



Special Report
Industrial Development Agency
Grant Awards

October 17, 2011

Statutory Purpose of Industrial Development Agencies

Article 18-A of General Municipal Law (GML) authorizes the formation of industrial development agencies (IDAs) for the purpose of growing regional employment and encouraging the creation, expansion or re-location of viable commercial businesses in local communities. IDA financial assistance is to be used to promote and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing and commercial facilities, and certain other types of projects, for the purpose of minimizing unemployment and economic deterioration.

To achieve these objectives, IDAs are granted certain powers that are enumerated in section 858 of General Municipal Law (GML). These powers include the acquisition of real property, the ability to enter contracts and leases, acquire, construct, lease, improve, maintain, equip or furnish projects, accept gifts, grants, loans or contributions from the federal or state government or other entities, borrow money and issue bonds, and enter into PILOT agreements. Section 854 of GML defines the financial assistance that IDAs can provide as the proceeds from the sale of bonds, and exemptions from mortgage recording taxes, sales and use taxes, and real property taxes associated with the IDA taking title to a project as defined by section 854(4).

Limitations on Financial Assistance

Industrial development agencies are public benefit corporations, and the powers granted to such corporations are limited to those specifically enumerated in statute. Therefore, an IDA can only exercise those powers granted to it by General Municipal Law. This legal principle has guided the analysis reflected in this report.

Clearly, the enumerated powers of an IDA include the ability to provide limited forms of financial assistance and to accept grants, gifts and contributions from public and private sources that can be used to advance a legitimate IDA purpose. Federal or state funds received by the IDA may be granted or loaned for purposes consistent with spending restrictions imposed by that federal or state program. The statute does not specifically confer on IDAs the power to make outright grants, gifts or contributions from their own funds for such purposes, even if those funds are distributed by contract. Accordingly, the analysis of IDA financial practices performed by the ABO is premised on the fact that such the latter actions would be inappropriate and inconsistent with the powers granted to IDAs.

Industrial Development Agency Grants

The ABO reviewed the minutes and reports of 29 IDAs, that were chosen as geographically representative of IDAs across the state as well as representative of the different county level, town, city, and village IDAs. These minutes reflected agency board meetings held between 2007 and 2011. These public records indicate that IDAs are providing grants to various public and private entities, although the provision of grants is not a specific power authorized to IDAs in GML. The ABO review found that the amount of gifts, contributions, or sponsorship arrangements made by 19 of these IDAs to private entities could be as much as \$10 million over the past four years.

The ABO attempted to ascertain whether the gifts, contributions, or sponsorship arrangements were direct payments, or contractual agreements between the IDAs and the recipients of the funds that were misrepresented in the meeting minutes. The ABO also reviewed certified reports submitted by the authorities in the Public Authorities Reporting Information System (PARIS) and found no indication that any of the examples were projects as defined by section 854(4) of GML.

The ABO recognizes that this is a sensitive issue and that IDAs cannot look to current law for clear guidance on what constitutes an appropriate use of IDA money. While IDAs have no specific legal authority to grant their own funds to either a public or a private organization, program money from federal or state sources can sometimes be granted or loaned, and IDAs may fail to distinguish these sources from their own funds. Often the sole determining criterion for an IDA board is whether the project recipient's use of the money can be broadly interpreted so as to advance the economic development mission of the IDA. The ABO does not believe that this evaluation criterion is adequate or determining, or that the examples cited in this report meet this test. A close reading of the minutes gives no indication that these grants were pass-through grants from the state or federal government to projects for otherwise eligible purposes.

Examples of IDA Grant Awards

The ABO takes no position on the merits of the projects that received as much as \$10 million in grant funding. Many may be worthwhile and community-oriented. While some may argue that the language in General Municipal Law is open to interpretation and creates a gray area for boards of directors, the ABO believes that the law is clear on one point. The structure of any IDA funding should have as its primary purpose economic growth, the stabilization or expansion of employment, or the attraction of new businesses to the area. These public purposes cannot be secondary benefits. The primary purpose for the use of those funds cannot be for the benefit of the private entity. Nor should the funding be intended to subsidize the operations of the recipient. Moreover, an IDA funding decision should be made with the expectation that the IDA would receive an explicit benefit that advances its mission and purpose, and is not made for marketing or public relations purposes.

A review of board minutes, audit reports, press accounts, and other IDA documents for 2010 and 2011, found the following grants were made by IDAs in the sample group. Such awards would appear to be inconsistent with the ABO's reading of General Municipal Law:

- Orange County IDA:
 - \$500,000 matching contribution for renovations and sports facilities at the nonprofit Newburgh Armory Unity Center;
 - \$57,000 to the Orange County Firefighters Museum for its newly-renovated facility to buy furniture, computers, and training items;
 - \$54,260 to Orange County Community College to expand its Business Solutions and Professional Development Program;
 - \$22,500 to Hudson Valley Economic Development Corporation for operating expenses;

- \$9,000 to the National Purple Heart Hall of Honor for its project to purchase and distribute 2,500 honor coins;
 - \$600 to purchase a table for 10 at the National Purple Heart Hall of Honor Tribute;
 - \$250 to the Marlboro High School Band.
- Dutchess County IDA
 - \$248,000 to the Dutchess County Economic Development Corporation (DCEDC), including:
 - \$115,000 to match dollar-for-dollar private contributions to the DCEDC External Marketing Council by private businesses in Dutchess County;
 - \$100,000 for the operating budget;
 - Up to \$28,000 for DCEDC Trade Show Program;
 - \$5,000 for the DCEDC student Business Plan Competition.
 - \$1,500 to Hudson Valley Fresh to subsidize the cost of milk at the Dutchess County Fair.
- Onondaga County IDA:
 - Repurposed a \$150,000 grant to Onondaga Community College so that it now funds the college's Presidential Scholars Program.
- St. Lawrence County IDA
 - \$25,000 per year for three years for a total commitment of \$75,000 to the FishCap project, intended to make St. Lawrence and Franklin counties the fishing capital of the world.
- Fairport IDA
 - \$25,000 to the Village Tree Board for a project which involves recording the Village's tree inventory into a GPS system that allows the mapping of tree locations.
- Clarence IDA
 - \$10,000 to the Clarence Chamber of Commerce to assist in relocating their offices.
- Brookhaven IDA
 - \$7,500 to the Miller Business Resource Center at the Middle Country Public Library;
 - \$15,000 to the Stony Brook Dare to Attempt/Risk Entrepreneurship.
- Greene County IDA
 - Donated money and iPads as prizes for a "Lemonade Day" competition which encouraged children to open their own lemonade stands for a day complete with business and marketing plans.

The ABO has concluded that a number of factors have led boards of directors to believe that it is permissible to make such grant awards.

- The IDA is often the primary economic development organization in the community. IDAs are charged with promoting economic stability and enhancing the economic welfare of the residents through employment and recreational opportunities, tourism, and improving quality of life. Boards of directors view this mission very broadly and, therefore, justify any action or financial decision as supportive of these objectives. Board members, however, have a fiduciary duty to ensure that the agency not only operates consistent with its mission and public purpose, but also within the limitations imposed on the IDA by statute. The ABO does not believe that GML should be read as to allow the awarding of an IDA financed grant to an entity even if that grant is intended to be used for an accepted and beneficial public purpose.
- IDAs charge fees to process and evaluate project applications and to administer financial assistance. Since many IDAs operate much like financial institutions and arrange the financial backing for economic development projects, it is not uncommon for the IDA to be considered a potential funding source by public or private entities seeking financial support for a community project. As residents of the community, board members may want to accommodate such requests, especially as other sources of funds become scarcer. In addition, many boards of directors view these fees as the “private” funds of the IDA, not subject to the same restrictions imposed on public funds. It is the position of the ABO, and the clear intent of public authority reform legislation, that these funds are no different than the fees charged by state and local government agencies for services rendered and that they need to be treated and managed as public funds, and directed only for purposes for which they can be used by law.
- Prior to 2006, the regulatory climate allowed IDAs to operate without close public scrutiny. Even though financial reporting requirements were first enacted in 1993, prior to the Public Authorities Accountability Act of 2005 (PAAA) and 2009 Public Authorities Reform Act (PARA), IDAs were subject to limited oversight that amounted primarily to reporting project data and debt issuances. The ABO is aware that the lack of central oversight previous to PAAA and PARA contributed to mission creep and IDAs engaging in activities not exclusively (or only broadly interpreted) for industrial, manufacturing and commercial development.

Conclusions

The ABO sampled the spending activities of 29 IDAs dating back to 2007. This examination revealed that many IDAs, over the years, may have provided grants from their own revenue sources, which would appear to be beyond their authority to provide financial assistance only in the form of tax exempt bonds, exemptions from mortgage recording and sales taxes, and property tax abatements. In its examination of 29 of the 114 IDAs in New York State, the ABO found examples of questionable grant awards by at least 19 IDAs, an indication that such practices are likely widespread.

Moreover, it appears that much of this grant money was not intended to generate new economic growth in the community through increased payrolls, higher property values, or enhanced economic activity – the primary reasons for the existence of IDAs. Nor was it clear what direct benefit the IDA was to realize from the award in

furtherance of its mission. Rather these grants appear to have been awarded, in part, for charitable purposes, to provide revenue to the recipient, or to promote the image of the IDA within the community.

The grants identified in this report indicate that IDA boards may not be fully aware of the limitations on the form of financial assistance that an IDA can provide. Even if a recipient is worthy of public support, or the purpose is ancillary to economic development, such routine approval of grants demonstrates that some IDA boards view the role of the IDA as a public funding stream to be used for whatever ends the board can justify.

As economic difficulties place strains on local government finances, municipalities, business owners, and community groups may view IDAs as an attractive source of funding. All too often, IDA boards may be pressured to direct public funds to projects that are unlikely to achieve the purpose for which the IDA was formed, or to award funds without following the normal project application evaluation process.

The ABO does not question the intentions or motives of boards of directors in making these funding decisions. The purpose of this report is to raise, as an issue, how IDAs direct their money to community projects and private entities. As a result of this report, the ABO suggests that IDA boards undertake a thorough review of their organizations' enabling legislation, missions, and financial assistance policies to make sure that all activities in which they are engaged are statutorily appropriate and mission-driven.