

Greg Hasty

From: Ivan Schraeder <ils@schraederlaw.com>
Sent: Friday, November 01, 2019 12:29 PM
To: Greg Hasty
Cc: Beverly Thomas; Don Williams; cmcelyea@pmcwlaw.com; Maggie Fuhr
Subject: RE: Commission powers regarding TCLA REPLY
Attachments: BusinessDstMemo 110119.docx

Commissioners: Attached to this e-mail is our preliminary report regarding the two entities identified in correspondence to us.

From: Ivan Schraeder
Sent: Tuesday, October 29, 2019 11:47 AM
To: greg_hasty@camdenmo.org
Cc: beverly_thomas@camdenmo.org; don_williams@camdenmo.org; cmcelyea@pmcwlaw.com; Maggie Fuhr <maf@schraederlaw.com>
Subject: RE: Commission powers regarding TCLA REPLY

Commissioners: We are unable to answer all of your inquiries without additional information. The law requires that the advisory board be organized as a not for profit. Copies of the organizational documents should be provided for the advisory board and minutes of meetings where the appointment of board members happened. Since the business district is a political subdivision of the state and subject to sunshine law records' requirements, records must be produced and meetings properly conducted under this law just as for the county commission. If the business district board does not comply with sunshine law requests, a court action may be brought to enforce the law AND a declaratory judgment action may be possible to determine the other questions raised by the entities who have approached the county commission.

The Judgment provided to us is a court declaration that the business district was properly established, but it does not address anything post-November 14, 2012, the date of entry of the court order. Pleadings in that lawsuit are available in the circuit court records if you want to review the pleadings to see what facts were alleged and found to exist as well as what the county commission did in defense of the action then.

We do not believe that the county commission has clear authority to withhold funds without some court order declaring the operations of the business district as being improper since the business district is a political subdivision except as noted below. Section 67.1177.6 RSMo provides for the collector to contract for collection of the fees and for the county commission to "adopt rules and regulations for the collection and administration of the tax." If the rules are not complied with, the county commission may be able to direct the collector to withhold funds until compliance is met.

We are not clear as to what election is being requested or held for the soccer complex issue. It is also not clear as to whether the basis for such a complex is legally possible. If that ballot question has not be voted on yet, the outcome may be challenged in a post-election contest under Ch. 115 RSMo if timely filed. If election was held and the time to challenge has passed, there is no ability to challenge the outcome of the election because failure to challenge in a timely manner under the law stops any future election challenge.

We looked at the Sec. of State business registration listings and did not find any filing for TCLA. If it acts for the business district it has to have a contract adopted by the business district under Sec. 432.070 RSMo and the record maintained under the sunshine laws.

With the limited information provided, we are unable to provide other guidance until other records are produced or determined not to exist. Let us know if you would like to set up a conference call to discuss in more detail.

Ivan

From: Maggie Fuhr <maf@schraederlaw.com>
Sent: Tuesday, October 29, 2019 10:12 AM
To: Ivan Schraeder <ils@schraederlaw.com>
Subject: FW: Commission powers regarding TCLA

From: Greg Hasty <greg_hasty@camdenmo.org>
Sent: Tuesday, October 29, 2019 9:52 AM
To: Maggie Fuhr <maf@schraederlaw.com>
Cc: Beverly Thomas <beverly_thomas@camdenmo.org>; Don Williams <don_williams@camdenmo.org>; Charles McElyea <cmcelyea@pmcwlaw.com>
Subject: Commission powers regarding TCLA

IVAN SHRIADER REGARDING TCLA AND LAKE AREA BUSINESS DISTRICT

EMAIL REQUEST FOR ADVICE FOR CAMDEN COUNTY COMMISSION
REGARDING LAKE AREA BUSINESS DISTRICT LAW SECTIONS 67.1170 – 67.1180 RSMo.
Good afternoon Ivan,

Recently there has been placed on the ballot at the Lake of the Ozarks a proposal for a "Destination Soccer Complex". This ballot measure was apparently placed on the ballot by the "Lake Area Business District" (LABD). In Camden County, the ballot measure was officially placed on the ballot by "The Camden County Business District, a Lake area business district", placed this on the ballot. A copy of that resolution and order is attached to this email. The LABD apparently exists in Miller, Morgan and Camden Counties, however the Camden County Commission has no record at this point to confirm anything regarding the formation or operation of this political subdivision. This entity was apparently formed in the Ealey 1990's after a ballot measure passed to authorize the formation.

The LABD has, according an unsigned document provided by our Camden County Collector, entered into an agreement with the "Tri-County Lodging Association" (TCLA) to be the receiver of the funds related to the tax.

Last Wednesday, October 23, 2019, members of the TCLA small resort owners, met with the Camden County Commission (Commission) regarding issues relating to the LABD and TCLA. They stated that the formation of operation of LABD was not done correctly and the election process of the TCLA is not being done in accordance with law. In fact, members of the small resort owners stated that LABD does not even exist, and the TCLA is operating outside of the laws of Sections 67.1170 – 67.1180 RSMo.

Specifically, the resort owners ask the Commission to look into the following issues:

1. Are the elections being held to elect the six members of the Advisory Board for the Camden County Business District being conducted properly?
2. Is the Camden County Commission required to adopt rules and regulations for the collection and administration of the lodging tax?

Beyond that, they ask the Commission to withhold all funding to the TCLA, and to stop this election regarding the soccer complex until all of these issues are addressed.

The Commission was aware that there was a group of resort owners that said, they were left out of the process, and was not contacted regarding the election of board members. However, we were not aware of the expectations of the business owners relating to oversight and administration by the Commission.

The Commission would like to know the extent of our authority under Sections 67.1170 – 67.1180 RSMo. is.

- A. Do we have authority to withhold funds to from TCLA?
- B. Do we have authority to look into the issues relating the election of the officers?
- C. What is the intent and meaning regarding the portion of these statutes as to commission collection and administration of the lodging tax?

How much authority does the Commission have relating to oversight of the LABD and the TCLA.

At the meeting we had Charles McElyea, the Camden County Attorney present. Members of the small resort owners claimed a conflict with Charlie because he had done work relating to the formation of TCLA when they were formed. The TCLA has had separate legal counsel for many years so Charlie doesn't regard this as a conflict. However, to be on the up and up with the people we represent, we need someone that is not in any way related to these issues to advise the Commission as to the extent of our power to address their concerns.

Please see the attached Camden County Circuit Court Ruling regarding these issues.

Thank you

The Camden County Commission

Greg Hasty,

Camden County Presiding Commissioner

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November 1, 2019

MEMORANDUM

To: Camden County Commission

From: Ivan L. Schraeder, Special Counsel

Re: Lake Area Business District (District) and Tri-County Lodging Association (TCLA)

We were requested to provide advice to the Commission concerning the relationship between the above noted entities. Set out in this Memorandum is our advice as best as can be provided now in light of the applicable laws and the available facts.

The Business District was created by election and confirmed as to legal existence in the lawsuit decided in November 2012 and the District was authorized to contract with TCLA in that same lawsuit. We have been unable to locate any organizational documents for TCLA through the usual governmental filings.

In order to identify what relationship exists between the two entities, the Commission should use the Sunshine Law to access public records. The District, which is a "public governmental body" pursuant to Sec. 610.010(4) RSMo, records can be obtained by a Sunshine Law request in writing setting out what documents are desired. Here are the preliminary documents that should be obtained:

1. Minutes of all meetings of the District, including notices, agenda, and contracts approved by the District.
2. Copies of all records of the District, identifying the Advisory Board members and their respective appointments and terms of office and what type of lodging entity that they represent.
3. Copies of all governing documents of the District.
4. Copies of all contracts entered between the District and TCLA. Contracts authorized by the District Board are governed by Sec. 432.070 RSMo.
5. Copies of all financial reports created after January 1, 2013.
6. Reports generated by TCLA relating to the contract(s) with the District.

The TCLA is a "quasi-governmental body" pursuant to Sec. 610.010(4)(f) RSMo, whose records can be obtained by a Sunshine Law request in writing setting out what document are desired. Here are the preliminary documents that should be obtained from TCLA:

1. Minutes of all meetings of the TCLA governing body, including notices, agenda, and contracts approved by the TCLA with the District.

2. Copies of all records of TLCA identifying the Board members and their respective selection process and the terms of office for each Board member.
3. Copies of all governing documents of the TCLA.
4. Copies of all contracts entered between the District and TCLA. Contracts authorized by the TCLA Board with the District are governed by Sec. 432.070 RSMo.
5. Copies of all TCLA financial reports created after January 1, 2013 showing financial connections with the District and payments made in behalf of the District.
6. Reports generated by TCLA relating to the contract(s) with the District and the services provided.

Once these records are obtained from TCLA and the District, we will be able to advise the County Commission of any authority, if any, it may have to oversee the two entities. However as of now, it does not appear that the County Commission has any authorized oversight or control of either entity.

Except as noted below, we do not believe that the County Commission has clear authority to withhold funds without some court order declaring the operations of the business district as being improper since the business district is a political subdivision. Section 67.1177.6 RSMo provides for the collector to contract for collection of the fees and **for the county commission to "adopt rules and regulations for the collection and administration of the tax."** If the rules are not complied with, the County Commission may be able to direct the collector to withhold funds until compliance is met. We would like to review the County Collector's contract for collection of the fees for the District and the minutes of the meeting in which the County Commission approved that contract.

The make-up of the District Advisory Board is set out in Sec. 67.1175.1 RSMo, whose membership is selected by the identified types of lodging facilities and the terms of each person is established, and by the County Commission.

Let us know if the Commission needs anything more at this point in time.