REGIONAL INDUSTRIAL PROJECT

- Issue- The site for the project is located within the “county industrial park”, although part of it is located within a city. After the MOU was negotiated and drafted but before it was executed, the parties find out that the city part of the land is actually located in another county.
 - ▶ How to get the jurisdiction to implement the structure on the city part of the land?
- Workaround- Here are some theoretical possibilities-
 - ▶ The county owns the land within the city. Would it work to have the county remain as landlord and lease that part of the project to the county development authority?
 - ▶ Is the part of the project in the city only incidental to the main project so that it would work for the county development authority to issue bonds for that extraterritorial portion as well as for the main project?



JDA EXAMPLE- REGIONAL INDUSTRIAL PROJECT

- Solution- The county teamed with the city to create a new city-county joint development authority. The new JDA issued the bonds, leased the project to the company, and was a conduit for the incentives.
- Questions. In the course of carrying out this solution, these questions had to be answered-
 - ▶ What should the area of operation of the new JDA be? Just the city? Just the project site (part of the city plus part of the county)? The total of both participating local governments (all of the city plus all of the county)? The “county industrial park”, including the part of it located within the city?
 - ▶ Can the area of operation of the new JDA be restricted to less than the total of both participating local governments? If so, how?
 - ▶ Who should control the new JDA? How?
 - ▶ Does the MOU require sign off by the County Board of Tax Assessors of the county in which the city is located?
 - ▶ In what county should the new JDA get its bonds validated? Why?
 - See *Hay v. Newton County*, 246 Ga. App. 44, 538 S.E.2d 181 (2000), reconsideration denied Sept. 19, 2000, certiorari denied Feb. 2, 2001. “The record shows that the Joint Authority is incorporated [sic] in Morgan County and thus the present petition was properly filed in the superior court of that county. “246 Ga.App. at 46.



JDA EXAMPLE: CROSS-BORDER PROJECT

- Pursuant to a 2003 DAL amendment, a joint development authority can be created and activated by “any county in this state and any contiguous county in an adjoining state.”
 - ▶ the Georgia county has to be contiguous to the sister state’s county
 - ▶ the sister state must also authorize this type of cross-border development authority.
- In North Carolina, on June 3, 2003 a law (HB 582) became effective that allows Clay County (and just Clay County), by proper resolution of its governing body, to create a joint development agency with a contiguous county in an adjoining state.
 - 2003 Project: joint industrial park with Towns County, Georgia
- Current interest in cross-border joint authorities is between Florida counties and Georgia counties.



ANOTHER TOOL- “REGIONAL FACILITIES”

- ARTICLE IX, SECTION IV, PARAGRAPH IV OF THE GEORGIA CONSTITUTION PROVIDES:
 - ▶ Paragraph IV. Tax allocation; regional facilities. As used in this Paragraph, the term "regional facilities" means industrial parks, business parks, conference centers, convention centers, airports, athletic facilities, recreation facilities, jails or correctional facilities, or other similar or related economic development parks, centers, or facilities or any combination thereof. Notwithstanding any other provision of this Constitution, a county or municipality is authorized to enter into contracts with: (1) any county which is contiguous to such county or the county in which such municipality is located; (2) any municipality located in such a contiguous county or the same county; or (3) any combination thereof. Any such contract may be for the purpose of allocating the proceeds of *ad valorem* taxes assessed and collected on real property located in such county or municipality with such other counties or municipalities with which the assessing county or municipality has entered into agreements for the development of one or more regional facilities and the allocation of other revenues generated from such regional facilities. Any such regional facility may be publicly or privately initiated. The allocation of such tax proceeds and other revenues shall be determined by contract between the affected local governments. Such contract shall provide for the manner of development, operation, and management of the regional facility and the sharing of expenses among the contracting local governments and shall specify the percentage of *ad valorem* taxes and other revenues to be allocated and the method of allocation to each contracting local government.
- JDA’S ROLES: PROJECT MANAGER, POTENTIAL BOND ISSUER



SPECIAL INCENTIVE

- Article IX, Section IV, Paragraph IV of the Georgia Constitution also provides:
 - ▶ Paragraph IV. Tax allocation; regional facilities. ... Unless otherwise provided by law, such a regional facility will qualify for the greatest dollar amount of income tax credits which may be provided for by general law for any of the counties or municipalities which have entered into an agreement for the development of the regional facility, regardless of the county or municipality in which the business is physically located. The authority granted to counties and municipalities under this Paragraph shall be subject to any conditions, limitations, and restrictions which may be imposed by general law.
- DCA informally advises that some projects have actually obtained the higher JTC level through this structure.



CONCLUSION

- REGIONALISM IS A PROCESS
 - ▶ A JOURNEY, NOT A DESTINATION
- LIKE USING GPS FOR OTHER JOURNEYS, THERE ARE TOOLS YOU CAN USE TO HELP YOURSELF TOWARDS REGIONALISM
- A JDA IS A VERY VERSATILE TOOL TO FACILITATE REGIONALISM
 - ▶ THERE ARE OTHER TOOLS, TOO
- I HOPE THAT THIS PRESENTATION HELPS YOU PUT THESE TOOLS TO WORK



REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- August 2012- “Joint Development Authorities- Everything you Need to Know”
- December 2011- “Regionalism: The Value, Importance and Expectations of Development Authorities, Regionally ”
- January 2011- “Bonds 101”
- January 2011- "Development Authorities 101"
- January 2011- "The Bridge to Success- The Role of a Joint Development Authority in Making Projects Happen"
- January 2011 – "Everything You Need To Know About Joint Development Authorities"
- January 2011- "The Incentives ‘Power Curve’- How to Beat It"
- August 2010 – "Bonds For Title"

at <http://danmcrae.info/whitepapers>



QUESTIONS?

Daniel M. McRae, Partner

Seyfarth Shaw LLP

1075 Peachtree Street, N.E., Suite 2500
Atlanta, GA 30309

Telephone: 404.888.1883
dmcrae@seyfarth.com

dan@danmcracrae.info



MORE INFORMATION

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