



DEVELOPMENT AUTHORITIES

WHY We Have Them
HOW They Operate
WHAT They Can and
Can't Do

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DEVELOPMENT AUTHORITIES

Why We Have Them



WHAT IS AN AUTHORITY, REALLY?

An authority is frequently defined as ‘an entity possessing both corporate and governmental characteristics’ which is created by ‘general purpose governments to accomplish specific purposes involving long-range financing of public facilities without impinging on the credit of the government.’ Bonapfel, ‘The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither?’ 8 Ga. L. Rev. 680, 681 (1974).

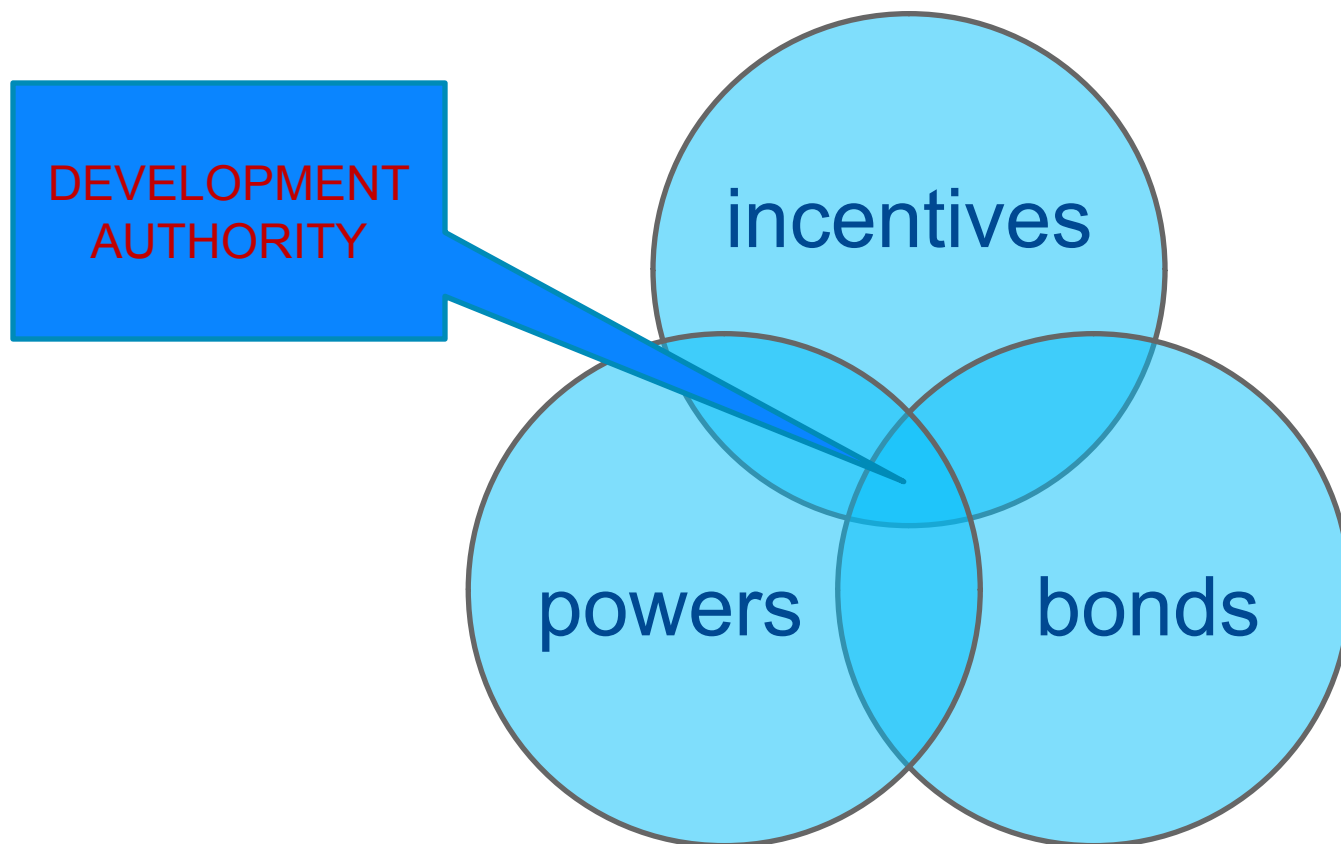
Above from an Attorney General Opinion on the Savannah Ports Authority, now the Savannah Economic Development Authority (SEDA). Ga. Op. Atty. Gen. No. U86-7 (February 11, 1986)



GEORGIA IS AN “AUTHORITY STATE”

- GEORGIA USES LOCAL AUTHORITIES TO ADD POWERS THAT THE LOCAL GOVERNMENT DOESN'T HAVE.
 - EXAMPLE- ECONOMIC DEVELOPMENT
- GEORGIA ALSO USES LOCAL AUTHORITIES AS A WAY TO PROTECT THE LOCAL GOVERNMENT.
 - EVEN IF BOTH A LOCAL GOVERNMENT AND A LOCAL AUTHORITY HAVE A POWER, USING THE LOCAL AUTHORITY IS A WAY TO PROTECT THE LOCAL GOVERNMENT.
 - EXAMPLE- REDEVELOPMENT.

GEORGIA IS DEVELOPMENT AUTHORITY-CENTRIC





AUTHORITIES HAVE TO FOLLOW THE RULES

THE LOCAL AUTHORITY AND ITS POWERS HAVE TO BE BASED ON THE CONSTITUTION.

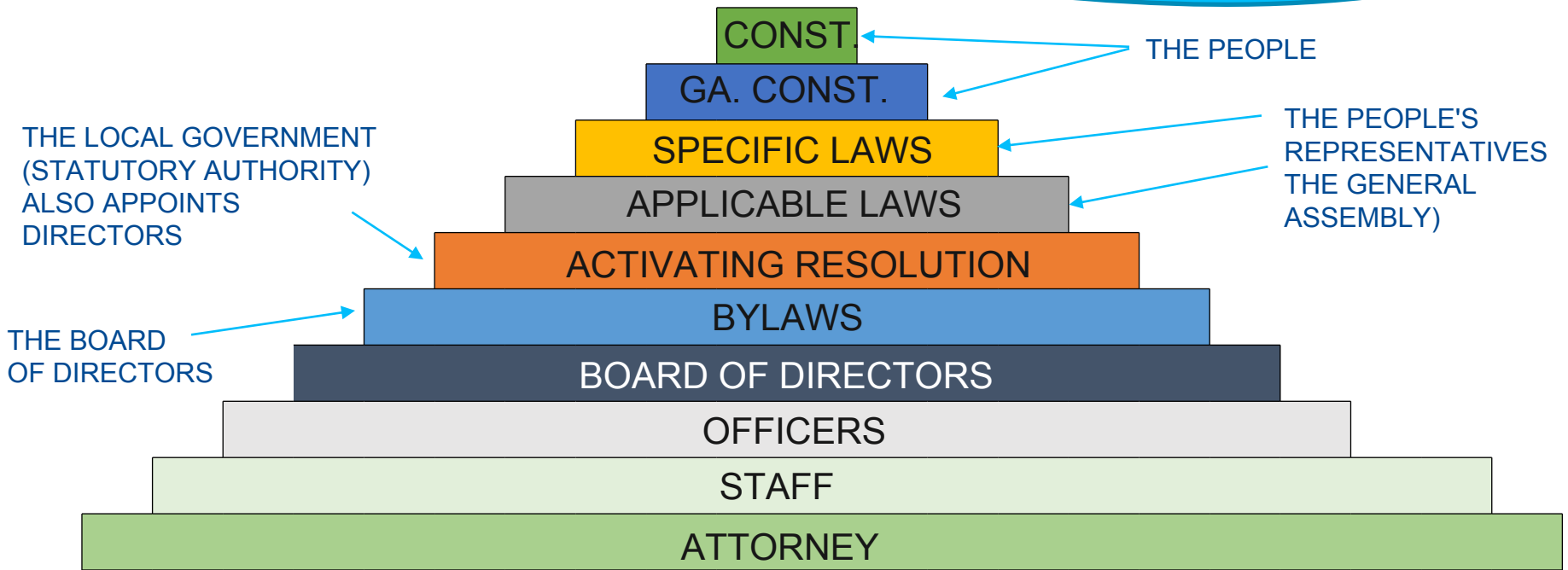
- THE ATTORNEY GENERAL RULED "INDUSTRIAL BUILDING AUTHORITIES" UNDER A GENERAL LAW TO BE UNCONSTITUTIONAL. Op. Ga. Att'y Gen. (Feb. 15, 1963 p. 44; unauthorized issuance of revenue bonds).
- A LOCAL ACT CANNOT CONFLICT WITH A GENERAL LAW. Ga. Const. Art. III, Sec. VI, Para. IV.
 - A CASE OUT OF ALBANY UPHELD A SPECIAL TAX FOR STATUTORY HOUSING AUTHORITIES AGAINST A CHALLENGE ON THOSE GROUNDS. DeJarnette v. Hospital Authority of Albany, 195 Ga. 189 (1942), reh. den. Dec. 15, 1942
 - THIS SAME RULE APPLIES WHEN THE GENERAL ASSEMBLY PASSES A LOCAL ACT TO CREATE A LOCAL AUTHORITY.



A QUICK REMINDER

- MANY ACTIONS ARE NECESSARY WHEN A COMMUNITY USES LOCAL AUTHORITIES.
 - PASSAGE OF BILL, ADOPTION OF BYLAWS, ADOPTION OF RESOLUTIONS, AND/OR MORE.
- THE LAW DETERMINES WHETHER OR NOT THESE ACTIONS ARE APPROPRIATE, OR EVEN LEGAL, ACCORDING TO A HIERARCHY.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.



THE HIERARCHY OF A DEVELOPMENT AUTHORITY

MOST "IN CHARGE" AT THE TOP
LEAST "IN CHARGE" AT THE BOTTOM



DEVELOPMENT AUTHORITIES

How They Operate



SPECIFIC LAWS

TYPES OF DEVELOPMENT AUTHORITIES

“Statutory”

- Created by General Assembly under Development Authorities Law (“DAL”)
 - After Attorney General Opinion ruled against Industrial Development Authorities
 - 1963 Industrial Development Authorities Law
- Constitution was amended to authorize development authorities
- Statewide pattern
 - 1969 and later
- Activation by City or County required

THIS PRESENTATION REFERS ONLY TO STATUTORY CITYWIDE AND COUNTYWIDE DEVELOPMENT AUTHORITIES UNLESS OTHERWISE NOTED



SPECIFIC LAWS TYPES OF DEVELOPMENT AUTHORITIES

“Constitutional”

- Pursuant to Local Constitutional Amendment (“LCA”)
- 1987 and earlier
- each LCA is different
- referendum was required

THIS PRESENTATION REFERS ONLY TO STATUTORY CITYWIDE AND COUNTYWIDE DEVELOPMENT
AUTHORITIES UNLESS OTHERWISE NOTED



SPECIFIC LAWS TYPES OF DEVELOPMENT AUTHORITIES

Local Act (of General Assembly, not under home rule powers)

- Prior to 1969
- no referendum required
- each Local Act is different

THIS PRESENTATION REFERS ONLY TO STATUTORY CITYWIDE AND COUNTYWIDE DEVELOPMENT
AUTHORITIES UNLESS OTHERWISE NOTED



APPLICABLE LAWS

Applicable Laws

- Example: Open Meetings Act, O.C.G.A. Sec. 50-14-1 *et seq.*,
- Example: Open Records Act, O.C.G.A. Sec. 50-18-70, *et seq.*
- Example: State Code of Ethics, O.C.G.A. Sec. 45-10-3



APPLICABLE LAWS

Applicable Laws

- Example- Reporting of “public “benefits” it provides (applies to certain incentives). See O.C.G.A. Sec. 50-36-1
- Example: Georgia Local Government Public Works Construction Law. O.C.G.A. Sec. 36-91-1 *et seq.*
 - for development authority projects
 - doesn't cover properly structured projects for prospects
- Federal and State environmental laws



LOCAL GOVERNMENT

- Adopts an Activating Resolution
 - If a Statutory Development Authority
- Appoints the Directors
 - Statutory development authority: Directors 7-9, as appointed by local government; terms (after first directors), 4 years; must reside within borders of local government; directors not compensated except per diem if county of 550,000 or more.
 - Constitutional development authority: Directors - Local constitutional Amendment (LCA) and enabling legislation (local acts) determine number and qualifications of directors and their term of office. Provisions usually can't be changed.



BYLAWS

Development Authority Bylaws

- Adopted by Board of Directors
- Directors are subject to procedures in bylaws; e.g., notice required to amend bylaws
- Best to cover only what law doesn't cover for you
- Example - meeting schedule, who can call unscheduled (special) meetings, terms of officers and when elected
- Example - don't cover director qualifications (that's in the law and can change)



BOARD OF DIRECTORS

SETS POLICY AND ADOPTS RESOLUTIONS

- Statutory development authority - resolutions must be adopted by majority of whole board, not just majority of a quorum. O.C.G.A. Sec. 36-62-4(b)(exception - executive session vote)
- Statutory development authority: Directors - one elected official may be director; directors can't be removed by local government. Local government can't dissolve development authority if bonds outstanding.
- Constitutional development authority: Directors - most provide for some elected official representation on board; some have removal provisions. Dissolution requires referendum and unlikely to be effective if bonds outstanding.



OFFICERS

- ELECTED BY BOARD OF DIRECTORS
- Statutory development authority
 - Chairman and Vice-Chairman
 - Have to be directors
 - Secretary and Treasurer or Secretary-Treasurer
 - OK if not directors
- Constitutional development authority - per Local Constitutional Amendment (LCA) and bylaws
- CARRY OUT POLICY AND IMPLEMENT RESOLUTIONS



STAFF

Provides Support to Officers and Board

- Can be hired and compensated
- Can be loaned, assigned or "seconded" by local government to development authority
 - Regular salary wouldn't be paid by development authority, so are really appointed instead of hired
 - Sometimes development authority pays additional compensation
 - Careful with bonuses - could be prohibited "gift or gratuity"
 - Understand issues about who is the employer and who has what liabilities



STAFF

- Conflict of interest situations can arise
 - Classic: when DA executive is employee of parent government, and local government and development authority are in a dispute



ATTORNEY

- Development authority engages its own attorney
 - Local government attorney not automatically attorney for development authority
 - If local government attorney also engaged by development authority, conflicts of interest can arise
 - Example - intergovernmental agreement
- Advises board, officers and staff
- Represents interests of development authority
 - For example, acts as its “Issuer’s Counsel” when it issues revenue bonds



DEVELOPMENT AUTHORITIES

What They Can and Can't Do



GEORGIA CONSTITUTION

- DEFINES "GOVERNMENTAL MISSION" OF DEVELOPMENT AUTHORITY
- Statutory citywide/countywide development authority - "trade, commerce, industry and employment opportunities"
 - DDA is a subset of this
 - Carries out above mission by revitalization of the city's central business district
- Constitutional development authority- usually similar
- STATUTORY (AND MOST CONSTITUTIONAL) DEVELOPMENT AUTHORITIES CAN ONLY CARRY OUT PROJECTS FOR PRIVATE SECTOR
 - EXCEPTION - PROPER PUBLIC/PRIVATE PARTNERSHIPS



GEORGIA CONSTITUTION

- PROHIBITS PUBLIC SECTOR FROM CONFERRING A "GIFT OR GRATUITY" ON THE PRIVATE SECTOR
 - Everyday Issue with Incentives
- AUTHORIZES STATE, LOCAL GOVERNMENTS, AND LOCAL AUTHORITIES TO ENTER INTO CONTRACTS AMONG THEMSELVES FOR UP TO 50 YEARS
 - Georgia Supreme Court Upheld "Right to Bind Successors" in 2015
 - Confirmed Bonds for Braves and Falcons
- PROHIBITS STATUTORY LOCAL AUTHORITIES FROM ROAD CONSTRUCTION PROJECTS INVOLVING LOCAL GOVERNMENTS
 - CID Can Be Useful Partner in Road Projects

COMPARE AND CONTRAST

FEATURE	DA	DDA	JDA (statutory)
Jurisdiction?	<ul style="list-style-type: none"> • Statutory city DA-citywide • Constitutional city DA - usually just citywide; sometimes includes radius from city limits, market area, etc. • Statutory county DA - countywide, including cities • Constitutional county DA - countywide 	<ul style="list-style-type: none"> • Statutory DDA-CBD <ul style="list-style-type: none"> • green energy/ • conservation - citywide • Constitutional DDA - usually CBD; sometimes includes radius from CBD 	<ul style="list-style-type: none"> • Throughout the borders of the participating local governments • Some activating resolutions limit the JDA's jurisdiction by agreement of the participating local governments. Precedent: Op. Ga. Att'y Gen. No. U96-24(city and county could agree not to appoint elected officials to new JDA)

COMPARE AND CONTRAST

FEATURE	DA	DDA	JDA (statutory)
Multiple memberships?	Only one statutory DA per local government	Only one statutory DDA per local government	DAL permits county to belong to more than one JDA
Purpose?	Economic development	Community development/ economic development	Statutory JDA same as statutory DA
Private projects?	Yes	Yes	Statutory JDA same as statutory DA
Public projects?	Prohibited (case law, statute) P3 OK	Prohibited (case law) P3 OK	Statutory JDA same as statutory DA

COMPARE AND CONTRAST

FEATURE	DA	DDA	JDA (statutory)
Board size?	7-9	7	Any number; activating resolution controls
Board appointments?	Parent local government	Parent local government	Activating resolution controls which local government gets how many appointments

COMPARE AND CONTRAST

FEATURE	DA	DDA	JDA (statutory)
Parent elected officials?	One	One	Each participating local government can appoint one of its elected officials
Officer appointments?	Elected by board	Elected by board	Elected by board

COMPARE AND CONTRAST

FEATURE	DA	DDA	JDA (statutory)
Bonds?	Revenue bonds	Revenue bonds	Same as statutory DA
Notes?	No	Revenue notes	Same as statutory DA
Conditions?	Employment increased or maintained	Revitalization of CBD	Same as statutory DA
Plan?	No	No	Same as statutory DA

COMPARE AND CONTRAST

FEATURE	DA	DDA	JDA (statutory; contiguous counties)
Regular Meetings?	Open Meetings Law implies requirement for regular meetings	Open Meetings Law implies requirement for regular meetings	Same + required to meet at least quarterly by DAL
Active and bona fide?	No express requirement	No express requirement	DAL expressly requires
Board members in office?	No express requirement	No express requirement	DAL expressly requires
Operational business plan?	No express requirement	No express requirement	DAL expressly requires



CONCLUSION

- NOW YOU KNOW THE “BASIC BUILDING BLOCKS” OF DEVELOPMENT AUTHORITIES
- A DEVELOPMENT AUTHORITY IS AN ESSENTIAL TOOL FOR ECONOMIC DEVELOPMENT IN YOUR COMMUNITY
- USE YOUR NEW SKILLS TO “GET THE JOB DONE!”



QUESTIONS?

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FOR MORE INFORMATION

- THIS PRESENTATION AND MY WHITE PAPERS ON ECONOMIC DEVELOPMENT AND OTHER TOPICS CAN BE DOWNLOADED

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



MORE INFORMATION

This presentation is a quick-reference guide for company executives and managers, elected and appointed officials and their staffs, economic developers, participants in the real estate and financial industries, and their advisors. The information in this presentation is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)