



TYRONE C. FAHNER
~~WILLIAM C. SCOTT~~
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 80-025

TRANSPORTATION;
Grants to the Bi-State
Development Agency

John D. Kramer
Secretary
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764

Dear Mr. Kramer:

I have your letter wherein you request my opinion on two questions relating to a proposed grant by the Illinois Department of Transportation [Department] to the Bi-State Development Agency [Bi-State]. (Ill. Rev. Stat. 1979, ch. 127, par. 63r-1 et seq.)

Bi-State, an entity created by an interstate compact between the States of Illinois and Missouri, has as one of its key functions the providing and promoting of public transportation services in the Bi-State Metropolitan Development District, which encompasses several Illinois counties in the St. Louis metropolitan area. You state that Bi-State has

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applied for a capital grant to help finance the construction of a new maintenance garage facility or main shop which will be located in St. Louis. You point out that the project is to be primarily funded through Federal grants and that Bi-State has requested Illinois to provide 18.13 percent of the non-Federal share of the project. This figure represents the same proportion of cost as the services which are provided by Bi-State to Illinois residents. You have asked:

"1. Whether the State of Illinois can participate in the funding of a public transportation capital project to be located in the State of Missouri which will be used in connection with public transportation service provided in Illinois and directly benefit Illinois residents?

2. Whether Series B Bond funds can be used as the funding source for such a capital grant and, more specifically, whether a garage facility for the maintenance and repair of buses providing public transportation service is a 'mass transportation facility' as provided under the Transportation Bond Act?"

You advise that the facility will provide a centralized maintenance and repair facility to service all buses operated by the Bi-State transit system and will promote continued efficient operation of public transportation service throughout the district.

For the reasons hereinafter stated, it is my opinion that a central maintenance garage to be constructed for the Bi-State Development Agency is a mass transportation facility which may be partially funded by the Illinois Department of

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Transportation and that the Department may use the proceeds of Series B bonds as a funding source for such capital grants, even though the facility is located outside the State of Illinois.

Subsection 49.19(2) of The Civil Administrative Code of Illinois (Ill. Rev. Stat. 1979, ch. 127, par. 49.19(2)) (Mass Transportation Grants) authorizes the Department to provide:

"(2) Grants * * * to municipalities, districts and carriers for the acquisition, construction, extension, reconstruction and improvement of mass transportation facilities. * * *" (Emphasis added.)

"District" is defined by subparagraph (1)(e)(3) of section 49.19 of the Code (Ill. Rev. Stat. 1979, ch. 127, par. 49.19(1)(e)(3)) to include:

"(3) Any authority, commission or other entity which by virtue of an interstate compact approved by Congress is authorized to provide mass transportation;"

The term "Facilities" is defined by subsection 49.19(1)(c) of The Civil Administrative Code as:

" * * * [A]ll real and personal property used in or appurtenant to a mass transportation system."

The question then is whether Bi-State is a "District" and whether the proposed maintenance garage is a "Facility", within the meaning of subsection 49.19(1)(c). If they are, the Department is expressly authorized to make the grant requested. The Bi-State Development Agency is a "District"

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because it was created by interstate compact in 1949. (Ill. Rev. Stat. 1979, ch. 127, par. 63r-1.) The compact was consented to by the United States Congress as required by the United States Constitution. (U.S. Const., art. I, § 10.) In 1953 the powers of the Agency were expanded by section 1 of "AN ACT to further effectuate that certain compact between the States of Missouri and Illinois, etc." (Ill. Rev. Stat. 1979, ch. 127, par. 63s-9(1), similarly consented to by Congress. That Act authorizes the Bi-State Development Agency:

" * * *

(1) To acquire by gift, purchase or lease, and to plan, construct, operate and maintain, or lease to others for operation and maintenance, bridges, tunnels, airports, wharves, docks, harbors, warehouses, grain elevators, commodity and other storage facilities, sewage disposal plants, passenger transportation facilities, and air, water, rail, motor vehicle and other terminal facilities;

* * *

(Emphasis added.)

The proposed maintenance garage is expressly included within the term "Facilities" because it is "real and personal property" which will be "used in or appurtenant to a mass transportation system".

In Ladue Local Lines, Inc. v. Bi-State Development Agency of Missouri-Illinois (8th Cir. 1970) 433 F. 2d 131, 132, 137, the court held that when two States enter into a congressionally-approved compact to operate a public trans-

portation system as a monopoly, the antitrust laws do not apply. At page 137 the court held:

"Here, Bi-State is a body politic created by the legislatures of Missouri and Illinois. It is acting under legislative authorization to operate passenger transportation facilities * * * ."

The court found that Bi-State's entry into the field of public transportation is legislatively authorized conduct.

The General Assembly was necessarily aware that Bi-State would be carrying on activities in Missouri and Illinois and would necessarily locate its facilities where they could most centrally and efficiently serve the entire district.

The next question is whether the proposed main shop may be located in the State of Missouri. Section 49.19(1)(a) of The Civil Administrative Code (Ill. Rev. Stat. 1979, ch. 127, par. 49.19(1)(a)) defines "Mass transportation" as:

" * * * transportation provided within the State of Illinois by rail, bus, or other conveyance, available to the general public on a regular and continuing basis." (Emphasis added.)

The phrase "within the State of Illinois" does not appear to limit funding to mass transportation facilities which are physically located in Illinois because it applies only to "transportation" and not to "Facilities". In defining "Facilities" in subsection 49.19(1)(c), the General Assembly made no requirement that "Facilities" be located in Illinois. Further, the General Assembly has explicitly authorized the making of grants to entities created by interstate compacts. (Ill. Rev. Stat. 1979, ch. 127, par. 49.19.) As the Ladue case

held, Bi-State is such an entity providing public transportation services pursuant to legislative authorization.

The General Assembly will be presumed to know existing conditions. (Krebs v. Bd. of Trustees (1952), 410 Ill. 435, 441.) Therefore, it must be presumed that the General Assembly, in adopting the amendment to the Bi-State compact (Ill. Rev. Stat. 1979, ch. 127, par. 63s-1 et seq.), acted with full knowledge of the transportation conditions existing in the Bi-State District and of the need to centralize facilities and avoid duplication in the provision of services. The phrase "within the State of Illinois" must therefore be construed to apply to the place where the transportation services are provided, and not to the place where the facilities needed to provide the services are located, since a contrary interpretation would be inconsistent with the purposes of the interstate compact and would frustrate them. Therefore, it is my opinion that the Department is authorized to award a grant to the Bi-State Development Agency to help finance the construction of a maintenance facility in Missouri to be used in connection with providing mass transportation services in Illinois.

With regard to your second question, the Transportation Bond Act (Ill. Rev. Stat. 1979, ch. 127, par. 701 et seq.) provides that the State may issue bonds for the purpose of promoting better and more efficient mass transportation for the people of Illinois. (Ill. Rev. Stat. 1979, ch. 127, par. 702.) Money raised by the sale of the bonds is to be used to make grants or loans for:

" * * * the acquisition, construction, reconstruction, extension and improvement of the following transportation facilities and equipment and for the acquisition of real property and interests in real property required or expected to be required in connection therewith * * * .

* * *

(b)(1) the acquisition, construction, extension, reconstruction and improvement of mass transportation facilities including rapid transit, rail, bus and other equipment used in connection therewith by the State or any unit of local government, special transportation district, municipal corporation or other corporation or public authority authorized to provide and promote public transportation within the State or two or more of the foregoing acting jointly; * * * .

* * *

Since Bi-State is a body politic and corporate (Ill. Rev. Stat. 1979, ch. 127, par. 63r-1, art. III), it is eligible to receive grants under the definition set out in section 2(b)(1) of the Transportation Bond Act and for the reasons previously noted in answering your first question. The language in the Transportation Bond Act is very similar to that used in section 49.19 of The Civil Administrative Code. The statutes are in pari materia and should be read together. (People v. VanWinkle (1972), 5 Ill. App. 2d 240, 247.) There is no basis for assuming that the phrase "mass transportation facilities" was intended to have different meanings in the two Acts, particularly since both the Transportation Bond Act and the pertinent provisions of The Civil Administrative Code were enacted by the General Assembly on the same day.

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(Laws of 1971, pp. 276-282, 284-294.)

In view of the preceding discussion in answer to your first question, and the need to construe both Acts consistently, it is my opinion that the garage facility you have described is a mass transportation facility and that Series B bonds may be used to finance the Illinois portion of the grant.

Very truly yours,

A T T O R N E Y G E N E R A L