

April 2, 2015

OFFICIAL OPINION 2015-4

The Honorable Steven R. Stemler
Indiana House of Representatives
200 W. Washington St.
Indianapolis, IN 46204

RE: River Ridge Development Authority

Dear Representative Stemler:

You have asked whether the River Ridge Joint Reuse Authority a/k/a River Ridge Development Authority (“RRDA”) is a governmental entity subject to the provisions of the Indiana Tort Claims Act (“ITCA”).

BRIEF ANSWER

The RRDA is a “governmental entity” subject to the provisions of the ITCA. The RRDA is created by statute and endowed with powers and functions that are uniquely governmental in nature.

ANALYSIS

The ITCA, codified at Ind. Code Chpt. 34-13-3, is the General Assembly’s expression of the circumstances under which the state and its political subdivisions may be held liable in tort. As observed by the Indiana Court of Appeals, ITCA “operates as an unequivocal statement of Indiana’s consent to be sued in tort[.]” *Oshinski v. N. Ind. Commuter Transp. Dist.*, 843 N.E.2d 536, 544 (Ind. Ct. App. 2006).

The ITCA affords certain protections to “governmental entities” from claims sounding in tort. Ind. Code § 34-13-3-3. A “governmental entity,” for the purposes of the ITCA, “means ... the state or a political subdivision of the state.” Ind. Code § 34-6-2-49. The “state,” for the purposes of the ITCA, “means Indiana and its state agencies.” Ind. Code § 34-6-2-140. “State agency,” for purposes of the ITCA, “means: (1) a board; (2) a commission; (3) a department; (4) a division; (5) a governmental subdivision, including a soil and water conservation district; (6) a bureau; (7) a committee; (8) *an authority*; (9) a military body; or (10) other instrumentality; of the state.” Ind. Code § 34-6-2-141 (emphasis added).¹

A “political subdivision” is defined in relevant part, for the purpose of the ITCA, as including a county, township, city, town, separate municipal corporation, special taxing district, or a board or

¹ “Authority” has no further relevant definition under the ITCA. However, it is instructive to note that in *Bonney v. Indiana Finance Authority*, 849 N.E.2d 473 (Ind. 2006), the Indiana Supreme Court concluded that the Indiana Finance Authority fit within the definition of “separate municipal corporation” in Ind. Code § 34-6-2-86 for purposes of the public interest lawsuit statute. As noted, the “separate municipal corporation” language is used in the ITCA definition of “political subdivision.”

commission of one of these entities.² Ind. Code § 34-6-2-110.

Other characteristics of a “governmental entity” include the discharge of a function that is “uniquely governmental” in nature. Courts will look to see whether there is legislative intent to create an instrumentality of government, including of local government. This is generally expressed through statutory enactments. See *Ayres v. Indian Heights Volunteer Fire Department, Inc.*, 493 N.E.2d 1229, 1235 (Ind. 1986) (finding a volunteer fire department to be an instrumentality of local government and, thus, within the ambit of the ITCA, noting its creation is statutory such that the volunteer fire department was “endowed by the state with powers or functions governmental in nature”). Also see *World Productions, Inc. v. Capital Improvement Board of Marion County*, 514 N.E.2d 634, 637 (Ind. Ct. App. 1987), *reh. den., trans. den.* (utilizing a two-part test to determine whether an entity is a state or political subdivision: (1) was the entity created directly by the State so as to constitute a department or administrative arm of government; or (2) is the entity administered by individuals who are controlled by public officials and responsible to such officials or the general public).³

The RRDA is an “authority” created pursuant to state law under Ind. Code § 36-7-30-3(a):

A unit may establish a board of five (5) members to be known as the “[River Ridge] Reuse Authority”, designating the name of the military base.

Thus, the RRDA is specifically created as a particular type of “governmental entity,” in this case a “political subdivision” under the ITCA. Accordingly, the ITCA applies.

The RRDA has other characteristics of an instrumentality of local government or a “political subdivision.” The RRDA can sue and be sued. Ind. Code § 36-7-30-9(a)(9)-(10)⁴. All of its members are appointed by elected officials at the municipal or county level. Ind. Code § 36-7-30-4. RRDA members must take an oath of office, which must be filed with the clerk of the unit the member serves. IND. CODE § 36-7-30-5. The RRDA can, *inter alia*, acquire interests in certain real and personal military property; employ certain personnel and professionals; enter into certain contracts; accept loans, grants or other forms of financial assistance from the federal and state governments as well as from other private and public sources; and provide a pension and retirement system for its employees through the Public Employees’ Retirement Fund. See, generally, Ind. Code § 36-7-30-9(a). It may also issue bonds through its special taxing unit in order to discharge certain of its statutory responsibilities. See Ind. Code § 36-7-30-18.

Moreover, the RRDA has been granted the one power that is unique to governmental entities—the

² This definition of “political subdivision” includes other categories not relevant to the issue at hand. Also see Ind. Code § 34-13-3-22 for additional categories of persons or entities considered to be “political subdivisions for ITCA purposes.

³ The Supreme Court was somewhat critical of the use of this test – not the test itself – in *Greater Hammond Community Services, Inc. v. Mutka*, 735 N.E.2d 780, 783 (Ind. 2000) (accepting the test, with some reservation, noting that the Capital Improvement Board was deemed to be a political subdivision “based in large part on the fact that the statute creating the Board requires an exceptionally high level of governmental control”).

⁴ In fact, pursuant to IND. CODE § 36-7-30-9(a)(9), the reuse authority may “institute or defend in the name of the unit any civil action” as well as “use any legal or equitable remedy that is necessary or considered proper to protect and enforce the rights of and perform the duties of the reuse authority” pursuant to Ind. Code § 36-7-30-9(a)(10).

power of eminent domain:

The military base reuse authority may ... exercise the power of eminent domain in the name of and within the corporate boundaries of the unit ...

Ind. Code § 36-7-30-9(a)(11). *See also* Ind. Code § 36-7-30-16, Ind. Code § 36-7-30-2(c).⁵

Finally, when authorizing the creation of the reuse authorities, the General Assembly declared that “[t]he planning, replanning, rehabilitation, development, redevelopment, and other preparation for reuse of military bases and military base property are public and governmental functions,” Ind. Code § 36-7-30-2(a), adding that “public money may be spent and private property may be acquired” in furtherance of these “public uses and purposes.” Ind. Code § 36-7-30-2(c). Given the foregoing statutory framework and characteristics, the RRDA is a “political subdivision.” As such, it is a governmental entity subject to the ITCA.

As a “political subdivision,” any claim against RRDA is barred unless a plaintiff files notice with the “governing body of the political subdivision” within 180 days after a loss occurs. Ind. Code § 34-13-3-8(a). The RRDA “may compromise, settle or defend against a claim or suit brought against” it. Ind. Code § 34-13-3-16. The RRDS may also purchase liability insurance. Ind. Code § 34-13-3-20(a).⁶

CONCLUSION

It is the opinion of this Office that the River Ridge Development Authority, as created pursuant to the General Assembly grant of authority at Ind. Code Chpt. 36-7-30 and endowed with the powers or functions that are uniquely governmental in nature, is a “political subdivision” and, hence, a “governmental entity” under the Indiana Tort Claims Act. As such, the RRDA is entitled to all of the immunities, limitations on liability, and notice requirements applicable to political subdivisions set forth in that Act.

Sincerely,

Gregory F. Zoeller
Attorney General

Nicole M. Schuster
Deputy Attorney General

⁵ See, e.g., *Metal Working Lubricants Co. v. Indianapolis Water Co.*, 746 N.E.2d 352, 357 (Ind. Ct. App. 2001) and *Indianapolis Water Co. v. Lux*, 64 N.E.2d 790,791 (Ind. 1946) recognizing the authority to condemn property as a means of acquiring the property to discharge responsibilities is an exercise of the governmental power of eminent domain.

⁶ These are distinguishing features between a “political subdivision” and the State (and its agencies) under the ITCA. Notice to the State must be provided within 270 days after the loss occurs, Ind. Code § 34-13-3-6; upon recommendation of the attorney general, the governor “may compromise or settle a claim or suit brought against the state or its employees,” Ind. Code § 34-13-3-14; the State may not purchase liability insurance, Ind. Code § 34-13-3-20(b); and funds are appropriated by the legislature to settle claims and satisfy tort judgments “obtained against the state,” Ind. Code § 34-13-3-24. None of these applies to a “political subdivision” only to the State and its agencies.