

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

JOHN GUNN and wife,)	
CLARICE GUNN,)	
JACK KENLEY and wife,)	
CHARLOTTE KENLEY,)	
STEVE MONROE and wife,)	
CAROL MONROE, CHARLES CROSBY,)	
STEVE HAMMER and wife,)	
BANDI HAMMER, LEROY MALONE,)	Tennessee Supreme Court
ANNETTE LOY,)	No. _____
and PEGGY CORBETT, citizens,)	
residents, and property owners)	Tennessee Court of Appeals
of Jefferson County, Tennessee,)	No. E2016-01452-COA-R3-CV
)	
Plaintiffs-Respondents,)	Chancery Court of Jefferson County
)	Case No. 13-CV-212
v.)	Judge Don R. Ash
)	
JEFFERSON COUNTY ECONOMIC)	
DEVELOPMENT OVERSIGHT)	
COMMITTEE, INC.,)	
)	
Defendant-Applicant.)	

**APPLICATION FOR PERMISSION TO APPEAL FROM THE
COURT OF APPEALS TO THE SUPREME COURT**

Robert E. Cooper, Jr. (BPR # 010934)
Paige Waldrop Mills (BPR # 016218)
Christopher J. Climo (BPR # 035082)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
Telephone: (615) 742-7768
Facsimile: (615) 742-2858

Attorneys for Defendant-Applicant

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INTRODUCTION

Defendant-Applicant Jefferson County Economic Development Oversight Committee, Inc. (the “Oversight Committee”) respectfully submits this Application for Permission to Appeal to the Tennessee Supreme Court from the order of the Court of Appeals dated September 26, 2017, pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure. (A copy of the Court of Appeals opinion is attached hereto as **Exhibit A.**)

This case addresses a question of first impression in Tennessee courts – whether a private corporation organized to complement and coordinate local economic development efforts must comply with the disclosure requirements of the Public Records Act, Tenn. Code Ann. §§ 10-7-501, et seq., and the Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, et seq. (collectively, the “Acts”). Plaintiffs seek a declaration that the Oversight Committee, a non-profit corporation whose purpose is to “promot[e] economic development and alleviat[e] unemployment in Jefferson County, Tennessee,” (**Ex. 29W**), must open its private records and meetings to public inspection despite its status as a private business entity.

The Oversight Committee respectfully requests that this Court grant its Application for Permission to Appeal because: (1) private, non-profit corporations play an essential role in local efforts to recruit employers and other economic development to low-growth, high-unemployment areas; (2) the supreme courts of several other states have recognized the importance of private, non-profit corporations to local economic development efforts by holding that they are not

subject to public disclosure requirements; (3) the Court of Appeals' decision to the contrary conflicts with precedents from both this Court and the Court of Appeals; and (4) the public will benefit from this Court's clarification of the scope of the Public Records Act and the Open Meetings Act.

QUESTIONS PRESENTED

The Oversight Committee respectfully requests that the Court grant its

Application for Permission to Appeal on the following issues:

- 1) Whether the Oversight Committee qualifies as a “functional equivalent of a governmental agency” for purposes of Tennessee’s Public Records Act as interpreted by this Court in *Memphis Publishing Company v. Cherokee Children & Family Services*.
- 2) Whether the Oversight Committee is a “public body” for purposes of Tennessee’s Open Meetings Act.

STATEMENT OF THE CASE

Plaintiffs – a group of citizens, residents, and property owners of Jefferson County – sued the Jefferson County Economic Development Oversight Committee and others under the Public Records Act and the Open Meetings Act in the Chancery Court of Jefferson County on October 24, 2013.¹ (R. I at 1). The Plaintiffs’ complaint sought a declaration that the Oversight Committee is governed by the Acts and an injunction to prevent future violations of the Acts. (R. I at 19). The complaint did not seek disclosure of any specific documents or records. (R. I at 19).

On December 7, 2015, the trial court entered an order granting partial summary judgment to the Oversight Committee. (R. IV at 566-67). The trial court held the Oversight Committee was not governed by the portion of the Open Meetings Act that applies to boards of directors of non-profit corporations established for the benefit of local governments and could only be subject to the Act if it qualified as a “public body” under Tenn. Code Ann. § 8-44-102(b)(1)(A). (R. IV at 578, 581). The trial court also accepted Plaintiffs’ concession that the Oversight Committee is not a “government agency” as that term is defined in the Public Records Act, holding that the Oversight Committee could only be governed by the

¹ The trial court dismissed several parties originally named in the complaint for various reasons. Plaintiffs Oliver and Jean Wood were dismissed for lack of standing under the Acts because they were not citizens of Tennessee. (R. IV at 570). The trial court dismissed claims against defendants Jefferson County Chamber of Commerce, Inc., and several county and municipal officials for failure to state a claim. (R. IV at 576-78). The dismissal of these claims was not appealed. The Court of Appeals decision was captioned *Wood et al. v. Jefferson County Economic Development Oversight Committee, Inc.* (Ex. A at 1). The caption on this Application differs from the Court of Appeals’ caption to reflect the dismissal of Oliver and Jean Wood.

Public Records Act under the doctrine of “functional equivalence” established by this Court in *Memphis Publishing Company v. Cherokee Children & Family Services*, 87 S.W.3d 67, 79 (Tenn. 2002). (R. IV at 585). The trial court’s order left two issues for trial: (1) whether the Oversight Committee was a “functional equivalent of a government agency” for purposes of the Public Records Act, and (2) whether the Oversight Committee was a “public body” for purposes Open Meetings Act. (R. IV at 567).

Between May 24 and May 25, 2016, the trial court held a bench trial on those issues. On July 8, 2011, the trial court dismissed the case, holding the Oversight Committee was not governed by either Act. (R. V at 659). The trial court held that the Oversight Committee was not a functional equivalent of a government agency under the Public Records Act. (R. V at 659). In so holding, the trial court emphasized “the role of the private sector in spurring economic growth and development” and the fact that the Oversight Committee has “not been granted authority by the government of Jefferson County to set public policy or act on the County’s behalf.” (R. V at 659). The trial court also held that the Oversight Committee is not a “public body” governed by the Open Meetings Act. (R. V at 655). As support for that holding, the trial court reasoned that the Oversight Committee’s origin and authority could not be fairly traced to the local governments in Jefferson County because they had merely “requested” the Chamber of Commerce form an entity to coordinate economic development efforts. (R. V at 655). Further, the Court noted that the Oversight Committee lacked “authority to make decision[s] or

recommendations on policy or administration affecting the conduct of the business of . . . the governmental sector.” (R. V at 655).

Plaintiffs filed a notice of appeal to the Tennessee Court of Appeals on July 14, 2016. (R. V at 661). The Court of Appeals reversed the judgment of the trial court in an opinion dated September 16, 2017, concluding that the Oversight Committee was governed by both the Public Records Act and the Open Meetings Act. (Ex. A at 19, 21-22). The Court of Appeals based its ruling on a broad construction of the Acts. The Court found that the Oversight Committee is subject to the Public Records Act because it performs a governmental function, receives substantial taxpaying funding, is subject to local government oversight, and is similar to statutorily created joint economic and community development boards. The Court held that the Oversight Committee’s meetings are subject to the Open Meetings Act because the Oversight Committee’s “origin and authority may be traced to county and city legislative action.” (Ex. A at 21). No petition for rehearing was filed.

The Oversight Committee seeks this Court’s review of the Court of Appeals’ decision pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure. This Application for Permission to Appeal is timely filed as it was submitted within sixty days after the Court of Appeals’ entry of judgment on September 26, 2017. (Ex. A at 1).

STATEMENT OF THE FACTS

Before 2008, Jefferson County's economic prospects were bleak. For thirty years, the County had relied on "expansion as a bedroom and retiree community," instead of coordinated industrial and commercial recruitment, as the primary driver for the region's economic growth. (Ex. 63 at 4). That course of action led to a number of economic problems that have been described collectively as a "perfect storm." (Ex. 63 at 12). The County's focus on residential expansion meant that the County had almost no net new job growth between 2000 and 2005. (Ex. 63 at 12). Although the County's net population of working age residents grew by an estimated 700 individuals annually between 2000 and 2005, the County only produced enough net new jobs to employ an average of 13 of those individuals each year. (Ex. 63 at 7) (citing U.S. Dep't of Commerce, Bureau of Econ. Analysis, Apr. 2007 release). The focus on residential growth also meant that the County's tax base relied heavily on revenue from residential and farm property since business and sales tax revenue were comparatively low. (Ex. 63 at 5-6, 12). As a result, residential property owners were forced to shoulder "huge" tax rate increases to pay for budget deficits, bond-financed infrastructure and school spending, and other obligations. (Ex. 63 at 3, 12-13).

Recognizing the "impending calamity" of the County's economic situation and the significant need for economic development planning, the Jefferson County Chamber of Commerce, Inc. ("Chamber of Commerce"), a private non-profit corporation, led a community-wide effort to address economic development across Jefferson County. (Tr. II at 265; Ex. 63 at 12). First, the Chamber formed an 18-

person Focus Group tasked with determining “how to pursue the right future for Jefferson County.” (Ex. 63 at 30). The Chamber’s Focus Group unanimously decided to develop and implement a Strategic Action Plan that would synthesize and lay out a strategy for accomplishing the community’s economic development goals. (Ex. 63 at 30).

The process of drafting the Strategic Action Plan was referred to as “Jefferson County: Building a Better Future.” (Ex. 63 at 30). The Chamber of Commerce selected a “diverse and community-based” 32-person Steering Committee to oversee the Building a Better Future initiative. (Tr. II at 194; Ex. 63 at 30). Funding for the initiative was provided by 120 individuals known as Founding Partners. (Ex. 63 at 30, 33). While the Building a Better Future initiative sought the support of local governments, it was and remains a grassroots, community-driven effort led by the Chamber of Commerce. The initiative was neither conceived of nor the result of action by any governmental entity. (See Ex. 63 at 30).

During the latter half of 2007, the economic development consultant engaged by the Chamber’s Focus Group coordinated several community meetings to determine, summarize, and prioritize Jefferson County residents’ goals for economic development. (Ex. 63 at 30). The Steering Committee distilled and organized the issues raised in the community meetings into a draft Strategic Action Plan. (Ex. 63 at 30). The Steering Committee distributed the draft Strategic Action Plan broadly, sought public comments on the draft Plan, and formally presented the draft Plan at meetings attended by nearly 2,000 Jefferson County residents. (Ex. 63 at 30). After

considering all of the public feedback on the draft Plan, the Steering Committee approved the final Strategic Action Plan on December 6, 2007. (Ex. 63 at 30).

The Economic/Business Development portion of the final Plan called for a new approach to economic development efforts across the County. Instead of relying on commuter residents and retirees for population and economic growth, the Plan called for “an aggressive economic development and marketing program” that would result in “a balanced economy, increased local employment, [a] diversified local tax base, and a better quality of life.” (Ex. 63 at 18). Recognizing that the Plan’s success would require substantial support from the community, the Steering Committee sought support and endorsements from “[p]rivate and public sector organizations of all kinds.” (Ex. 63 at 30).

After the Plan’s publication, the Steering Committee originally selected by the Chamber of Commerce remained responsible for overseeing the execution and implementation of the actions and strategies identified in the Plan. (Ex. 63 at 30-31). To that end, the Chamber of Commerce committed to provide the Steering Committee with all necessary support in terms of “staff, management support, communication and coordination” for at least five years following the Plan’s publication. (Ex. 63 at 31).

In approximately 2009 – more than a year into the Plan’s implementation – the Steering Committee appointed a group of eight people to manage the implementation of the Plan’s Economic/Business Development goals and strategies. (Tr. II at 236-37; Ex. 77 at 27-30, 65). That group began meeting in 2009 and soon

determined that it would be better able to promote economic development efforts across Jefferson County if it “formaliz[ed] its legal structure by incorporating as a nonprofit corporation.” (Tr. I at 64-65).

Consistent with the Plan’s request for endorsements from “[p]rivate and public sector organizations of all kinds,” (Ex. 63 at 30), the Jefferson County Commission, the Jefferson City Council, and the Dandridge Board of Mayor and Aldermen all passed non-binding resolutions requesting the Chamber of Commerce to create a private economic development committee to “promote economic development within the County and to oversee the utilization of public and private resources to implement the Strategic Plan.” (R. V at 651; Exs. 67, 69, 70). These non-binding resolutions were primarily intended to serve as “supporting documentation to accompany the [Oversight Committee’s] application for 501(c)(3) status.” (Ex. 68 at 179). The resolutions did not delegate any power to the Oversight Committee to set public policy or act on behalf of any government entity. (R. V at 652; Exs. 67, 69, 70).

To ensure that the Economic/Business Development group could more effectively implement the Plan’s economic development strategies and goals, the Chamber of Commerce filed a charter creating the Jefferson County Economic Oversight Committee, Inc. with the Tennessee Secretary of State on July 26, 2010.²

² The longstanding and close relationship between the Oversight Committee and the Chamber of Commerce is confirmed by the Services Agreement under which the Chamber provides the Oversight Committee with “staff and support, as needed.” (Ex. 29W at 16; Tr. I at 102). Pursuant to the Services Agreement, the President of the Chamber of Commerce provides oversight, prepares budgets, attends meetings, and gives reports on the Oversight Committee’s behalf. (Tr. I at 31). Moreover, the Chamber employs two individuals whose full-time jobs are to serve the Oversight Committee’s needs; the Oversight Committee pays the salaries of those individuals by means of its payments to the Chamber under the Services Agreement. (Tr. I at 102-03).

(Tr. I at 54; Ex. 29V at 1). The charter provides that the Oversight Committee's primary purposes are to "promot[e] economic development and alleviat[e] unemployment in Jefferson County, Tennessee." (Tr. I at 52-53; Ex. 29V at 1). As evidenced in its application for 501(c)(3) status, the Oversight Committee works to achieve those ends by coordinating business recruitment efforts, supporting existing local businesses through counseling and technical assistance, making efforts to improve the County's retail sector, working to bolster the County's sales tax base, and promoting Jefferson County as a tourist destination. (R. V at 652; Ex. 29W).

The Oversight Committee's efforts to implement the Strategic Action Plan have been effective. While the County produced only approximately 65 net new jobs between 2000 and 2005, the Oversight Committee's efforts resulted in the creation of at least 575 jobs between 2009 and 2012. (Ex. 65 at 4). The following examples are illustrative of the Oversight Committee's impact on the economy of Jefferson County: In 2009, a furniture manufacturer relocated its operations to Jefferson County, investing \$8 million in the community and creating 150 jobs. (Ex. 65 at 4). In 2010, a book company acquired a vacant industrial facility in Jefferson City, investing \$6 million in the community and creating at least 325 new jobs. (Ex. 65 at 4). In 2011, a corporation purchased a large building in Jefferson City, investing \$1.7 million in the community and creating nearly 100 new full-time jobs. (Ex. 65 at 4).

Pursuant to its bylaws, the Oversight Committee is governed by a Board of eight directors. (Ex. 29W at 3). Four of the Board's directors are private citizens

appointed to the Board by virtue of their financial support of the Oversight Committee's economic development efforts; the remaining four directors sit *ex officio* by virtue of their positions in local governments across the County.³ (Tr. III at 313, 317-18). This even split between directors from the private and public sectors reflects the Strategic Action Plan's goal for economic development efforts across Jefferson County to be an equal partnership between business and government. (Tr. I at 124; Ex. 63 at 26). To that end, the Oversight Committee has not adopted a measure to break a tie vote, ensuring some level of both public and private support for all of its activities.⁴ (Tr. I at 91-92, 124-25). None of the local governments in Jefferson County has power to control the Oversight Committee's operations. (R. V at 652; Exs. 67, 69, 70).

The Oversight Committee funds a substantial portion of its economic development efforts – approximately 32% to 40% – with monetary donations from private citizens and businesses. (Tr. I at 75-80, 127; Ex. 29Y). The remainder of the Oversight Committee's annual revenue – approximately 60% to 68% – comes from support from local governments throughout Jefferson County. (Tr. I at 75-78; Ex. 29Y). Between 2012 and 2015, the Oversight Committee received an average of \$164,807 in private donations each year. (Tr. I at 75-76; Ex. 29Y). Given that level

³ Specifically, the *ex officio* board members sit by virtue of their roles as Chair of the Jefferson County Commission, Finance Director of Jefferson County, Mayor of Jefferson City, and Mayor of Dandridge. (Tr. III at 313).

⁴ The *ex officio* Board members could theoretically block Oversight Committee action, (Ex. A at 9), but the testimony at trial indicated that the Board's votes have always been unanimous. (Tr. III at 313-14). Moreover, the likelihood of a public-private split remains unlikely because the *ex officio* Board members represent three independent local governments, each with different constituencies and interests. (Tr. III at 313).

of private support, the Oversight Committee could have funded its economic development efforts across Jefferson County using only private funds.⁵ (Ex. 75 at 2).

This litigation arose out of controversy surrounding the proposed development of a commercial and industrial park near the City of Dandridge. Throughout the litigation, the proposal has been referred to as the “Megasite project.” (R. V at 653). As part of its efforts to promote economic development and to address the problem of unemployment in Jefferson County, the Oversight Committee commissioned an Economic Impact Analysis of the proposed Megasite project. (R. V at 653; Ex. 4). To assess the feasibility of acquiring the land needed for the Megasite project, the Oversight Committee independently approached certain landowners to ask about their willingness to sell their land. (R. V at 653; Ex. 44). The Oversight Committee also undertook, at its own expense, several other preparatory tasks in order to facilitate the County Commission’s decision-making process regarding the proposed Megasite project.⁶

After completing its initial work on the Megasite project, the Oversight Committee disclosed its work to local government officials and the general public. (Ex. 77 at 123-24). On February 11, 2013, the Jefferson County Commission allocated funds for the initial certification of the Megasite project after reviewing the Oversight Committee’s work and hearing public comment on the issue. (Ex. 71

⁵ The Oversight Committee’s 2014 federal tax return shows that the Oversight Committee spent \$185,975 on business recruitment and promoting existing businesses in 2014. (Ex. 75 at 2). The Oversight Committee received \$178,825 in private donations during its fiscal year ending June 30, 2014. (Tr. I at 75; Ex. 29Y). The Committee, however, could not also have continued to fund its tourism promotion efforts in 2014 without public funding, as those expenses totaled another \$242,675. (Ex. 75 at 2).

⁶ Specifically, the Oversight Committee identified a potential site for the project, estimated the expenses associated with certifying the site, and identified companies that could provide various services related to certifying the site. (Tr. II, p. 244-46; Ex. 77 at 161-64).

at 270, 272). During the time for public comment on the proposed funding, the Oversight Committee's representative recommended that the County Commission approve initial funding because of the economic and employment benefits the Megasite would bring to the County. (Tr. I at 58; Ex. 71 at 270). Other public comments urged the County Commission not to approve funding because of concerns about the project's viability. (Ex. 71 at 270). During two meetings following its initial decision to allocate funding to the Megasite project, the County Commission heard additional concerns from sixteen Jefferson County residents about the Megasite project. (Ex. 54). Underscoring its independent authority to approve or deny support for proposed economic development projects, the Commission voted to rescind funding for the Megasite project on April 15, 2013. (Ex. 54).

The Oversight Committee's promotion of economic development efforts across Jefferson County and its execution of the Strategic Action Plan have helped to dramatically improve the County's economic prospects. If businesses and commercial developments continue to locate their operations in Jefferson County, unemployment and out-commuting rates across the County will continue to decrease. Similarly, if the business share of the tax base increases, the citizens of Jefferson County will be relieved of the burden of higher residential tax rates that have been necessary to cover governmental expenses. In short, the Oversight Committee has been and can continue to be an essential element in avoiding an "impending calamity" in Jefferson County and ensuring that residents of Jefferson

County enjoy the benefits of “sustainable economic development with a balanced economy.” (Ex. 63 at 12; Ex. 65 at 2).

STANDARD OF REVIEW

Findings of fact after a bench trial are reviewed *de novo* on the record with a presumption of correctness. *See Cross v. City of Memphis*, 20 S.W.3d 642, 644-45 (Tenn. 2000) (citing Tenn. R. App. P. 13(d)). As the Court of Appeals noted below, the facts of this case are generally not in dispute. (**Ex. A at 6**). This Court's interpretation and application of the Public Records Act and the Open Meetings Act involve questions of law, which it should review *de novo* with no presumption of correctness. *Memphis Publ'g Co. v. Cherokee Children & Family Servs.*, 87 S.W.3d 67, 74 (Tenn. 2002).

STATEMENT OF REASONS SUPPORTING SUPREME COURT REVIEW

The disclosure requirements in Tennessee's Open Records and Public Meetings Acts play an important role in promoting the public's involvement and understanding of government. However, imposing these disclosure requirements on a private entity intrudes on the entity's rights of privacy, speech, and association and its right to petition government; it also chills the entity's ability to fulfill its corporate mission. Accordingly, courts should carefully and clearly define the parameters of doctrines that treat a private entity as a public body. The Court of Appeals ruling below is neither careful nor clear. It undermines the effectiveness of the private sector in promoting economic development; it does not follow existing precedent; and it fails to provide clear guidance on what private action is and is not covered by its standards. The Court should grant this application for permission to appeal and reverse the opinion below.

I. Supreme Court Review Is Necessary Because the Court of Appeals' Decision Deprives Tennessee's Rural Cities and Counties of a Highly Effective Tool to Address the Problems of Slow Economic Growth and Unemployment.

A. Private, Non-Profit Economic Development Corporations are an Effective and Widely Used Tool to Promote Local Economic Development.

Privately organized, non-profit economic development corporations operating alongside (but separate from) local governments are effective at reducing unemployment and recruiting employers to areas with sluggish economic growth. *See* Stephen Moret et al., *Effective Chambers of Commerce: A Key to Regional Economic Prosperity*, in *Retooling for Growth: Building a 21st Century Economy in America's Older Industrial Areas* 119, 124 (Richard M. McGahey & Jennifer S. Vey,

eds., 2008) [hereinafter, Moret et al., *Effective Chambers of Commerce*].⁷ Because of their advantages, these private organizations can be found across the country. Randall W. Eberts & George A. Erickcek, *The Role of Partnerships in Economic Development and Labor Markets in the United States* 29-31 (Upjohn Working Paper No. 02-75, 2002)⁸ (attached as **Exhibit B**).

Private, non-profit organizations like the Jefferson County Economic Development Oversight Committee are generally more effective at spurring economic growth in low-growth areas than governmental agencies because the corporate form provides prospective investors with the confidentiality they require during preliminary talks. See Moret et al., *Effective Chambers of Commerce*, at 122. Confidentiality is especially important during initial discussions with firms seeking locations for large-scale, community-transforming commercial and industrial developments because public disclosure of such plans can give competitors a valuable head-start on responding. (Tr. II at 182; Tr. III at 280-81).

⁷ This article can be accessed online at: <https://books.google.com/books?id=XEboe6dCrm0C&lpg=PA119&ots=RV3shPRZp1&dq=Effective%20Chambers%20of%20Commerce%3A%20A%20Key%20to%20Regional%20Economic%20Prosperity&pg=PA119#v=onepage&q=Effective%20Chambers%20of%20Commerce:%20A%20Key%20to%20Regional%20Economic%20Prosperity&f=false>

⁸ The W.E. Upjohn Institute for Employment Research is a non-profit, non-partisan research organization that investigates the causes and effects of unemployment. This report describes the advantages of pursuing economic development through private organizations on page 30 as follows:

Private organizations surveyed included the Civic Committee Inner-City Business Development Initiative in Chicago, the Right Place Program of Grand Rapids, and WIRE-Net in Cleveland. These organizations have strong business support and involvement in pursuing economic development efforts. They try to recruit new businesses to locate in their region and to retain existing businesses. Funding for these efforts come from a variety of sources, including local businesses, foundations, and federal, state, and local governments. As private organizations, they have greater latitude to court businesses than a government agency might have, because they are not subject to open-meeting requirements (and thus can meet discreetly with potential clients) and because they are not subject to public restrictions on the use of public monies. However, because their funding is voluntary and not mandated by government action, they are expected to show significant results or risk losing their franchise.

Moreover, public disclosure of preliminary discussions about economic development projects can hurt investors' ability to negotiate efficiently with relevant stakeholders. (Tr. III at 303). As a result, investors are less likely to locate projects in jurisdictions that are unable to protect the confidentiality of the investors' preliminary talks. (Tr. III at 280-81, 303).

Private, non-profit entities cannot effectively promote economic development if they are subject to disclosure requirements such as the Public Records Act and the Open Meetings Act. Public disclosure would destroy the confidentiality of preliminary discussions with potential community investors, thereby seriously if not fatally impairing the private entity's ability to recruit new development. Thus, a holding that the Oversight Committee is governed by the Acts would render it unable to achieve its primary charitable purpose — to promote economic development and reduce unemployment throughout Jefferson County.

Protecting the privacy interests of non-profit economic development committees does not mean that information relevant to public discussions would remain confidential. To the contrary, all relevant facts would be publicly disclosed whenever a proposed transaction required government action or participation. All materials provided to local governments, including any recommendations from the economic development corporation, would be available for public inspection pursuant to the Public Records Act. Similarly, local government meetings to decide whether to approve or deny a potential deal would be open to the public under the Open Meetings Act. In short, respecting the privacy rights of non-profit economic

development corporations will ensure that communities seeking to recruit large-scale economic development projects can offer the confidentiality required during preliminary talks without impacting the public's access to records and meetings relevant to any governmental action.

B. Other State Supreme Courts Have Recognized the Importance of Addressing the Applicability of Public Disclosure Laws to Private, Non-Profit Economic Development Corporations.

Recognizing the importance of private, non-profit corporations to local efforts to promote economic development, other state supreme courts have held that public disclosure laws do not apply to entities organized and operated like the Oversight Committee. *E.g., Frederick v. City of Falls City*, 857 N.W.2d 569, 579 (Neb. 2015); *Dow v. Caribou Chamber of Commerce & Indus.*, 884 A.2d 667, 672 (Maine 2005).

In *Frederick v. City of Falls City*, the Nebraska Supreme Court held that Nebraska's public records law did not apply to EDGE, a non-profit economic development corporation similar to the Oversight Committee in terms of its organization and operations. 857 N.W.2d at 579. Like the Oversight Committee, EDGE was organized by private individuals unconnected with government and existed for the purpose of "encouraging economic development and growth and improving business conditions" in the rural city of Falls City and the surrounding area. *Id.* at 571-72. Also like the Oversight Committee, EDGE received approximately 63% of its revenue from public sources. *Id.* at 577-78. While EDGE's 21-member board of directors only included three public officials, EDGE maintained

a formal relationship with Falls City by providing economic development services pursuant to a services agreement with the city. *Id.* at 572.

In holding that EDGE was not governed by Nebraska's public records law, the court first distinguished the government's interest in promotion of economic development from "essential governmental functions" such as building and maintaining streets and highways and providing for public health and safety, noting that "private entities are free to engage in economic development activities without any involvement of public bodies." *Id.* at 577-79. The court also held that EDGE's receipt of 63% of its funding from public sources alone was not sufficient to render it subject to the public records statute because such a rule would mean that any private organization that received grant money from a governmental entity could be forced to comply with the public records law. *Id.* The court finally held that EDGE was not subject to the public disclosure statute because city employees did not constitute a governing majority on EDGE's board of directors, because EDGE was not created by legislative act, and because EDGE's employees were not Falls City employees, its offices were not located in government buildings, and its financial and other records were kept separately from those of Falls City.⁹ *Id.*

The Supreme Judicial Court of Maine similarly declared that public disclosure laws did not apply to a non-profit economic development corporation called the Caribou Chamber of Commerce and Industry. *Dow*, 884 A.2d at 672. Much like the Oversight Committee, the Caribou Chamber was a private, non-profit

⁹ Like EDGE, the Oversight Committee's employees are not employed by any of the local governments, its offices are not located in government buildings, and its financial and other records are kept separately from those of the local governments. (Tr. I at 73-76, 102-04; Exs. 29Y, 76).

corporation created “to promote local business development, job creation and job retention, and tourism, and to increase the City's tax base.” *Id.* at 668. The Caribou Chamber received approximately 60% of its revenue from government allocations. *Id.* at 668-69. The *Dow* court, like the *Frederick* court, held that the fact that a private corporation “performs services that also benefit [a government entity] . . . should not, by itself, render that corporation a public entity.” *Id.* at 671. Similarly, the *Dow* court held that an entity’s receipt of substantial governmental funding is insufficient to render the entity a public agency if the funding is allocated annually and on equal footing with all other requests. *Id.*; (Tr. II at 154). The *Dow* court finally held that the government did not control or create the Caribou Chamber because the two board members serving by virtue of their public office lacked voting power to control the Board’s decisions and because the Caribou Chamber was incorporated as the result of a merger of two private, non-profit corporations. *Id.* at 671-72.

This Court should follow the course laid out by the high courts of Nebraska and Maine by recognizing that “private entities have their own distinct interests in economic development” and that the mere fact that a private entity “performs services that also benefit [a government entity] . . . should not, by itself, render” the private entity subject to public disclosure laws. *Frederick*, 857 N.W.2d at 579; *Dow*, 884 A.2d at 671. This Court should grant this Application for Permission to Appeal to ensure that communities across Tennessee are able to harness the demonstrated

effectiveness of private non-profit economic development corporations to address the widespread problems of slow economic growth and unemployment.

II. Supreme Court Review Is Needed to Provide the Lower Courts with Clarity Regarding the Scope of the Public Records Act and Open Meetings Act.

In addition to the importance of facilitating economic development, Supreme Court review of this case is needed to clarify the standards used to determine whether a private, non-profit corporation is governed by the Public Records Act and the Open Meetings Act. The Court of Appeals' holding that the Oversight Committee is the functional equivalent of a governmental agency governed by the Public Records Act conflicts with prior decisions of both this Court and the Court of Appeals. The Court of Appeals' holding that the Oversight Committee is a "public body" governed by the Open Meetings Act stretches this Court's decision in *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976), far beyond its natural boundaries. This Court should grant this Application for Permission to Appeal to clarify the applicability of the Public Records Act and the Open Meetings Act to private, non-profit entities organized to coordinate local economic development efforts.

A. The Court of Appeals' Holding that the Oversight Committee is a "Functional Equivalent of a Governmental Agency" Conflicts with Settled Law Articulated by Both This Court and the Court of Appeals.

Private organizations must comply with the Public Records Act if they qualify as the "functional equivalent of a governmental agency." *Memphis Publishing Company v. Cherokee Children & Family Services, Inc.*, 87 S.W.3d 67, 79 (Tenn. 2002). Whether a private entity is a "functional equivalent" is based on the totality of the evidence, but courts focus on four factors when making the determination. *Id.*

First, courts ask whether the organization is performing a governmental or public function; this is the “cornerstone” of the analysis. *Id.* Second, courts consider the level of government funding received by the organization. *Id.* Third, courts assess the level of public control over the organization. *Id.* Finally, courts look to circumstances surrounding the creation of the organization. *Id.*

This Court has repeatedly emphasized that “[a] private business does not open its records to public scrutiny merely by doing business with, or performing services on behalf of, state or municipal government.” *Id.*; see also *Gautreaux v. Internal Med. Educ. Found.*, 336 S.W.3d 526, 529 (Tenn. 2011). That precaution is well-founded, since a holding that an entity is governed by the Public Records Act can intrude on the entity’s right of privacy and chill its ability to fulfill its corporate mission.

1. Governmental Function

The Court of Appeals’ ruling that the Oversight Committee is the functional equivalent of a government agency relies significantly on resolutions adopted in 2009 and 2010 by three local governments in Jefferson County. In fact, the Court of Appeals’ opinion begins by quoting the County Commission’s resolution in full. The largely identical resolutions each state that promoting economic development is “a primary governmental purpose” and ask the Jefferson County Chamber of Commerce to create the Oversight Committee.

Read in isolation, the resolutions leave the impression that the Oversight Committee was a governmental project conceived by local governments that delegated the project to the Chamber for implementation. The full record, however,

tells the opposite story. The Oversight Committee was the Chamber of Commerce's project, and the local government resolutions were only a small part of an extensive, community-wide process led by the Chamber to address economic development in Jefferson County. With the Chamber as the organizing force, Jefferson County citizens and businesses participated in focus groups, steering committees, planning task forces, and community meetings over six months in 2007. (Tr. II at 194; Ex. 63 at 30). Those Chamber-led efforts resulted in the publication in December 2007 of a 34-page Strategic Action Plan entitled "Jefferson County: Building a Better Future." (Ex. 63 at 30). A key recommendation in the Plan was creating "an aggressive economic development and marketing program" that drew on private and public resources and "maintain[ed] active partnerships with all educational, regional, state and federal agencies that could assist Jefferson County in job creation."¹⁰ (Ex. 63 at 18). Eventually the Chamber-created Steering Committee responsible for overseeing the Plan's implementation appointed an informal group of eight individuals to oversee the implementation of the Plan's economic development goals. (Tr. II at 236; Ex. 77 at 27-30, 65). In 2009, that informal group sought to incorporate as the Oversight Committee to promote economic development initiatives more effectively across the County. (Tr. I at 64-65). Only at that point – and only for the limited purpose of providing "supporting documentation to accompany the [Oversight Committee's] application for 501(c)(3) status" – did the

¹⁰ The Strategic Action Plan defines "Jefferson County" to encompass both private and public sectors. (Ex. 63 at 18 n.12) ("Everywhere Jefferson County is mentioned we mean County & Cities, all government entities and all not-for-profit and for profit organizations.").

local governments pass the resolutions “request[ing]” the Chamber of Commerce to facilitate the creation of the Oversight Committee. (Exs. 67, 68 at 179, 69, 70).

By concluding that the product of this citizen-driven process is the functional equivalent of a government agency, the Court of Appeals’ decision greatly expands the scope of activity this Court has found to amount to performance a governmental function. It also conflicts with this Court’s recent emphasis on delegation as the relevant principle when determining if a private entity is performing a governmental function. As the trial court noted, the analysis of whether a private entity is performing a governmental or public function focuses primarily upon whether a government has an obligation to perform the function at issue or whether a government has delegated its responsibility for performing one of its functions to a private entity. (R. V at 659).

In *Gautreaux*, this Court emphasized delegation as central to the public function analysis when a private entity performs activities related to a non-mandatory governmental function.¹¹ 336 S.W.3d at 529 (“Our purpose in concluding that private entities could be subject to the Public Records Act was to prevent government agencies from escaping the requirements of the Act by delegating their duties to private entities.”). Specifically, this Court held that a non-profit corporation’s assistance with administrative functions related to the University of Tennessee College of Medicine’s internal medicine residency program

¹¹ Previous Court of Appeals precedents are consistent with this approach. See *City Press Commc’ns, LLC v. Tennessee Secondary Sch. Athletic Ass’n*, 447 S.W.3d 230, 237-38 (Tenn. Ct. App. 2014) (coordinating and regulating interscholastic athletic activities among public schools pursuant to a legislative delegation of authority from State Board of Education); *Allen v. Day*, 213 S.W.3d 244, 253 (Tenn. Ct. App. 2006) (managing operations of city-owned arena pursuant to a contractual delegation of authority).

did not amount to performance of the public function. *Id.* at 530. This Court focused its analysis on the fact that the College of Medicine did not “delegate the responsibility to manage or administer [its] teaching program” to the non-profit entity. *Id.* This Court also emphasized that the non-profit did not exercise any control over the College’s hiring decisions or the College’s performance of its teaching and training responsibilities. *Id.* In so holding, this Court refused to find that the non-profit entity was performing a public function simply because of language in the non-profit’s charter stating that the corporation’s purpose was “[t]o develop, support, and enhance the delivery of teaching, academic, clinical, and related services, by and for the Department of Medicine.” *Id.* Thus, under *Gautreaux*, the public-function analysis focuses on whether a governmental entity has actually delegated its authority to perform a public function to a private entity. Charter language indicating a private entity’s intent to coordinate or assist with a governmental entity’s efforts to perform a public function alone is insufficient to bring the private entity within the scope of the Public Meetings Act.

Because private entities have interests in economic development independent from the government, other state supreme courts have recognized the particular importance of delegation to the public function analysis when analyzing private entities organized to promote economic development. In *Dow*, the Supreme Judicial Court of Maine refused to find that an entity’s promotion of local economic development initiatives amounted to performance of a public function simply because those services were aligned with the government’s interest in economic

development.¹² *Dow*, 884 A.2d at 671. In *Frederick*, the Nebraska Supreme Court noted the importance of affirmative delegation in the context of economic development corporations because “a city does not have a duty or responsibility to promote economic development.” *Frederick*, 857 N.W.2d at 577-79.

Despite this Court’s emphasis on delegation as a key element of the public-function analysis when a private entity performs services related to a non-mandatory governmental function, the Court of Appeals grounded its finding that the Oversight Committee performed a public function on two facts unrelated to delegation. First, the Court of Appeals noted that the non-binding resolutions passed in support of the Oversight Committee’s application for 501(c)(3) status declared promotion of economic development to be a “primary governmental purpose.” (Ex. A at 8). Second, the Court of Appeals noted that the Oversight Committee makes “binding decisions” about how to spend its resources, including the public grants it receives each year. (Ex. A at 11).

Neither of those facts supports a finding that a government entity delegated authority to the Committee to promote economic development on its behalf. While it is certainly true that economic development can be a public function, it is not *exclusively* a public function. As the trial court noted, the private sector plays a key role in “spurring economic growth and development.” (R. V at 659). Given the private sector’s role in promoting economic development, the Oversight Committee

¹² The trial court below recognized as much, noting “the role of the private sector in spurring economic growth and development.” (R. V at 569).

cannot be held to be performing a public function simply because its work contributes to local governments' efforts to promote economic development.

Similarly, the fact that the Oversight Committee receives and spends grant funds from local governments is insufficient to support a finding that the Oversight Committee is acting pursuant to delegated governmental authority. The Oversight Committee's decisions about spending its grant funds are no different than spending decisions made by any other non-profit entity that receives grant funds. To that end, the Court of Appeals' holding would subject the records of a wide variety of non-profit corporations to scrutiny under the Public Records Act. Such a result would directly conflict this Court's repeated caution that private entities do not open their records to public scrutiny simply by doing business with governmental entities. *See Gautreaux*, 336 S.W.3d at 529.

The Court of Appeals failed to give due consideration to the fact that the Oversight Committee has never been delegated any authority to act on behalf of any government entity. Accordingly, the Court of Appeals' holding that the Oversight Committee's promotion of economic development efforts amounted to performance of a public function conflicts with settled law in Tennessee and should be reversed.

2. Public Funding

The Court of Appeals found that the Oversight Committee's receipt of public funds from the local governments weighed in favor of finding functional equivalence. The opinion notes that the combined funding from the County and four cities between 2012 and 2015 averaged approximately \$279,000 annually and constituted between 60.1% to 67.6% of the Oversight Committee's budget. (Ex. A at

8-9, 11). The court asserted that “[g]enerally speaking, the expenditure of taxpayer revenues in these amounts can fairly be said to be a governmental function.” (Ex. A at 9).

The Court of Appeals offered no rationale or citations for this conclusion. Instead, it seems to have adopted a per se rule that receipt of governmental grants of this size converts a private entity into a governmental agency. Prior decisions of this Court and the Court of Appeals have not found receipt of government money at this level to be decisive, and the opinion, if left standing, would sweep many unsuspecting recipients of state grants within the scope of the Public Records Act.

This Court, along with the Court of Appeals, has previously held that the proper analysis on the public-funding factor asks what proportion of an entity’s annual revenue comes from public sources. *Friedmann v. Corrections Corp. of Am.*, 310 S.W.3d 366, 376 (Tenn. Ct. App. 2009); see *Gautreaux*, 336 S.W.3d at 528 (expressing public funding as a percentage of the entity’s total revenue). In this case, the record shows that the Oversight Committee received approximately 60% to 68% of its annual revenue from public sources during the relevant time period. (Tr. I at 75-76; Ex. 29W). But instead of basing its decision solely on the proportion of government funds, the Court of Appeals also appeared to give significant weight to the amount of government grants, noting that “over a quarter of a million dollars in public funds per year has been allocated” to the Oversight Committee. (Ex. A at 8-9). This Court’s review of that decision is necessary to ensure that Tennessee case law continues to emphasize the proportion, as opposed to the absolute value, of

public funding each year. Without this Court's intervention, the mere receipt of a large grant could weigh in favor of a finding of functional equivalence.

To the extent the Court of Appeals' decision is based on the proportion of the Oversight Committee's revenue derived from public sources, it still departs from the logic of this Court's and the Court of Appeals' previous decisions on the public-funding factor. In every case where this Court or the Court of Appeals has held that the public-funding factor weighs in favor of a finding of functional equivalence, the entity in question received all or substantially all of its revenue from public sources. *See Cherokee*, 87 S.W.3d at 79-80 (finding public-funding factor weighed in favor of functional equivalence when 99% of entity's operating budget came from governmental sources); *Allen*, 213 S.W.3d at 254 (holding government's payment of 100% of entity's operating expenses weighed in favor of functional equivalence); *City Press*, 447 S.W.3d at 236 (holding TSSAA's receipt of 100% of its revenue from indirect public funding weighed in favor of functional equivalence); *Friedmann*, 310 S.W.3d at 376 (holding public-funding factor weighed in favor of functional equivalence after reasoning that the percentage of CCA's revenue generated in Tennessee attributable to State and local governments was "likely . . . quite high").

Unlike the entities described above, the Oversight Committee receives between 60.6% and 67.6% of its revenue from public sources. (Tr. I at 75-76). While the entities described above would have been unable to continue their Tennessee operations without public funding, the Oversight Committee would have had an average annual budget of \$164,807 without public support. (Tr. I at 75-76). Those

funds would have been sufficient to permit the Oversight Committee to continue to promote economic development efforts across Jefferson County.¹³ Accordingly, the Court of Appeals' finding that the public-funding factor weighed in favor of functional equivalence failed to take into account the level of financial support the Oversight Committee receives from the private sector.

This Court should grant this Application for Permission to Appeal to ensure Tennessee courts uniformly consider the proportion, as opposed to the absolute value, of funding an entity receives from public sources when analyzing the public funding factor. Moreover, review is also needed to correct the Court of Appeals' failure to consider the fact that the Oversight Committee's receipt of substantial private financial support would have enabled it to continue accomplishing its charitable purposes without public support.

3. Governmental Control

In holding that governmental entities yield sufficient control over the Oversight Committee's actions to weigh in favor of a finding of functional equivalence, the Court of Appeals incorrectly based its holding on whether public officials have the ability to influence – as opposed to direct – the Oversight Committee's conduct. Specifically, the Court of Appeals relied on: (1) the ability of the four *ex officio* Board members to block a proposed action by voting together, (2) the requirement that the Jefferson County finance director countersign any check

¹³ The Oversight Committee's 2014 federal tax return shows that the Oversight Committee spent \$185,975 on business recruitment and promoting existing businesses in 2014. (Ex. 75 at 2). The Oversight Committee received \$178,825 in private donations during its fiscal year ending June 30, 2014. (Tr. I at 75; Ex. 29Y). The Committee, however, could not also have continued to fund its tourism promotion efforts in 2014 without public funding, as those expenses totaled another \$242,675. (Ex. 75 at 2).

issued on behalf of the Oversight Committee, and (3) the Oversight Committee's compliance with a request by the County Commission for a change to the Committee's organizational chart. (Ex. A at 9-10). That analysis conflicts with prior decisions of both this Court and the Court of Appeals.

The government-control analysis asks whether a government entity has authority to affirmatively direct the affairs of an otherwise private entity by means of governance or contractual rights; the government's ability to merely influence a private entity has not been held to be relevant. *See Cherokee*, 87 S.W.3d at 79-80 (finding sufficient control where contract required advanced state approval of costs and authorized audits of entity's activities and financials); *City Press*, 447 S.W.3d at 236. Governance rights held by public officials weigh in favor of functional equivalence when they permit public officials to dominate an entity's affairs without risk of being blocked by private citizen board members. *City Press*, 447 S.W.3d at 236-37. For instance, the Court of Appeals in *City Press* held that the public-control factor weighed in favor of functional equivalence when seventeen of the eighteen members of TSSAA's governing bodies were public employees, giving them the right to affirmatively direct the TSAA's activities without any risk of being vetoed by private citizen board members. *Id.*

Here, the trial court correctly noted that no single governmental entity has the ability to control the activities or policy of the Oversight Committee. (R. V at 652). Even though public officials make up half of the Oversight Committee's Board membership, those four officials represent three different local governments:

Jefferson County (two directors), Jefferson City (one director), and the City of Dandridge (one director). Acting alone, no government entity can force or block any action by the Oversight Committee. And while the *ex officio* Board members could prevent the Oversight Committee from taking some proposed action by voting together, the Board members from the private sector have the reciprocal ability to block proposed action pressed by the public officials.¹⁴ The record in this case can only support the conclusion that the *ex officio* members of the Oversight Committee's Board lacked ability to affirmatively direct the Oversight Committee's business. Accordingly, the Court of Appeals' conclusion that the government entities' governance rights in this case weighed in favor of functional equivalence conflicts with its previous holdings on the government-control factor.

4. Creation of the Oversight Committee

The Oversight Committee's full history as the product of the Chamber's Strategic Action Plan makes clear that the Oversight Committee was a private initiative, not a creation of government. The Court of Appeals, however, muddies the doctrinal waters by analogizing the Oversight Committee to statutorily-created joint economic and community development boards. This argument will introduce needless confusion into the application of this fourth functional-equivalence factor.

¹⁴ This same analysis applies to the Court of Appeals' reliance upon the administrative requirement of the County Finance Director's signature on any checks issued by the Oversight Committee. However, that argument is even weaker because there is no record evidence to suggest that the Finance Director had discretion to withhold his consent for expenditures duly authorized by the Oversight Committee; rather, his fiduciary obligations as an Oversight Committee Board member would require him to act in the best interest of the Oversight Committee. Moreover, the testimony at trial suggests the requirement was an accounting measure intended to ensure the integrity of the Oversight Committee's finances. (Tr. I at 139).

The Court of Appeals' opinion equivocates regarding whether the fourth functional-equivalence factor – whether the entity was “created by an act of the legislature or previously determined by law to be open to public access,” *Cherokee*, 87 S.W.3d at 79 – weighed in favor of a finding of functional equivalence. (Ex. A at 12, 14-15). The Court of Appeals first concluded it could not find that the local governments of Jefferson County “created” the Oversight Committee by means of their non-binding resolutions, since those resolutions merely requested the Chamber of Commerce to create the Oversight Committee. (Ex. A at 12). The Court of Appeals also noted that the Oversight Committee has not previously been determined by law to be open to public access. (Ex. A at 12).

The Court of Appeals should have stopped its analysis there. Instead, the Court of Appeals went on to suggest that the similarity of the Oversight Committee's purpose to that of a “joint economic and community development board” under Tenn. Code Ann. § 6-58-114 weighed in favor of functional equivalence. In light of a Tennessee Attorney General opinion that these statutory boards must comply with the Public Records Act, the Court of Appeals implied – without citation – that the fourth factor might actually weigh in favor of finding the Oversight Committee to be a functional equivalent. (Ex. A at 12-15). That analysis goes beyond the scope of the proper inquiry under the fourth factor, and this Court should clarify that a mere similarity of purpose between a private entity and a governmental entity is insufficient to warrant a finding of functional equivalence.

The Court of Appeals also suggested that the Oversight Committee's role in exploring the viability of the Megasite project before the County approved its initial funding weighed in favor of a finding of functional equivalence. (Ex. A 15-19). During the initial talks about the Megasite project, the Oversight Committee took several independent actions to determine the viability of the project. Specifically, it engaged a firm to conduct an economic impact analysis of the proposed Megasite; it hired a public relations firm to coordinate its public messaging on the Megasite; and it independently approached landowners in the proposed footprint for the Megasite about their willingness to sell their property. (Ex. A at 15-18). On the basis of these facts, the Court of Appeals concluded the Oversight Committee played a "significant role" in promoting the Megasite project and was accordingly a functional equivalent of a governmental agency. (Ex. A at 19).

The Court of Appeals' analysis mistakes effective issue advocacy for functional equivalence. There is no evidence that any of the local governments in Jefferson County ordered – or even requested – the Oversight Committee to perform the tasks discussed above. Nor does the record suggest that any local government was obliged to follow the Oversight Committee's recommendation of public funding for the Megasite project. Rather, the Oversight Committee's preliminary efforts were in furtherance of its charitable purpose of promoting economic development across Jefferson County. The fact that the Oversight Committee's efforts initially persuaded the County Commission to fund the Megasite project (funding the

Commission subsequently rescinded) is insufficient to justify a finding that the Oversight Committee is governed by the Public Records Act.

Because the Court of Appeals' analysis on each of the functional-equivalence factors conflicts with precedents from this Court and the Court of Appeals, this Court should grant this Application for Permission to Review to ensure uniformity of decision among Tennessee's functional-equivalence precedents.

B. The Court of Appeals' Holding that the Oversight Committee is a "Public Body" Under the Open Meetings Act Resulted from an Overly Expansive Reading of this Court's Definition of that Phrase in Dorrier.

Tennessee's Open Meetings Act requires meetings of "any governing body" to be "open to the public at all times, except as provided by the Constitution of Tennessee." Tenn. Code Ann. § 8-44-102(a). The Act defines the term "governing body" to include, among other groups, "[t]he members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." Tenn. Code Ann. § 8-44-102(b)(1)(A). The Act does not define the term "public body," but this Court has interpreted it to include:

any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.

Dorrier, 537 S.W.2d at 892. This definition has two elements, both of which must be satisfied for an entity to be classified as a "public body": (1) the entity's origin and authority must be "traced" to some governmental action, and (2) the entity's

members must have authority to make decisions or recommendations affecting governmental conduct. This Court has not revisited the scope or application of these elements since the *Dorrier* decision.

Faced with a lack of further guidance on this Court's definition of the term "public body," the Court of Appeals adopted a broad reading that would sweep many entities into the scope of the Open Meetings Act. This Court should grant this Application for Permission to Appeal to clarify the applicability of the term "public body" to private entities and to correct the Court of Appeals' overbroad construction of the phrase.

1. The Oversight Committee's "Origin and Authority" Cannot Be Reasonably "Traced" to a Legislative Act by Any Governmental Entity.

As the record shows, the Oversight Committee's existence is the direct result of the Chamber of Commerce's Building a Better Future initiative to study and address longstanding economic issues confronting Jefferson County. (Tr. II at 236-37). Even though the Oversight Committee's existence is directly attributable to the actions and leadership of the Chamber, the Court of Appeals held that the Oversight Committee's "origin and authority may be traced to county and city legislative action." (Ex. A at 21).

Without citing authority, the Court of Appeals held that the Oversight Committee's origin and authority could be traced to governmental action by virtue of the non-binding resolutions passed by the governments of Jefferson County, Jefferson City, and Dandridge requesting and approving of the Oversight Committee's creation. (Ex. A at 21). The Court of Appeals so reasoned despite

concluding under the Public Records Act that those resolutions were not by themselves sufficient to hold that the Oversight Committee had been created by the local governments. (Ex. A at 12). To reconcile these disparate holdings, the Court of Appeals must have interpreted this Court's use of the phrase "traced . . . to legislative action" in *Dorrier* as being met when a government agency issues a non-binding request to create a private entity, even though the entity is being organized by private citizens to meet a need previously identified by those citizens.

That reading simply cannot be correct. To hold that a non-binding statement of legislative support for an entity being organized to meet a demonstrated community need is sufficient to support a finding that the organization's "origin and authority may be traced to State, City, or County legislative action" strains reason.¹⁵ Under such a rule, private organizations that plan to make recommendations to government entities would be subject to the Open Meetings Act whenever a local legislative body endorsed the need for and requested creation of such an organization. The Court of Appeals' interpretation would create a counterproductive incentive for organizers of public-benefit corporations to avoid interaction with their local governments until after the entity had been created.

The better interpretation of the term "traced" in *Dorrier* would focus on whether a private entity was directly or indirectly created by the legislative act of

¹⁵ The *Dorrier* Court interpreted the term "public body" in the context of a facial challenge to the Open Meetings Act on void-for-vagueness grounds. 537 S.W.2d at 889-90. The Court in *Dorrier* was forced to interpret the term without the benefit of a specific challenge to a particular group's status as a "public body." *Id.* Given the "abstract" nature of the *Dorrier* Court's review, the Court of Appeals should not have adopted such a broad reading of this Court's interpretation of the term "public body." *Id.* at 890.

the State or a local government.¹⁶ Under that definition, the origin and authority of a private entity would be said to be “traced to State, City, or County legislative action” only if a legislative act directly created the private entity or instructed a third party to form the entity on the government’s behalf. A mere legislative request that an entity be created to address a social problem would not be enough.¹⁷ Such an interpretation would safeguard the public’s interest in attending meetings of bodies created at the government’s direction without infringing on the privacy interests of private corporations that enjoy support from local governments.

Accordingly, this Court should grant this Application for Permission to Appeal to clarify the circumstances under which an entity’s “origin and authority can be traced to State, City, or County legislative act.”

2. Making Recommendations to Government Officials During Time Designated for Public Comment Is Insufficient to Subject the Oversight Committee to the Requirements of the Open Meetings Act.

In order for the Open Meetings Act to apply, the Court of Appeals had to find that the Oversight Committee also satisfied the second element of the definition of “public body,” which requires that the Committee “has authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.” The Court of Appeals based its holding on a finding that the Oversight Committee’s representatives routinely make

¹⁶ This interpretation would square with the fourth factor of the functional-equivalence analysis under the Public Records Act. See *Cherokee*, 87 S.W.3d at 80.

¹⁷ While the Court of Appeals suggests that a legislative request amounts to a legislative demand because it is unlikely that the Chamber of Commerce would refuse to fulfill the request, (Ex. A at 21), that conclusion has no support in the record. There is no evidence that the Chamber of Commerce believed it had no option but to incorporate the Oversight Committee. The Court of Appeals’ conclusion to the contrary is against the weight of the evidence.

non-binding recommendations to the Jefferson County Commission during time designated for public comment.¹⁸ (Ex. A at 22). After recognizing that none of the Oversight Committee’s recommendations were binding, the Court of Appeals held that recommendations “do not have to be [binding] in order for the [Committee] to be a public body for purposes of the Sunshine Law.” (Ex. A at 22).

This result illustrates the danger posed by the Court of Appeals’ expansive interpretation of the *Dorrier* “public body” test to private organizations’ constitutional rights of privacy and petition. Under the Court of Appeals’ logic, the Open Meetings Act could apply to any non-profit that made any type of recommendation to any State, City, or County government if the non-profit also benefitted from legislative support prior to its creation. Such a rule would require private non-profit entities created to address any number of social problems – including fire departments, animal shelters, and homeless shelters – to open their private meetings to the public if they made recommendations to local governments and were created after a governmental declaration of the need for such organizations.

In addition to its undesirability as a matter of policy, the Court of Appeals’ ruling could have an improper chilling effect on the Oversight Committee’s First Amendment right to petition the government. *See* Maggie McKinley, *Lobbying and the Petition Clause*, 68 Stan. L. Rev. 1131, 1181 (2016) (noting that “legislative petitioning” is a “ripe area” for the Supreme Court to hone its recent interest in the

¹⁸ This Court need not reach this question if it agrees that the Oversight Committee’s origin and authority cannot be traced to legislative action by any of the relevant local governments because the definition of “public body” in *Dorrier* requires both elements to be satisfied for the Open Meetings Act to apply.

Petition Clause). Forcing a private organization to surrender its First Amendment freedom to associate privately as a consequence for exercising any constitutional rights to petition government raises serious constitutional concerns. In light of the possible constitutional problems with the Court of Appeals' holding, this Court should grant this Application for Permission to Appeal to adopt a narrower interpretation of the term "public body" as applied to private entities both to avoid extreme results and to neutralize potential constitutional concerns under the canon of constitutional avoidance.

III. Supreme Court Review Is Appropriate Because the Public Will Benefit From Clarification of the Applicability of the Open Records Act and the Open Meetings Act to Private, Non-Profit Economic Development Corporations.

Finally, this Court should grant this Application for Permission to Appeal because consideration of the questions presented for review would inure to the public's benefit. A decision from this Court that the Oversight Committee is not required to comply with the Public Records Act or the Open Meetings Act will benefit individuals living in low-growth, high-unemployment areas of Tennessee by ensuring that they are able to harness the demonstrated ability of private, non-profit corporations to drive economic development in areas that desperately need jobs and wage growth. A decision either way will provide greater certainty about the scope of the Public Records Act and the Open Meetings Act for the benefit of government entities, private entities, and the public at large. Because a definitive statement from this Court on the applicability of the Public Records Act and the

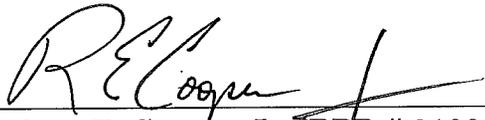
Open Meetings Act to organizations like the Oversight Committee will inure to the public's benefit, this Court should grant this Application for Permission to Appeal.

CONCLUSION

For these reasons, the Oversight Committee respectfully requests that this Court grant this Application for Permission to Appeal so that the parties can fully brief the issues discussed above and present oral argument to the Court.

Dated: November 27, 2017

Respectfully submitted,



Robert E. Cooper, Jr. (BPR # 010934)
Paige Waldrop Mills (BPR # 016218)
Christopher J. Climo (BPR # 035082)
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
Telephone: (615) 742-7768
Facsimile: (615) 742-2858

Attorney for Defendant-Applicant

CERTIFICATE OF SERVICE

I, Robert E. Cooper, Jr., do hereby certify that, pursuant to Tenn. R. App. P. 20, I have this date forwarded a true and exact copy of the foregoing Application to D. Scott Hurley, Esq. and Ryan N. Shamblin, Esq. at 205 Mohican Street, Knoxville, TN 37919 by U.S. Mail, postage pre-paid.

Dated: November 27, 2017


ROBERT E. COOPER, JR.

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 18, 2017 Session

**OLIVER WOOD ET AL. V. JEFFERSON COUNTY ECONOMIC
DEVELOPMENT OVERSIGHT COMMITTEE, INC.**

**Appeal from the Chancery Court for Jefferson County
No. 13-CV-212 Don R. Ash, Senior Judge¹**

No. E2016-01452-COA-R3-CV

In 2009 and 2010, the legislative bodies of Jefferson County, Jefferson City, and Dandridge enacted resolutions requesting that the Jefferson County Chamber of Commerce create a non-profit corporation to be called the Jefferson County Economic Development Oversight Committee (EDOC). Its purpose was to promote economic development in the county. In 2013, a group of citizens filed this action seeking a declaration that EDOC is subject to the provisions of the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503 (2012), and the Open Meetings Act, Tenn. Code Ann. § 8-44-101 *et seq.* (2016). After a bench trial, the court denied the plaintiffs' requested relief. They appealed. We find and hold that the undisputed facts establish that EDOC performs a governmental function, receives a substantial amount of taxpayer funding, and is significantly involved with and regulated by the governing city and county legislative bodies. In light of our duty to broadly construe and interpret the Public Records and Open Meetings Acts in favor of governmental transparency and accountability, we hold that the EDOC is subject to these acts. The judgment of the trial court is reversed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Reversed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and J. STEVEN STAFFORD, P.J., W.S., joined.

D. Scott Hurley and Ryan N. Shamblin, Knoxville, Tennessee, for appellants, John Gunn, Clarice Gunn, Jack Kenley, Charlotte Kenley, Steve Monroe, Carol Monroe, Charles Crosby, Steve Hammer, Bandi Hammer, Leroy Malone, Annette Loy, and Peggy Corbett.

¹ Sitting by interchange.

James L. Gass and Anna C. Penland, Sevierville, Tennessee, for appellee, Jefferson County Economic Development Oversight Committee, Inc.

Opinion

I.

On July 21, 2009, the Jefferson County Commission enacted “a resolution requesting and approving the creation of a non-profit corporation to be known as the Jefferson County Economic Development Oversight Committee, Inc.” The resolution provides, in pertinent part, as follows:

WHEREAS, through an extensive community planning process, Jefferson County, Tennessee (the “County”), along with other participants in the community, developed a strategic action plan (the “Strategic Plan”) to promote economic development in the County; and

WHEREAS, the balanced growth of the economy in the County will help stabilize the tax base in the County and promote job opportunities for the citizens of the County; and

WHEREAS, *a primary governmental purpose of the County is to promote economic development for the benefit of its citizens*; and

WHEREAS, the County desires that a non-profit corporation be formed in order to coordinate the implementation of the Strategic Plan; and

WHEREAS, the County intends to provide significant funding for such non-profit corporation;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County (the “Governing Body”), as follows:

Section 1. Formation of Corporation. The County hereby requests that the Jefferson County Chamber of Commerce

facilitate the creation of a non-profit corporation to be known as the Jefferson County Economic Development Oversight Committee, Inc. (the “Corporation”). The purpose of the Corporation shall be to promote economic development within the County and to oversee the utilization of public and private resources to implement the Strategic Plan.

Section 2. Representation on the Board of Directors. The Chairman of the County Commission, The County Mayor and the Finance Director of the County shall be directors of the Corporation with their service as such directors to coincide with the terms of office of such persons.

Section 3. Additional Authorizations. All additional acts and doings of the County Mayor and County Clerk of the County and any other representative or officer of the County which are in conformity with the purposes and intent of this Resolution shall be and the same hereby are in all respects, approved and confirmed.

(Italics added; underlining in original). On December 8, 2009, the Town of Dandridge’s Board of Mayor and Aldermen enacted a functionally identical resolution. On January 4, 2010, the Jefferson City Council followed suit, enacting its own, nearly identically-worded, resolution.

The EDOC was incorporated as a non-profit “public benefit corporation” on July 26, 2010. Its charter states that EDOC’s purpose is “promoting economic development and alleviating unemployment in Jefferson County, Tennessee and other charitable purposes within the meaning of §§ 501(c)(3) and 170(c)” of the Internal Revenue Code. EDOC’s application to the IRS for tax-exempt status under section 501(c)(3) states, in pertinent part, as follows:

The Jefferson County [EDOC] is the outgrowth of a comprehensive strategic planning initiative in Jefferson County, Tennessee to coordinate economic development activities among the governmental entities in the County and to plan and implement a new economic future for the County.

* * *

[EDOC's] primary purpose is *to serve as the entity that will centralize the economic development activities of Jefferson County, the City of Jefferson City and Town of Dandridge in order to undertake those activities in the most efficient manner so that public funds are efficiently utilized while leveraging private support.* The Chair of the County Commission and the Finance Director of Jefferson County are members of the Board of Directors of [EDOC], and the Mayors of the City of Jefferson City and the Town of Dandridge also serve on the Board of Directors. Therefore, public officials make up half of the members of the Board of Directors of [EDOC]. The bylaws of [EDOC] provide that these public officials serve *ex officio* on the Board of Directors of [EDOC]. The governing bodies of Jefferson County, the City of Jefferson City and the Town of Dandridge each adopted resolutions acknowledging that economic development is a primary governmental purpose and requesting the formation of [EDOC] in order to promote economic development on their behalves. . . . It is expected that the governmental entities referenced above will provide approximately 60% of the funding for [EDOC] to undertake its activities.

The specific activities that [EDOC] will undertake in order to fulfill its economic development mission on behalf of the County are several. First, [EDOC] will coordinate business recruitment efforts on behalf of the County. . . . Second, [EDOC] will provide support for existing local companies through counseling and technical assistance. Third, [EDOC] will make efforts to improve the retail climate in the County so that the County will be an attractive location for retail establishments. . . . Finally, [EDOC] will seek to enhance recognition of the County as a tourist destination.

* * *

[EDOC's] purpose is not to provide services to specific members. In fact, [EDOC] will have no members. Rather, [EDOC's] mission is *to coordinate the strategic economic development efforts of the entire County, including the public entities therein.*

* * *

[EDOC's] charitable mission is therefore at least twofold. First, it is lessening the burdens of government *by undertaking the economic development activities on behalf of Jefferson County, the City of Jefferson City and the Town of Dandridge*. This type of *coordinated governmental effort* is precisely what is needed in this time of limited resources, and through such coordination, [EDOC] is substantially lessening the burdens of government. Secondly, [EDOC] is promoting the social welfare of the community by reducing poverty through job growth and combating community deterioration by addressing the decline in the County's tax base.

(Emphasis added.)

Plaintiffs filed their complaint on October 24, 2013. Following discovery and the trial court's grant of partial summary judgment to EDOC, which plaintiffs have not appealed, a trial was conducted on May 24 and 25, 2016. Several public officials testified: Darrell Helton, CEO of the Chamber of Commerce and former Jefferson City Mayor and Jefferson County Finance Director; David Seal, County Commissioner; George Gantte, Mayor of Dandridge; Marty Mills, former County Commission Chairman; and Mark Potts, Mayor of Jefferson City. Several plaintiffs also testified, as did Jay Moser, a member of the EDOC Board of Directors since its inception. The trial court ruled that "the EDOC: (1) is not a 'public body' so as to qualify as a 'governing body' subject to the Open Meetings Act and (2) is not the functional equivalent of a government agency subject to the Public Records Act." Plaintiffs timely filed a notice of appeal.

II.

The issues presented are as quoted from plaintiffs' brief:

1. Whether the trial court erred in determining that EDOC is not the functional equivalent of a government agency subject to the Public Records Act.
2. Whether the trial court erred in determining that EDOC is not a "public body" subject to the Open Meetings Act.

III.

The facts pertinent to this appeal are generally not in dispute. The interpretation and application of the Public Records Act and the Open Meetings Act involve questions of law, which we review de novo with no presumption of correctness. *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 79 (Tenn. 2002).

IV.

A.

The Tennessee Public Records Act provides that “[a]ll state, county and municipal records shall, at all times during business hours . . . be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A). The Act further states that “[a]ny citizen of Tennessee who shall request the right of personal inspection of any state, county or municipal record as provided in § 10-7-503, and whose request has been in whole or in part denied . . . shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access.” Tenn. Code Ann. § 10-7-505(a).

In the seminal *Memphis Publ'g Co.* case, the Supreme Court thoroughly analyzed the Act and observed as follows:

The Tennessee Public Records Act “governs the right of access to records of government agencies in this state.” *Cole v. Campbell*, 968 S.W.2d 274, 275 (Tenn. 1998). Through its provisions, the Act serves a crucial role in promoting accountability in government through public oversight of governmental activities.

* * *

The General Assembly has declared that the Act “shall be broadly construed so as to give the fullest possible public access to public records.” Tenn. Code Ann. § 10-7-505(d) (1999). “Our . . . cases reflect the broad construction of ‘record’ under the Act and a consistent adherence to the policy of full public access.” *Tennessean v. Electric Power Bd.*, 979 S.W.2d 297, 301 (Tenn. 1998). Accordingly, we . . . interpret the terms of the Act liberally to enforce the public

interest in open access to the records of state, county, and municipal governmental entities.

87 S.W.3d at 74. Addressing the issue of “whether [a] private entity’s records should be subject to public access,” *id.* at 78, the High Court stated as follows:

[P]rivate entities that perform public services on behalf of a government often do so as independent contractors. Nonetheless, the public’s fundamental right to scrutinize the performance of public services and the expenditure of public funds should not be subverted by government or by private entity merely because public duties have been delegated to an independent contractor. When a private entity’s relationship with the government is so extensive that the entity serves as the functional equivalent of a governmental agency, the accountability created by public oversight should be preserved.

Consequently, in light of our duty to construe the Tennessee Public Records Act liberally in favor of “the fullest possible public access to public records,” we follow the Connecticut Supreme Court and interpret records “made or received . . . in connection with the transaction of official business by any governmental agency” to include those records in the hands of any private entity which operates as the functional equivalent of a governmental agency. In making this determination, we look to the totality of the circumstances in each given case, and no single factor will be dispositive. The cornerstone of this analysis, of course, is whether and to what extent the entity performs a governmental or public function, for we intend by our holding to ensure that a governmental agency cannot, intentionally or unintentionally, avoid its disclosure obligations under the Act by contractually delegating its responsibilities to a private entity. Beyond this consideration, additional factors relevant to the analysis include, but are not limited to, (1) the level of government funding of the entity; (2) the extent of government involvement with, regulation of, or control over the entity; and (3) whether the entity was created by an act of the legislature or previously determined by law to be open to public access.

Id. at 78-79 (footnotes omitted); *see also City Press Commc'ns, LLC v. Tenn. Secondary Sch. Athletic Ass'n*, 447 S.W.3d 230, 235, 240 (Tenn. Ct. App. 2014) (holding “the TSSAA serves as the functional equivalent of a governmental agency, the Tennessee State Board of Education, by directing and managing the extracurricular sporting activities of almost every high school in the state”); *Gautreaux v. Internal Med. Educ. Foundation, Inc.*, 336 S.W.3d 526, 529 (Tenn. 2011) (holding a non-profit internal medicine education corporation was not the functional equivalent of a governmental agency where its duties were “merely ministerial” and it “merely acted as a bookkeeper” for a state university); *Friedmann v. Corr. Corp. of Am.*, 310 S.W.3d 366, 375 (Tenn. Ct. App. 2009) (Corrections Corporation of America is the functional equivalent of a state agency because it provided prison services that the state is required to provide); *Allen v. Day*, 213 S.W.3d 244, 246 (Tenn. Ct. App. 2006) (privately held LLC that provided management services to run day-to-day operations of the Gaylord Entertainment Center is the functional equivalent of a governmental agency).

Our initial inquiry is “whether and to what extent [EDOC] performs a governmental or public function.” *Memphis Publ'g Co.*, 87 S.W.3d at 79. The resolutions passed by Jefferson County, Jefferson City, and Dandridge each state that “a *primary governmental purpose* of the County [or Municipality] is to promote economic development for the benefit of its citizens.” (Emphasis added.) EDOC was incorporated at the request of these respective legislative bodies and tasked with that very “primary governmental purpose.” The testimony of various witnesses at trial confirmed that EDOC has been the primary agency promoting economic development on behalf of Jefferson County and its municipalities since its incorporation. Moreover, both former Mayor Helton and Mayor Potts testified that they agreed that the promotion of economic development is a primary governmental purpose. No one testified that it was not a governmental function. Both EDOC’s bylaws and its statement of purpose in the IRS application state that its economic development activities are undertaken “*on behalf of*” the county and municipal governments. We find that EDOC performs a governmental or public function, and that this factor weighs in favor of a finding that EDOC is subject to the Public Records Act as the functional equivalent of a governmental agency.

Regarding the level of public funding, the governments of Jefferson County, Jefferson City, and the municipalities of Dandridge, White Pine, and Baneberry have voted each year to provide funding to EDOC amounting to between 60.1% and 67.6% of its budget. In 2012, EDOC received public funding of \$276,156, which was 67.6% of its total budget of \$412,844. In 2013, its public funding was \$279,156, 62.8% of the total; in 2014, it was \$275,653 (60.1%); in 2015, it was \$283,653 (60.9%). Commissioner Seal testified at trial in May 2016 that the county commission had recently voted to allocate \$299,999.99 to EDOC. Thus, over a quarter of a million dollars in public funds per year

has been allocated to EDOC. Generally speaking, the expenditure of taxpayer revenues in these amounts can fairly be said to be a governmental function.

The remainder of EDOC's budget is comprised of contributions from private individuals and business entities. Former Mayor Helton, who stated that he was serving as the "chief operating officer" of EDOC at the time of trial, testified that these contributors were referred to as "investors." Helton and others testified that traditionally, four seats on EDOC's Board of Directors were held by representatives of the four largest investors, *i.e.*, those four contributors giving the most money to EDOC. The other four members of the Board of Directors are public officials, as provided by EDOC's bylaws:

The initial Board of Directors shall consist of eight (8) Directors . . . The persons serving in the following capacities from time to time shall be ex officio, voting Directors of the Company: the Chair of the County Commission of Jefferson County, the Finance Director of Jefferson County (or such other County officer or employee designated by County Commission), the Mayor of the Town of Dandridge and the Mayor of the City of Jefferson City.

(Underlining in original.) There is no procedure to break a 4-4 voting deadlock, so the four public officers voting together can block a proposed action by EDOC. We find that there is a substantial amount of government involvement with the operations of the EDOC.

Regarding the level of governmental control or influence over the EDOC's activities, Commissioner Seal testified as follows:

Each month EDOC and chamber of commerce send representatives to our work sessions and to our voting meetings. They make presentations to us. They explain to us what they're planning to do with the funding that we give them.

* * *

By the structure of their organization, our county commission chairman serves on their board, our finance director serves on their board, two of our city mayors serve on their board. As far as interaction between the county commission and EDOC, that's every month at every meeting. They have a

representative there. They field questions. They make recommendations. They answer our questions. There's monthly interaction.

* * *

Q. When they make such a recommendation and the county makes a determination to fund it, how does that happen? Does the commission vote on it or how does that logistically happen?

A. A majority of budget committee has to hear that recommendation from EDOC or chamber or any other nonprofit or any other county department, take a vote on it in budget committee after a motion is made to provide that funding. Assuming that it passes in budget committee, then it moves up to the floor of county commission for the entire body to consider as a recommendation from the budget committee.

* * *

In my service on the budget committee during this budget cycle, I proposed that EDOC and chamber of commerce both provide a written business plan and a return on investment as a condition of their funding, and that passed for the '15/16 budget cycle. That is in existence until June 30th I believe when our fiscal year ends.²

(Footnote added.) As an additional level of governmental oversight, no check written by or on behalf of EDOC is valid unless it bears two signatures, one of which is that of the county finance director. Helton also testified that in 2015, the county commission directed EDOC "to change the organizational structure or organizational flow chart of EDOC," which it did.

EDOC argues that it cannot be held to be performing a governmental function under this Court's analysis in *Allen*, 213 S.W.3d at 253-54, wherein we stated as follows:

²Commissioner Seal testified that the county commission did not impose the requirement on EDOC to provide a written business plan and return on investment analysis for fiscal year 2016/2017, and that he was "very much opposed to" that decision.

In 2001, the Connecticut legislature expressly defined “governmental function” as applied to Connecticut’s Freedom of Information Act, an Act substantively similar to Tennessee’s Public Records Act. The statute provides:

(11) “Governmental function” means the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person’s administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program *and such policies or decisions bind the public agency*. “Governmental function” shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency.

Conn. Gen. Stat. Ann. § 1–200(11).

(Emphasis added.) EDOC points out that it undisputedly cannot make policies or decisions that bind a public agency. It routinely makes recommendations to the county commission, which is free to accept, modify, or reject them. EDOC also makes binding decisions with regard to how to spend the public money allocated to it each year, an amount averaging \$278,654.50 for the years reported. While we do not disagree with the *Allen* decision, we reject EDOC’s proposed interpretation that *Allen* imposed a new *requirement* that an entity must be able to make binding decisions in order to be held to be performing a governmental function. First, *Allen* quoted a Connecticut statute, which it noted was similar to the Public Records Act, but obviously is not the law in Tennessee. Second, the *Allen* Court stated that it was “[a]pplying the factors that the Connecticut legislature found relevant” in concluding “that Powers performs a governmental function

in its management of the Arena.” 213 S.W.3d at 254 (emphasis added). This statement indicates that whether an entity participates in the formulation of policies or decisions that bind a public agency is a factor to be considered along with “the totality of the circumstances in each given case, and no single factor will be dispositive.” *Memphis Publ’g Co.*, 87 S.W.3d at 79. This interpretation comports with the Supreme Court’s formulation of the test in *Memphis Publ’g Co.* Third, both the Supreme Court and this Court have returned to the question of what constitutes a “governmental function” since *Allen* was decided, and neither Court referred to that opinion as establishing a requirement that an entity must make binding decisions in order to be held the functional equivalent of a governmental agency. See *Gautreaux*, 336 S.W.3d 526; *City Press Commc’ns*, 447 S.W.3d 230; *Friedmann*, 310 S.W.3d 366. Fourth, *Allen* rejected the argument of the privately held LLC in that case that it could not be “the functional equivalent of a public agency because it does not govern or regulate,” stating that the Supreme Court “never referred to a requirement that an organization govern or regulate.” 213 S.W.3d at 256.

The fourth relevant factor identified by the Supreme Court is “whether the entity was created by an act of the legislature or previously determined by law to be open to public access.” *Memphis Publ’g Co.*, 87 S.W.3d at 79. The plaintiffs argue that EDOC was created by the county and municipal legislative bodies here, citing a dictionary definition of “create” as “to produce or bring about by a course of action or behavior.” *Webster’s New Collegiate Dictionary* (8th ed. 1977). While we see some logic in this semantical argument, technically what the legislatures did, as stated in their resolutions, was to “request[] that the Jefferson County Chamber of Commerce facilitate the creation of” EDOC. We cannot say that the County Commission, Jefferson City Council, or Dandridge Board of Mayor and Aldermen, which officially speak and act through their resolutions, “created” the EDOC through the resolutions enacted in this case.

EDOC itself has not been previously determined by law to be open to public access. However, our inquiry on this factor is informed by Tenn. Code Ann. § 6-58-114 (2015), which provides, in pertinent part, as follows:

(b) There shall be established in each county a joint economic and community development board, which shall be established by interlocal agreement pursuant to § 5-1-113. The purpose of the board is to foster communication relative to economic and community development between and among governmental entities, industry, and private citizens.

(c) Each joint economic and community development board shall be composed of representatives of county and city

governments, private citizens, and present industries and businesses. The final makeup of the board shall . . . at a minimum, include the county mayor and the city mayor or city manager, if appropriate, of each city lying within the county and one (1) person who owns land qualifying for classification and valuation under title 67, chapter 5, part 10; . . .

* * *

(f) The board shall meet, at a minimum, four (4) times annually, and the executive committee of the board shall meet at least four (4) times annually. . . . Minutes of all meetings of the board and the executive committee shall be documented by minutes kept and by certification of attendance. *Meetings of the joint economic and community development board and its executive committee are subject to the open meetings law.*

(g)(1) The activities of the board shall be jointly funded by the participating governments. . . .

* * *

(3) The board may accept and expend donations, grants and payments from persons and entities other than the participating governments. The board is authorized to transfer or to donate funds from participating governments or outside sources to other public or nonprofit entities within the county to be used for economic or industrial development purposes.

* * *

(i) When applying for any state grant a city or a county shall certify its compliance with the requirements of this section.

(Emphasis added.) As can be seen, the Tennessee legislature required each county to establish a joint economic and community development board as a condition of receiving a state grant of funds. Although it cannot escape notice that EDOC bears many similarities to such a mandated board, it is not the “joint economic and community development board” created by Jefferson County to comply with the statute. That is a

separate body, referred to as the “1101 Board” or the “monthly mayors’ meeting” by all the testifying witnesses. Helton, who was on the 1101 Board during his ten years as Jefferson City Mayor, testified:

Well, the 1101 Board does not deal directly with recruiting particularly particular businesses into the area. They’re primarily kind of an oversight board. They meet and, of course, they have reports. In other words, I would on part of the chamber would go to their monthly meetings and give them the report that I give to county commission. Just give them information, but they did not act on any economic growth or development. They were more of an informational type board.

In his deposition, Helton further explained that the 1101 Board “can actually have a budget and kind of rule on some things like that [economic development projects], but they don’t.” He said that “they really don’t have any authority” and “I don’t ever remember us taking any really official action.”

The 1101 Board is, however, subject to the Open Meetings Act by the express terms of the statute. Tenn. Code Ann. § 6-58-114(f). Regarding the application of the Public Records Act to such a board, the Tennessee Attorney General has opined that:

with the L[oudon] C[ounty] E[conomic] D[evelopment] A[gency]’s certification as a joint economic and community development board pursuant to Tenn. Code Ann. § 6-58-114, it is likely to be found to be performing a governmental or public function as defined by the Court of Appeals in *Allen v. Day*. Furthermore, the LCEDA receives the majority of its funding from governmental entities and it is governed by a board of directors which includes officials of those same governmental entities. Accordingly, based upon the definition of “governmental function” and the factors outlined in the *Memphis Publishing Co.* case, we think that the LCEDA would be held to be the functional equivalent of a government agency and, therefore, its records would be subject to inspection under the Public Records Act.

Tenn. Op. Att’y Gen. No. 07-170, 2007 WL 4800789 (Dec. 21, 2007). Although EDOC is not subject to the Public Records and Open Meetings Acts under Tenn. Code Ann. § 6-58-114, the statute supports a pair of pertinent conclusions: that economic development is

generally considered a proper governmental function, and that the Tennessee legislature has determined a joint economic and community development board to be subject to the transparency and accountability provided by the Open Meetings Act.

At trial, the primary example of how EDOC interacted with government to promote economic development programs was presented by testimony regarding EDOC's efforts to develop a large commercial and industrial park in Dandridge, referred to by all the witnesses as the "megasite" development. The plan involved governmental acquisition of about 1,860 acres of privately-owned farmland for the industrial megasite. Helton testified that "the decision to go forward with the planning and the recommendation of the megasite was one of the largest economic decisions potentially ever made for Jefferson County." The other public officials in their testimony generally agreed with this assessment. EDOC recommended that the Jefferson County Commission authorize funds to be used for the certification process of the megasite. These costs included the hiring of several firms: McCallum-Sweeney, a consultant with ties to the automotive industry; Blanchard & Calhoun, a real estate acquisition firm; and Moxley Carmichael, a public relations firm. Former Mayor and EDOC executive Helton testified as follows regarding the public relations efforts to persuade county commission to support the proposed development:

Q. Moxley Carmichael, the public relations firm, did they – what role, if any, did they play in attempting to make recommendations or persuade county commission to take actions related to the Megasite?

A. Well, they're a public relations firm and the reason they were hired was to help the EDOC board promote or how to do it from a public relations standpoint. That's why they were hired.

Q. And did they use public relations efforts to attempt to persuade county commission?

A. Well, they recommended to the EDOC board what they should do, yes.

Q. Did Moxley Carmichael write comments for public officials and recommend that those comments be made at public meetings?

A. They assisted in writing them, yes.

Garrett Wagley was the director of economic development for Jefferson County. He was employed by the Jefferson County Chamber of Commerce, but EDOC reimbursed the chamber for one hundred percent of Wagley's salary. Mayor Gantte testified as follows regarding an email he received from Wagley shortly before the commission voted to proceed with the megasite development:

Q: [H]e was writing an email here to you, Don Cason, who was president of the chamber and kind of the chief operating officer of EDOC; is that correct?

A: That is correct.

Q: Also to Alan Carmichael, who is a PR representative from Moxley Carmichael out of Knoxville?

A: Correct.

* * *

Q: [The email] references a list of action items that come out of the call. And the first of those is under your name, Mayor Gantte, and there's a bullet point that says there will be and I quote, "Contact the EDOC board and encourage each member to bring at least five people to the February 11 commission meeting in support of the Megasite." Do you see that?

A: That's what it says.

Q: And then at the next bullet point "at the same time encourage the members to contact county commissioners to answer questions and insure that each commissioner has a firm idea of where we are in the process." I believe you specifically mentioned Commissioner Maples as a target to follow up with?

A: That's what it says.

Q: Now, here, Mayor Gantte, what we had was an organized effort through Mr. Wagley, the economic director, yourself,

the PR folks, and Mr. Cason to contact the commissioners prior to their February 11 meeting to encourage their support?

A: That was what the email said from Mr. Wagley.

At that time, both Cason and Mayor Gantte were members of EDOC's Board of Directors.

EDOC also hired the firm of Younger Associates to prepare an economic impact analysis of the proposed megasite development, as attested by Helton as follows:

Q. Before county commission voted in February 2013 to provide funding for the Megasite, was there an economic impact analysis that was put together at the request of the Jefferson County EDOC?

A. Yes.

Q. Can you tell the Court who it was that EDOC hired to put together that report?

A. Younger and Associates.

* * *

Q. The purpose of this economic impact analysis was to provide some information to EDOC about the prospects of the Megasite?

A. Yes.

Q. And was this economic impact analysis used at least to some extent by EDOC in attempting to make the case for the Megasite that it was recommending?

A. Yes.

Q. To county commission?

A. Yes.

Q. In fact, this economic impact analysis was discussed at county commission meetings, was it not?

A. I – I think so, yes.

Q. And we see from the face page of this document that it was put together apparently – at least it's dated on the face page January of 2013?

A. Correct.

Q. That would be the month before county commission voted, correct?

A. I think that's correct. I don't have the dates in front of me, but I believe that's right.

The analysis, which was distributed in January of 2013, states:

Public Investment

Jefferson County plans to invest an estimated \$60 million to secure privately held land for the park and for infrastructure and site development. Additional public fund[s] provided by TVA and the State of Tennessee bring the total investment to \$306.6 million.

(Bold font in original.) At the time the analysis was released, the county commission had not voted to allocate any money for the megasite development project. The public, including the landowners whose property would be impacted by the proposed development, was informed of the proposal in January of 2013. Mayor Gantte testified that “EDOC, by the time it got to that announcement [to the landowners] in January of 2013 and its request for funding in February '13, had already decided those things and was making specific recommendations to county commission.”

The megasite development proposal came before the county commission on February 11, 2013. Based upon EDOC's recommendation, the commission voted to allocate \$442,311 for the initial phases of certification of the megasite. Plaintiff Steve Hammer, who was present at the commission meeting, testified that “[t]here was no discussion. It was dictated. . . I saw a vote that passed with no questions, no discussion.” The commission also voted not to exercise the power of eminent domain to acquire any

of the land for the development. At its April 15, 2015 meeting, the county commission voted to rescind the funding for the megasite, a decision made again upon EDOC's recommendation.

EDOC, in support of its argument that it is not the functional equivalent of a public agency, cites the following provision of its charter:

No Legislative or Political Activity. No substantial part of the activities of the Corporation shall be for the carrying on of propaganda or otherwise attempting to influence legislation; and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(Underlining in original.) The testimony of various public officials, quoted and discussed above, establishes that EDOC played a significant role in promoting the megasite development, which was described as one of the most important economic decisions ever made by the county, and which involved a large expenditure of public funds. Bearing in mind “our duty to construe the Tennessee Public Records Act liberally in favor of the fullest possible public access to public records,” *Memphis Publ’g Co.*, 87 S.W.3d at 79 (internal quotation marks omitted), we hold that EDOC is the functional equivalent of a governmental agency subject to the Public Records Act.

B.

The Open Meetings Act, also known as the Sunshine Law, provides that “[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code Ann. § 8-44-102(a). The principles applicable to our interpretation and application of the Act have been stated by this Court as follows, in pertinent part:

Tennessee’s Sunshine Law prevents government bodies from conducting the public’s business in secret. *See* Tenn. Code Ann. § 8-44-101(a).

The Sunshine Law is remedial. *Dorrier v. Dark*, 537 S.W.2d 888, 891 (Tenn. 1976). It should, therefore, be construed broadly to promote openness and accountability in government, and to protect the public against closed door meetings at every stage of a government body’s deliberations.

Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville and Davidson Cnty., 842 S.W.2d 611, 616 (Tenn. Ct. App. 1992) (internal citations omitted). As we observed in ***Metro. Air Research***,

Public knowledge of the manner in which governmental decisions are made is an essential part of the democratic process. The public

must be able to “go beyond and behind” the decisions reached and be appraised of the “pros and cons” involved if they are to make sound judgments on questions of policy and to select their representatives intelligently.

Id.; accord ***Souder v. Health Partners, Inc.***, 997 S.W.2d 140, 145 (Tenn. Ct. App. 1998). The Sunshine Law applies to any “governing body,” which is defined as follows:

(b)(1) “Governing body” means:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration . . .

* * *

(E)(i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

Tenn. Code Ann. § 8-44-102. EDOC does not fall within section 102(b)(1)(E)(i) because it technically does not have any employees, although it reimburses the chamber of commerce for one hundred percent of the salaries of two of the chamber's employees, and additionally for an undisclosed fraction of the salaries of several others. Consequently, the issue at trial was whether EDOC is a "public body" under section 102(b)(1)(A).

The Supreme Court, in *Dorrier*, observed that the statute does not define "public body" and provided the following guidance:

We cannot say that "public body" as used in the context of this Act, without definition, is so uncertain that men of common intelligence must necessarily guess as to its meaning and differ as to its application.

It is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.

537 S.W.2d at 892.

We are of the opinion that EDOC's origin and authority may be traced to county and city legislative action. The resolutions "requested" and "approved" the creation of EDOC, and stated that the county and municipalities "desired that a non-profit corporation be formed," for which they "intend[] to provide significant funding." If the creation of EDOC was privately-driven, as it argues, it is unclear why all three legislative bodies voted on and approved written resolutions that were clearly designed to effectuate its creation. EDOC argues that the chamber of commerce could have refused to comply with the resolutions, a postulation that may be correct in theory, but highly unlikely in reality.

As for the second prong of the inquiry, the proof in the record is abundantly clear that EDOC's "members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector." *Id.* at 892. Several of the public officials testified that EDOC made recommendations to county commission on a regular basis. None of these recommendations were binding, but they do not have to be in order for EDOC to be a public body for purposes of the Sunshine Law. The Supreme Court specified that the test is whether "the members have authority to make decisions *or* recommendations." (Emphasis added.) Much of what we have said in Section IV(A) on the Public Records Act is also pertinent to this Open Meetings Act analysis. The above-discussed example of the interaction between EDOC and county commission regarding the megasite development plan illustrates that EDOC has had a significant role in not only expending substantial public funds, but also in making decisions and recommendations of enormous economic importance to the people of Jefferson County. In light of our duty to construe the Open Meetings Act "broadly to promote openness and accountability in government," *Metro. Air Research*, 842 S.W.2d at 616, we hold that it applies to EDOC.

V.

The judgment of the trial court is reversed, and this case is remanded to the trial court for such further proceedings as may be necessary, consistent with this opinion. Costs on appeal are assessed to the Appellee, Jefferson County Economic Development Oversight Committee.

CHARLES D. SUSANO, JR., JUDGE

2002

The Role of Partnerships in Economic Development and Labor Markets in the United States

Randall W. Eberts

W.E. Upjohn Institute, eberts@upjohn.org

George A. Erickcek

W.E. Upjohn Institute, erickcek@upjohn.org

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The Role of Partnerships in Economic Development and Labor Markets in the United States

Upjohn Institute Staff Working Paper No. 02-75

by

Randall W. Eberts and George Erickcek
W.E. Upjohn Institute for Employment Research

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JEL Classification Codes: H11, H77, R58

The Role of Partnerships in Economic Development and Labor Markets in the United States

Abstract

This paper describes the role of local partnerships in the delivery of workforce and economic development services in the United States. Partnerships include both public and private organizations and increasingly depend upon local business people for leadership. With grassroots organizations traditionally taking the lead in addressing local issues and a long history of decentralized government, it is not surprising that a labyrinth of partnerships characterize the provision of public services. This paper grew out of a study tour that the Upjohn Institute conducted in conjunction with the Local Employment and Economic Development (LEED) Committee of the Organization for Economic Co-Operation and Development (OECD). Delegates from 14 European countries visited nearly two dozen partnership organizations in the U.S. Midwest. The paper summarizes the history of local partnerships in the United States, tracks the separate evolution of workforce and economic development activities, describes the leadership roles of the federal and state governments in fostering partnerships, and provides case studies of current public-private partnerships that the delegates visited on the tour. The paper concludes by drawing lessons learned from the tour regarding the efficiency of partnerships, the efficiency of service delivery, the local management of programs, and the proper roles of federal, state, and local governments. A version of the paper appears in an OECD volume on partnerships entitled *Local Partnerships in Better Governance*, prepared by Sylvain Giguère.

JEL Classification Codes: H11, H77, R58

INTRODUCTION

Local partnerships play an important role in the delivery of workforce and economic development activities in the United States. Partnerships include both public and private organizations and increasingly depend on local business people for leadership. The strong role of the private sector reflects the predominance throughout the country's history of grassroots organizations in addressing local issues and in delivering services. Today, economic development activities are carried out primarily at the local level by nonprofit organizations, with help and guidance from state agencies but minimal involvement from the federal government. Workforce development efforts, on the other hand, have enjoyed a much stronger partnership with the federal government. Since the inception of the major employment programs that grew out of the economic crisis of the 1930s, state and local efforts have benefitted from the federal government's leadership, technical expertise, and superior taxing powers.

During the last decade, interest in strengthening the role of local organizations in providing activities in both these areas has increased. The underlying premise is that local governments are better able to assess and respond to the specific needs of their area. In addition, they are considered to be in a better position to coordinate services from the various programs that are intended to help people within their jurisdictions.

With regard to workforce development activities, Congress recently passed two major pieces of legislation that gave state and local governments significantly more responsibility in the delivery of social services. Several states, in turn, have granted local jurisdictions, particularly counties, an increased role and, in some cases, greater autonomy in providing and coordinating services. With encouragement and, in some instances, mandates from the federal government, states and counties have forged partnerships with nongovernment organizations (NGOs) to deliver services. Most recently, these local partners have

included private businesses, which provide leadership and oversight for the local service organizations and occasionally provide services. Local economic development partnerships have been strengthened, not by the encouragement of the federal government, but because of pressure from businesses. Concerned about the inability to find qualified workers in a tight labor market and the need to enhance their local supply chains, local businesses have taken a more active role in partnering with local governments to develop the workforce and to enhance the local economy.

The evolution of intergovernmental relations and current policy changes makes the United States an interesting and instructive example of the formation and evolution of local partnerships in providing workforce and economic development activities. Recognizing that potential, the W.E. Upjohn Institute for Employment Research organized and sponsored a study tour of local partnership organizations in the United States within the framework of the Study of Local Partnerships conducted by the Organization for Economic Cooperation and Development/Local Economic and Employment Development (OECD/LEED) Committee. The study tour focused on the U.S. Midwest. During the six-day tour in April 2000, 15 delegates representing 12 European countries and the European Commission visited 20 organizations in various cities in the states of Illinois, Michigan, and Ohio (see Appendix 1)

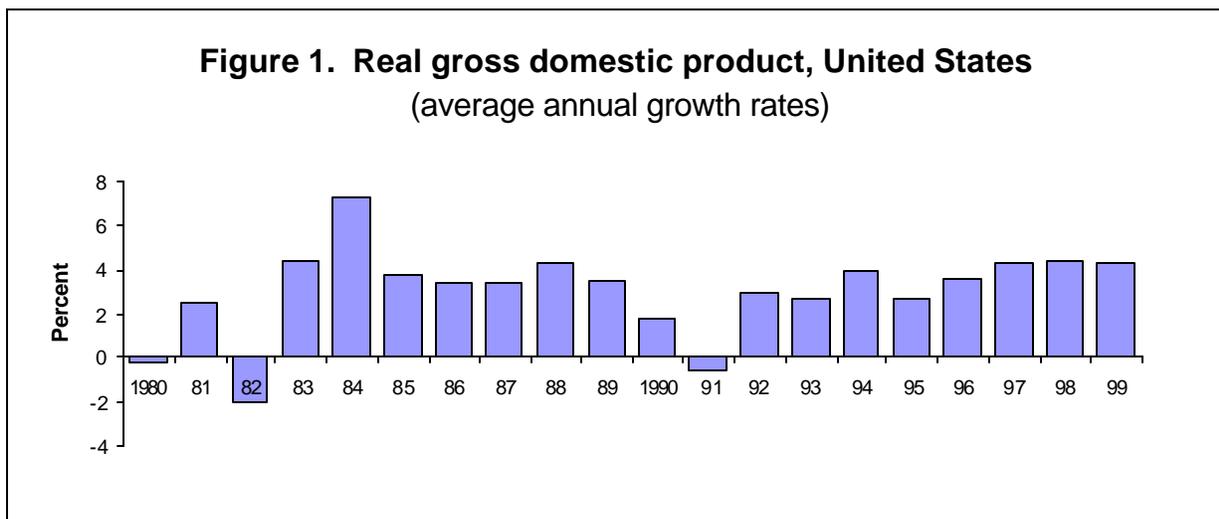
This chapter provides an overview of the role of partnerships in delivering workforce and economic development services in the United States. It is based on a survey of partnership cases in the Midwest, which possess characteristics that provide favorable comparisons with many European countries. Even after significant restructuring during the past two decades, the Midwest economy is still more dependent upon manufacturing than most other regions in the country. The restructuring resulted in considerable displacement of workers, an emphasis on work retraining, and an intense effort by states and localities to

promote economic development in their area. Consequently, the Midwest has fostered innovative approaches to workforce development and economic development initiatives and serves as a laboratory to examine the nature and effectiveness of local partnership organizations in meeting these needs.

Economic and Employment Situation

The study tour of local partnerships in the U.S. Midwest took place during strong economic times. Throughout the 1990s, the United States enjoyed its longest economic expansion ever, and except for a slight 0.5 percent decline in 1991, the nation’s economy grew steadily between 1983 and 1999 (figure 1). Accompanying this unprecedented growth were unemployment rates of around 4 percent and productivity growth rates that exceeded historical trends. Growth even accelerated during the latter half of the decade and into the current millennium with GDP growth reaching an unsustainable pace of 5.2 percent.

In 1999, employers hired 2.9 million workers, a 2.3 percent increase over the previous year. This high demand for workers kept the national unemployment rate below 4.5 percent during the entire year. From June 1993 to June 2000, the nation’s employers added 260,000 workers per month, on average.



The nation's businesses, facing highly competitive global and domestic markets, have spent billions of dollars year after year on new capital equipment (especially computers and related equipment). This expenditure, coupled with the strict discipline of the global marketplace, has contributed to both the nation's strong productivity growth and to lower production costs, which have in turn created an environment of stable prices.

As shown in Table 1, the Midwest shared for the most part in the robust national economy. Unemployment rates among the various areas surveyed ranged from 2.7 to 5.7 percent, and rates in most of the cities, except Chicago, were at or below the national rates.

Table 1. Characteristics of the areas surveyed in the Midwest

City	Population (1998)	Unemployment rate 1998)	Population living in poverty, 1995 (%)
Battle Creek	53,496	4.6	14.1 (Calhoun county)
Chicago	2,802,079	5.7	14.7 (Cook county)
Cleveland	495,817	4.5	14.3 (Cuyahoga county)
Grand Rapids	185,437	4.1	9.6 (Kent county)
Kalamazoo	76,241	2.7	11.3 (Kalamazoo county)
Lansing	127,825	4.1	13.9 (Ingham county)

General Characteristics of Workforce and Economic Development Activities

Several important dimensions characterize local partnerships concerned with workforce development and economic development in the United States. First, a distinct separation exists between activities related to workforce development and those related to economic development. Traditionally, these activities have been pursued by different levels of government and by different nongovernment entities.

However, in recent years, as employers have become increasingly frustrated in their search for qualified workers in the tight U.S. labor market, organizations responsible for economic development have turned their efforts to increasing the pool of trained workers. These efforts have been pursued primarily through businesses forging closer working relationships with workforce development agencies, as opposed to relying solely on their own efforts to train workers.

Second, most workforce development programs targeted at dislocated workers and the economically disadvantaged are funded by federal and state governments.¹ Active labor market programs (e.g., job training, job search assistance, labor market exchange) and income support programs (e.g., unemployment compensation) are administered and funded by the government. In most cases, the services are provided by state and local government agencies.

However, the newly enacted Workforce Investment Act allows for the privatization of some services, and state and local governments are beginning to contract with private sector (mostly nonprofit) organizations. Charitable foundations also help to support workforce development services by sponsoring small programs. Many of these initiatives are experimental, and most are implemented and tested in a limited number of areas on a relatively small number of people. Some of these schemes yield important information that has been used to initiate new government-sponsored programs or to improve existing programs. In some cases, local nonprofit organizations partner with local offices of government workforce programs to help improve the coordination of services and to deal with problems that government programs

¹The vast number of community colleges, colleges, and universities are also important contributors to workforce development. These institutions are funded in part through local and state taxes and federal grants. However, much of the support for higher education comes through tuition paid by students or their families and through alumni giving.

are not designed to address. Local charitable organizations and churches also play important roles in meeting the needs of the unemployed, particularly those who need food and other special assistance.

Third, most government-sponsored workforce development programs are marked by a strong federal-state-local partnership arrangement. This federal approach to providing social services was established when the first employment programs were implemented nearly 70 years ago. The new welfare reform initiative, Personal Responsibility and Work Opportunity Act of 1996, and the first major reform in the nation's job training system in 15 years, the Workforce Investment Act of 1998, have followed the same design but with even more emphasis on the devolution of authority to state and local government organizations.

Fourth, economic development activities are primarily the responsibility of state and local governments, with only limited assistance from the federal government. The federal government has chosen not to promote the economic development of one region over another, except in the case of severe poverty in specific areas, particularly inner cities. In recent years, federal funding initiatives have offered resources to a few urban areas to address chronically high unemployment and deteriorating economic infrastructure. Therefore, the vast majority of economic development efforts are conducted by state and local government agencies and by public-private ventures.

WORKFORCE DEVELOPMENT

Brief history of government-sponsored programs

Government-sponsored workforce development activities have focused primarily on the needs of the unemployed and the economically disadvantaged. The first broad-based labor programs in the United

States were initiated in response to the high level of joblessness during the Great Depression of the 1930s. The Wagner-Peyser Act of 1933 established in the U.S. Employment Service, and the Social Security Act of 1935 put in place the unemployment insurance system. While the federal government enacted both programs, each one was based on a strong federal-state-local partnership in the delivery of services.

The partnership arrangements among the different levels of government ostensibly grew out of two deep-rooted aspects of the institutional heritage of the United States. The first is the strong leadership role played by states in initiating programs to serve the needs of their citizens. The second is the federal system of government which, for the administration of many social programs, has evolved into strong partnerships among federal, state, and local governmental entities. For example, prior to the enactment of the Wagner-Peyser Act by the U.S. Congress, many states provided labor market exchange services through local employment offices. The Wagner-Peyser program used federal funds raised through the employer payroll tax to transform the patchwork of existing state offices into a more coordinated nationwide system with more consistent operating procedures and types of services (O'Leary and Straits, 2000). Today, the Employment Service is a federal-state partnership that provides free labor market exchange and reemployment assistance services in 1,800 offices in 54 states and territories (Balducci, Johnson and Gritz, 1997).

The unemployment insurance (UI) system shared a similar beginning, and arguably it established an even stronger federal-state partnership. Prior to its enactment in 1935, at least 17 states had considered establishing an unemployment compensation system. Only one state, Wisconsin, actually enacted such a program before the federal legislation went into effect. Many states, however, were reluctant to provide

income support to displaced workers. They feared that employers in their state would be at a disadvantage to those in states without such a program, because of the taxes needed to finance the system.

Since only one state had actually established an unemployment compensation system, Congress, when fashioning the Social Security Act, was presented with the opportunity to establish a wholly national system. However, after considerable deliberation, they chose a federal-state partnership. The system prescribed distinct federal and state roles and obligations. It gave states the discretion to set compensation levels and to experiment with system improvements but imposed separate limits for the federal and state components of the payroll tax. It also established financial incentives for states to comply with approved nationwide UI programs. Legal suits immediately followed the program's inception, challenging the constitutionality of the UI system on the grounds that it usurped states' rights and force them to act in compliance with federal regulations. Nonetheless, the UI system has survived and serves as a model for other federal-state partnerships (O'Leary and Wandner, 1997).

In many respects, the evolution of publicly supported job training programs in the United States is a lesson in the advantages and disadvantages of a centralized versus decentralized administration of social services. The Federal Manpower Development Training Act (MDTA) of 1962, the first nationwide publicly provided training program, was based on the primary belief that the lack of marketable job skills barred the economically disadvantaged from employment. Consequently, MDTA offered a full range of services to the economically disadvantaged, including remedial education, occupational skill training, work experience, and counseling.

Several problems arose with the program. It was a piecemeal approach managed primarily at the federal level and left little opportunity or incentive for partnering with nonprofit/nongovernmental

organizations. Federal administrators established programs and policies for separate categories of clients that were to be implemented at the local level in the belief that no one program could meet the divergent needs of the economically disadvantaged. Moreover, federal administrators held the view that there were gross inefficiencies in administrative capacity at the local level. Therefore, they prepared strict guidelines for the local implementation of the various programs. Unfortunately, “it was not unusual to find communities with similar programs located within a few city blocks of one another, targeting services to technically distinct but frequently overlapping groups” (O’Leary and Straits, 2000).

The resulting problems of the MDTA led the federal government to consolidate all categorical programs and then to decentralize their workforce programs to the local level. Decentralization meant the transfer of programs management from the federal level to the state and local level (Levitan and Gallo, 1988). Decategorization meant that federal appropriations were no longer earmarked for specific programs.

The Comprehensive Employment Training Act (CETA), established in the 1970s, offered several improvements to the delivery of workforce development services. It introduced the concept of local advisory councils to ensure that local public interest would guide program planning. CETA regulations required that councils include constituencies such as education and labor along with members of the business community. The effectiveness of these advisory councils differed across the country. Some were merely “rubber stamps” while others played an active role in on-site monitoring and local policy development.

Even with the establishment of advisory councils, CETA was criticized for operating inefficiently in many communities. In particular, classroom skill training often did not provide the kind of training desired

by local employers. Instead, clients selected the type of training they wanted regardless of the occupational demands of the area's business community, and they often selected occupations with limited "career ladders" offering little opportunity for career advancement. In addition, the public service's employment programs in CETA proved to be expensive and were used, in some instances, to subsidize the local provision of government services.

To address several of these problems, the Job Training Partnership Act (JTPA) was enacted in 1982. It made several improvements to CETA while following the same philosophy of federal-state partnerships. First, it eliminated the placement of displaced and economically disadvantaged individuals into public-sector employment, focusing instead on placing them in unsubsidized private sector employment. Second, it focused training programs on the development of skills that local employers demanded. Third, it increased private sector participation on the advisory councils to ensure that the needs and concerns of local businesses were being heard.

Current Federally Funded Programs

During the latter half of the 1990s, public assistance to low-income households and government-funded workforce development programs underwent major reform. Now, the focus was on moving welfare recipients off public assistance and into jobs and on giving states more discretion to find ways to accomplish this goal. The reforms also attempted to integrate employment-related services more closely by establishing one-stop centers in which all major services are provided at the same location.

These reforms were advanced in two pieces of legislation. The Personal Responsibility and Work Opportunity Act of 1996 provides states with federal block grants to fund income support for low-income

households but requires that the head of the household finds work within a specified time period. This shift in philosophy away from pure income support and the development of long-term skills training and toward a work-first approach was also incorporated in the workforce development reform legislation. The Workforce Investment Act (WIA) of 1988 emphasized job-search assistance and job-readiness training over specific job-skills training with the goal of increasing employment, retention, and the earnings of job participants. In short, WIA is based on the belief that the best training is experience on the job and that there are a sufficient number of jobs for even low-skill workers. In exceptional cases, training is still offered when a mismatch in workers' skills and employers' needs exists. WIA also gives state governors almost full discretion in determining how their state will achieve this requirement.

The Workforce Investment Act came at a time when the U.S. economy was stronger than it had been in a generation. Unemployment rates had reached a four-decade low, and many employers were finding it increasingly difficult to fill vacancies. Although opportunities for workers of nearly any skill level to find a job were unprecedented at the time, the demand for highly skilled jobs was nearly three times the rate of other jobs. Millions of workers with little or no skills required assistance to upgrade their abilities in order to avoid being trapped in low-wage, dead-end jobs. At the same time, employers needed to fill vacancies with qualified workers as quickly as possible to avoid costly capacity constraints. The WIA was an attempt to provide a system that serves the needs of low-skill workers and employers alike.

As with JTPA, a business-led advisory council, referred to as the workforce investment board (WIB) under WIA, supervises the delivery of services at the local level. One of the major requirements of WIA is for the local workforce development board to establish one-stop centers that provide core services to all job seekers regardless of income or employment status. Under previous programs, job

seekers were required to trek to their local employment service office for information on current job openings and to obtain job search skills. From there, they were required to find the offices of the JTPA service delivery agencies in order to obtain skill training, job placement, and information on job openings. Services were duplicated, and job seekers were required to go from place to place.

The one-stop approach provides many of these services at a single location, including

- a preliminary assessment of individuals' skill levels, aptitudes, abilities, and support service needs;
- information on available employment-related services including training opportunities;
- help in filing unemployment insurance claims and evaluation for job training and education programs;
- job search, placement assistance, and career counseling; and
- up-to-date labor market information.

The law prohibits the local administrative agency from providing services, so the local WIBs, as the administrative agents, select operators of the centers through a competitive process. Under this arrangement, the WIBs contract with numerous nonprofit organizations and other government agencies to provide these services. The law requires that each local one-stop center should comprise numerous partners. These partners include

- Adult, dislocated workers, and youth activities;
- Employment Service;
- Adult Education;
- Post-secondary Vocational education;
- Vocational rehabilitation;

- Welfare to Work
- Title V of the Older American Act;
- Trade Adjustment Assistance;
- NAFTA Transitional Adjustment Assistance;
- Veterans Employment and Training Programs;
- Community Services Block Grant;
- Employment and training programs administered by the U.S. Department of Housing and Urban Development;
- Unemployment Insurance.

These partners are required to provide services in a way that is consistent with their authorizing legislation, such as Wagner-Peyser, while striving to cooperate with the other co-located programs. The local area may also include other appropriate federal, state, or local programs, as well as private sector initiatives as partners in the one-stop system. WIA requires that all states implement their one-stop operating systems by July 1, 2000. Most states have complied at the time this study was carried out, but some were still in the developmental stage.

The requirement under WIA that local workforce investment boards contract with local providers to deliver services creates a relatively tight network of partner organizations. To formalize the relationship between a WIB, as the one-stop operator, and its partners, both parties enter into a memorandum of understanding (MOU). This establishes an agreement between the two entities concerning the agreed-upon roles and responsibilities of the subcontractor as a one-stop partner in the implementation of the provisions

under WIA. The agreement is formed to ensure the effective and efficient delivery of workforce services to prevent duplication, and to coordinate resources in the local workforce development area.

The agreement also establishes joint processes and procedures that will enable partners to integrate the current service delivery system. The MOU lays out the principles of the one-stop centers that the partners are required to adhere to; it specifies the services that the partner is obligated to provide; and it delineates the financial arrangements, legal compliance, and the period of performance, typically two years. Signatories from each organization sign the agreement with the understanding that it can be amended upon mutual consent.

In some states, partners can be members of the WIB's governing board, but in Michigan they cannot, to prevent possible conflicts of interest. Board are comprised of local business people and civic leaders. Business people comprise the majority of board members, which is in keeping with the intent of WIA that local boards be led by businesses so as to be responsive to their hiring needs.

WIA also establishes individual training accounts (ITAs) as a means of funding the delivery of training services. ITAs are similar to vouchers. Individuals who are eligible for training under WIA can choose the training program they prefer and WIA will pay a portion (if not all) of the tuition. A qualified training institution must meet specific requirements under WIA and post information about placement rates and program evaluations. These institutions include for-profit organizations as well as traditional nonprofit and public training and educational institutions.

State and Local Workforce Development Organizations

Three types of organizations involved in workforce development are presented in this chapter:

- Government bodies responsible for administering services
 - Michigan Department of Career Development (Lansing);
 - Mayor’s Office of Workforce Development (Chicago);
 - Kalamazoo-St. Joseph Workforce Investment Board (Kalamazoo).
- Public partner organizations providing services
 - Education for Employment (Kalamazoo);
 - Michigan Technical Education Center/Kalamazoo Valley Community College (Kalamazoo);
 - Regional Manufacturing Technical Center/Kellogg Community College (Battle Creek).
- Private nonprofit partner organizations providing services
 - Chicagoland Business Partners (Chicago);
 - Center for Employment Training (Cleveland).

The government bodies administer federal and state programs at the state and local levels. The Michigan Department of Career Development is the state agency in Michigan that is responsible for administering federal and state workforce development programs. This agency does not provide the services directly, but devolves this responsibility to about two dozen local WIBs in the state, such as the one in Kalamazoo. The state agency oversees the operation of WIBs to ensure that they and their subcontractors comply with the requirements of WIA and the other federal and state programs.

The Kalamazoo-St. Joseph Workforce Investment Board, also referred to a Michigan Works, administers 10 employment programs, including welfare-to-work, school-to-work, dislocated worker

training schemes, and the employment service.² More than 45,000 people drawn from a two-county area with a population of slightly over 300,000 have participated in at least one of the programs. The partners include a regional educational services agency, two private nonprofit service organizations, and two local colleges. Two of its partners are Education for Employment and Michigan Technical Education Center/Kalamazoo Valley Community College. The partners are all under contract to provide specific services and in most cases to achieve various predetermined performance outcomes.

The Michigan Works office's annual budget for 1999 was \$4.2 million³ and came from the following sources: 50 percent from the U.S. Department of Health and Human Resources, 24 percent from the state of Michigan, 20 percent from the U.S. Department of Labor, five percent from the U.S. Department of Education and 1 percent local. The program is staffed by 86 full-time and, 18 part-time workers, and 31 volunteers. Funds to operate the Michigan Works office are derived principally from the funds of the various programs it administers. It also receives some funds from the state to specifically implement the one-stop centers.

In Chicago, the five one-stop centers, located throughout the city, are run by a partnership between the city colleges of Chicago, the Illinois Department of Human Services, the Illinois Department of Employment Security and the Mayor's Office of Workforce Development (MOWD). These centers are part of the Illinois Employment and Training Center statewide network and work with employers,

²The Kalamazoo-St. Joseph Workforce Development Board is unique in that it is an administrative agent that is a division of an independent, nonprofit private foundation. The administrative arms of most boards are government entities. In 1970, the county designated the Institute as its agent to administer these programs, and this function has been housed in the Employment Management Services Division of the Institute ever since that time. The other divisions of the Institute conduct employment-related research, give out grants to researchers, and publish books.

³1 US\$ = 1.18 Euro (1 Euro = 0.844 US\$; exchange rate on 29.6.2001).

community organizations and other governmental agencies to provide job placement assistance, job training, and other employment services. MOWD employs 240 workers with an annual budget of \$118 million, which is funded by the city of Chicago (16%), the state of Illinois (75%), and the U.S. Department of Labor (9%).

One of the major problems facing MOWD is the selection of members to serve on its board. In large cities with many constituency groups, such as Chicago, it can be difficult to select a board that represents all the concerns in the community. Much attention has been given to proper representation on MOWD's board, since the ability of the agency's leadership to work with the major stakeholders of the community and the large number of partners is key to the program's success. It is recognized that political maneuvering and in-fighting could undermine this effort. However, the strong desire by many constituents, including businesses, to serve on the MOWD board contrasts with the opposite problem faced by some boards in attracting qualified members.

As mentioned earlier, WIBs typically partner with several local agencies to provide services, such as the Michigan Technical Education Center at Kalamazoo Valley Community College (M-TEC). The purpose of M-TEC is to solve the training challenges of businesses in southwest Michigan using creative, competency-based, cost-effective solutions. Opened in late 2000, the M-TEC facility aims to offer a CAD/CAM lab, a resource center, manufacturing laboratories, and classrooms. Other services include needs assessment for firms, skill assessments of a firm's current workforce, and the design and development of custom-training programs. Many of the training programs are fee-based, and the center is expected to be largely self-supporting.

A similar scheme, the Regional Manufacturing Technology Center, is operated by Kellogg Community College in partnership with the Calhoun County WIB, which borders the Kalamazoo workforce development area to the east. Its mission is to meet the training needs of the local manufacturing workforce by providing high-quality instruction in the most effective and efficient way possible. It offers open-entry, open-exit modularized instruction in the manufacturing skilled trades, nine skilled trade programs, and customized training at the center or on-site. Local businesses fund 31 percent of the \$1.25 million program, which has a staff of 7 full-time and 19 part-time instructors. The remaining 69 percent are funded by the state of Michigan (36%) and local government (33%). In addition, several manufacturers donate equipment and/or materials. One of the unique features of the center is that it is located in the heart of one of the state's more successful industrial parks, making it extremely accessible to on-site employers. That proximity underscores the close relationship that many WIBs have with businesses, and it illustrates the merging of workforce development and economic development activities.

Another program administered by the Kalamazoo-St. Joseph WIB, the Economic Development Job Training (EDJT) initiative, is a further example of how workforce development activities are important tools for local economic development. This program is a division of the Michigan Economic Development Corporation, which is the state's chief economic development agency. As described in more detail in the section on economic development, the corporation addresses the business retention and expansion needs of Michigan businesses. While this venture is administered and funded by an economic development agency, its primary focus is work training - a workforce development activity. To be eligible for training grants, businesses agree to create jobs or retain jobs that would be lost in such areas as manufacturing, research and development, warehousing and distribution, relocation of world headquarters, and exporting

of goods and services outside of Michigan. Most training is for high-skill jobs and typically encompasses skills that are specific to a company's needs.

One of the expected advantages of a decentralized organization with numerous partners is the ability to nurture innovative approaches to delivering employment services. An example of such a program in the Cleveland area is the Center for Employment Training (CET), a nonprofit organization specializing in training individuals, primarily from low-income households, for well-paying jobs. The facility is located in an economically distressed neighborhood with a high unemployment rate. CET partners closely with the county and city governments, receiving more than 90 percent of its funding from these two sources. It depends heavily on a technical advisory committee of business representatives to ensure that the training they provide is what local employers need.

CET provides training in other regions of the country as well, most notably the Silicon Valley area of California. Rigorous evaluations of CET in that state have shown the program to be successful for the following reasons:

- Potential workers are screened for local employers, thus making CET an integral part of the recruitment networks of employers.
- On-the-job counseling is offered to participants who have completed the training and are working but may be facing serious personal problems.
- Active industrial advisory boards and technical advisory committees ensure the program's curriculum is up-to-date and of high quality, assist in fund raising, and help in job development efforts.
- Strong ties are developed and maintained with local employers.

Research has shown that CET trainees enjoy great job-placement rates, retain their jobs longer, and enjoy substantial gains in earnings. In other words, CET works on both the supply and the demand

side of the labor market. Its approach to the latter explicitly recognizes the importance of inserting itself into precisely those networks that companies already value (Melendez and Harrison, 1998). However, some researchers question whether or not the CET program is transferable because the original program in San Jose, California, took advantage of existing employment networks in the area's strong Hispanic community. The question remains whether or not such strong community ties are available in other regions that do not have large Hispanic populations, such as the Cleveland neighborhood.

Public Education

Workforce training is a key element of workforce development. As described in the previous section, states and some local governments have established dedicated training centers to upgrade the skills of displaced workers or to enhance the skills of incumbent workers. Community colleges, in particular, have taken the lead in providing specialized training for workers in the areas they serve. However, these efforts are dwarfed by the traditional educational system of elementary and secondary schools (K-12 grades), community colleges, and four-year colleges and universities.

Considerable attention has been given to public K-12 schools in recent years. There is a general consensus that public schools have not served the needs of students with special needs or who come from economically disadvantaged households. Employers complain that high-school graduates are not prepared for work, either because they lack basic reading, writing, or math skills or because they do not have the job-readiness skills to move easily from school into the workplace.

While businesses have complained about this lack of job readiness, they have been slow to become involved in any large-scale effort to improve the situation. However, partnerships between businesses and

K-12 public schools have been established in several communities. One such program is Kalamazoo's Education for Employment (EFE). Administered by the intermediate school district, EFE offers a bridge between school and productive careers by helping to develop the appropriate skills, knowledge and attitudes that are essential for becoming a productive member of the workforce. The hallmark of the program is the internships with local businesses in several key local industries. High school juniors and senior split their time between traditional classroom training and on-the-job training. Internships are available not only for those who aspire to a trade job but also for those, who plan to pursue professions such as medical technicians and even physicians. In addition to EFE, the Kalamazoo area intermediate school district is working with area employers to ensure that high school students are being taught the necessary workplace know-how skills required by employers for their entry-level workers.

ECONOMIC DEVELOPMENT

Conceptual Foundation

Economic development efforts in the United States are carried out primarily by state and local organizations. Unlike some countries, the United States does not pursue a national industrial policy. Rather, as former Secretary of Labor John Dunlop once remarked, it pursues 5,000 industrial policies, as each state and local municipality pursues policies to promote their own economic development.⁴ The federal government provides some support for these local efforts, but the support is limited and is targeted primarily at economically distressed areas. Focused on meeting the needs of employers, economic

⁴Paraphrased from a private conversation with Prof. Dunlop during his visit to the Federal Reserve Bank of Cleveland in the late 1980s.

development efforts have traditionally addressed infrastructure and tax issues.⁵ In recent years, marketing and attraction efforts have shared the stage with retention and small-business development initiatives. Moreover, efforts to support an area's economic-based industrial clusters have taken center stage in many communities.

With local economic development organizations devoting considerable effort to attract businesses to their areas, economic development efforts in the United States have been labeled by some as costly competition between the states that results in no net benefit to the country. It is feared that the employment gains in the winning states are totally offset by the employment losses in the losing states. Moreover, some argue that government incentives can, in fact, promote poor site-location decisions if they persuade firms to locate at less than the optimal location.

During the late 1980s and through the 1990s, the economic development literature turned its focus away from the more traditional cost-cutting approach of attracting businesses (low taxes, subsidized loans, infrastructure grants) to a value-added approach (increase productivity, encourage innovation and entrepreneurship). Eisinger (1997) distinguished the two approaches by labeling the more traditional policies as supply side and the new value-added approach as demand side. He and others argue that value-added economic development policies are not subject to the zero-sum argument because the resulting advancements in productivity or innovation enlarge the broader economy.

⁵An exception to the statement that the federal government provides limited support to economic development is the distribution of federal funds for highways and other infrastructure investment. The federal government provides states and local governments with upwards of \$20 billion each year to expand and improve their highway systems. States and local governments have a good deal of discretion on how these funds are to be used. The federal government also spends an additional \$20 billion for air, transit, rail, and water transportation. A good portion of this money also goes to states and local governments (U.S. Department of Transportation, 1999).

One way in which this new approach has been conceptualized and implemented is through regional cluster analysis. Michael Porter, an early pioneer of cluster analysis, argues strongly that economic developers should concentrate their efforts on enhancing the competitiveness of their local industrial clusters. Porter defines a cluster as a geographically proximate group of interconnected companies and associated institutions in a particular field, linked by commonalities and complementarities (Porter, 2000). The geographical boundaries of clusters are difficult to define since they vary in size from a state (Michigan and the auto industry) to a metropolitan area (Grand Rapids and the office furniture industry), but they should include the major companies in the cluster along with several of their major suppliers. According to Porter (1990), the health of an area's economy depends upon the strengths of its clusters which, in turn, relies on four components: 1) demand conditions for the cluster, 2) quality of suppliers, 3) a supportive infrastructure, and 4) competition among rivals that is based more on quality and innovation than on price.

The emphasis on cluster analysis reinforces the need for local partnerships. One of the basic tenets of the cluster approach is to bring business, government and labor together to discuss common concerns and to elicit concerted efforts to address these problems. Successful cluster initiatives have a number of common characteristics. To be effective, initiatives must be industry driven, demonstrate a bias toward action, and involve the major firms in the cluster as well as associated institutions. In order to keep the cluster's members engaged, the initiative must maintain its focus on removing obstacles and easing constraints on cluster upgrading.

Role of the Federal Government

The federal government has typically backed away from supporting economic development efforts because of its possible “zero-sum” outcomes. The federal government does not see its role as assisting one region at the expense of another. In fact, the federal government has restricted its role to very specialized functions, such as providing technical and planning assistance to economically distressed areas, funding public infrastructure investment in economically distressed areas, providing technical assistance for businesses through universities and private service providers, and promoting export trade.

This role is consistent with the acceptance that market failures in the delivery of public goods and significant inequity in the distribution of income necessitate economic development efforts in economically distressed areas. Bartik (1994), Hill (1998) and Thornburgh (1998) agree that the federal government should a) achieve macroeconomic stability, b) provide timely and accurate economic statistics, c) provide incentives for states and local economic development activities to concentrate on economically disadvantaged communities, d) encourage and fund evaluations of existing state and local programs, and e) assist productivity growth through technology extension services and customized job training programs.

To learn about some of these functions, 2 of the 12 regional banks of the Federal Reserve System, one in Chicago and the other in Cleveland, were surveyed. These two banks, individually and as members of the Federal Reserve System, provide some of the functions listed above. As the nation’s central bank, the Federal Reserve System seeks to maintain price stability that will encourage and promote sustainable economic growth. Federal Reserve Banks (FRBs) also monitor economic trends and publish numerous regular and special reports on the economic trends in their districts. Both banks have a community affairs function that supports community reinvestment, fair lending, and as catalysts, conveners, and consultants

to identify best practices, build partnerships, and provide training and technical assistance to community development practitioners. The Federal Reserve System is technically not a federal agency. Each of the 12 regional banks is governed by its own board of directors, with oversight by the Board of Governors in Washington, DC. The Board of Governors also has its own governing body and is not part of the executive branch of the federal government, as are other federal agencies.

The Economic Development Administration (EDA) of the U.S. Department of Commerce is the primary federal agency that assists the nation's economically distressed areas. Its basic principle is that economically distressed areas must be empowered to develop and implement their own economic development effort; it cannot be issued by an out-of-the-area government entity. The EDA maintains a variety of programs to assist economically distressed areas through direct funding, local technical assistance, public infrastructure development, and economic and trade adjustment programs. The latter assist communities in adjusting to severe and sudden economic dislocation, such as plant or military base closings.

Another federal government economic development program promotes productivity growth through technology extension services. The National Institute of Standards and Technology (NIST) assists industries to develop the technology needed to improve product quality, to modernize manufacturing processes, to ensure product reliability, and to facilitate rapid commercialization of products based on new scientific discoveries. In carrying out this goal, NIST funds a national network of more than 75 local manufacturing extension partnerships (MEP). Their primary goal is to assist small to medium-size manufacturers in improving their production processes, management and financial systems, and product development. MEPs link manufacturers with business and production specialists and also serve as information centers.

Another agency delivering services in this field is the Michigan Manufacturing Technology Center (MMTC). MMTC offers assistance in performance benchmarking, business systems/information technology, costing systems, customer management, energy assistance, environmental services, and health and safety initiatives. MMTC hold quarterly meetings with local manufacturers and is geared towards meeting the needs of small and mid-sized firms for information on technology issues. Many of its services are fee-based and the services are provided by a contracted third party.

Two volunteer business councils work with MMTC on issues germane to their industry cluster: the Grand Rapids Right Place Program's Office Furniture Industry Council and the Manufacturing Council. These councils represent an application of the cluster-focused economic development approach. The Office Furniture Industry Council was formed in 1992 to serve as a forum for peer networking and continuous improvement in the industry. Its mission is to ensure growth by creating value and eliminating waste in the customer-supplier relationship. Its achievements include setting industry standards for supplier quality, color evaluation, and EDI/Electronic Commerce; exchanging best-practice processes and technologies; and supporting ISO/QS 9000 Certification among its members and their suppliers. A list of the council's current and future projects includes parts submission conventions for office furniture suppliers, standardized supplier performance-rating systems, minority/women-owned business enterprises and an internet-based information clearinghouse for the industry.

The mission of the Manufacturing Council, founded in 1989, is to "promote, facilitate and enable implementation of 'world class manufacturing' principles and practices among manufacturers" in the Grand Rapids area. The council's strategy is three-pronged: 1) create a forum where manufacturers can talk among themselves and identify common concerns; 2) work to improve the area's manufacturing workforce;

and 3) articulate and prioritize the needs of manufacturers. An evaluation of MEPs found that “participation in the manufacturing extension is associated with between 3.4 and 16 percent higher labor productivity growth between 1987 and 1992” (Jarmin, 1999).

State Economic Development Efforts

States are responsible for a large share of the economic development efforts. Michael Porter, in his study of regional competition (1990), concludes that a government can promote the well-being of its industrial base in several ways. It can a) provide business with an educated workforce, an appropriate physical infrastructure, and accurate and timely economic information; b) establish rules and incentives governing competition that will encourage productivity growth; c) develop and implement an economic action program or change process that mobilizes government, business, institutions, and citizens; and d) facilitate clusters.

As the state of Michigan’s chief economic development agency, the Michigan Economic Development Corporation (MEDC) focuses on the last two points listed above. MEDC’s status and organizational structure is somewhat unique among state economic development agencies, which is worth noting. It is a quasi-public organization that has a private-sector board of directors that controls public dollars. Therefore, instead of elected officials overseeing publicly funded projects, business leaders, as members of the board of MEDC, control the dispersal of government dollars. MEDC has a staff of 250 full-time individuals and a budget of \$340 million. It receives its funding from the general fund of the Michigan state government and from a separate, state revenue-funded Michigan Strategic Fund.

MEDC partners with local economic development agencies to mobilize resources, including contributing state funds to local projects. It plays a large role in providing technical assistance, political clout, and public funds to attract businesses from outside the state and to retain existing businesses. To achieve this, it can offer businesses grants to train their employees, making a small contribution to the overall education of the workforce. For example, MEDC funds job training facilities across the state, including the Michigan Technical Training Center in Kalamazoo and the Regional Manufacturing Technology Center in Battle Creek.

MEDC can also extend tax credits and provide industrial revenue bonds that have a lower interest rate than other loans because they are exempt from federal taxes. A recent example of MEDC partnering with a local community is its joint effort with Southwest Michigan First, a local private nonprofit economic development organization for Kalamazoo County. To attract a retail distribution center that promised to employ upwards of 1,000 workers, MEDC approved a \$4.5 million tax credit, offered a \$500,000 grant to train the company's employees, and provided \$2.5 million in infrastructure development assistance.

One of MEDC's most unique activities is the deployment of account managers throughout the state. Their primary responsibility is to be the regional eyes and ears for MEDC. Account managers are required to interview periodically the CEO or other top-ranking officers of every major private employer in their assigned region. Moreover, they work on a regular basis with the local economic development organizations in their region in monitoring the region's economic activity. If and when an account manager finds a firm that is considering shutting down, relocating, or expanding its regional facility, then it is his or her job to offer all the available services provided by MEDC. Indeed, a good account manager can change the negative attitude held by some businesses toward government.

Local Economic Development Organizations

Nearly all local areas engage in some form of economic development activities, even cities with populations as small as 10,000 people. In most areas, local governments take responsibility for several aspects of economic development, such as zoning regulations, infrastructure development, and business retention. In addition, many communities have established private nonprofit organizations to promote their area. These take the lead in business attraction and retention and partner with local governments and other private entities to carry out these functions.

Local government entities include Battle Creek Unlimited (BCU), the Grand Valley Metropolitan Council (GVMC) in Grand Rapids, and the Chicago Partnership for Economic Development. Both Battle Creek Unlimited and the Chicago Partnership offer a single point of contact for businesses interested in obtaining assistance in locating or staying in the area. BCU actually administers an industrial park, owned by the city of Battle Creek, and devotes most of its economic development efforts towards developing the park and seeing to the needs of businesses within the park. BCU activities are funded primarily through a portion of the property taxes generated at the park. It offers business loans, tax incentives, ready-to-build sites in an attractive environment, a commercial-size airport, and a one-stop shop that handles permits and other government regulations for its business customers.

Led by a board of directors, which is dominated by business representatives and chaired by the city's mayor, the Chicago Partnership is a not-for-profit, private-public corporation charged with "mobilizing and leading the city's public and private economic development efforts." One half of its budget is funded by the city of Chicago while the business community picks up the remaining share. The partnership serves as the clearinghouse for all economic development activities in the city and is the single

point of contact for businesses interested in obtaining assistance. GVMC is an association of local governments including cities and townships in the Grand Rapids urban area. Its primary focus is on land-use planning and transportation. One of its strengths has been its ability to consolidate all of the area's infrastructure needs into one comprehensive plan that is then presented to state and federal authorities for funding.

Private organizations surveyed included the Civic Committee Inner-City Business Development Initiative in Chicago, the Right Place Program of Grand Rapids, and WIRE-Net in Cleveland. These organizations have strong business support and involvement in pursuing economic development efforts. They try to recruit new businesses to locate in their region and to retain existing businesses. Funding for these efforts come from a variety of sources, including local businesses, foundations, and federal, state, and local governments. As private organizations, they have greater latitude to court businesses than a government agency might have, because they are not subject to open-meeting requirements (and thus can meet discreetly with potential clients) and because they are not subject to public restrictions on the use of public monies. However, because their funding is voluntary and not mandated by government action, they are expected to show significant results or risk losing their franchise.

The Right Place Program is a private, nonprofit organization focused on promoting economic growth in the Grand Rapids urban area, primarily Kent County. In addition to providing the standard set of economic development services (e.g., information on industrial sites, tax abatements, statewide business incentives, and information about the community itself), the Right Place Program has partnered with other organizations to offer several unique programs. One such initiative is with the city of Grand Rapids to redevelop abandoned industrial land in the inner city. It is somewhat unusual for a private organization to

carry out an effort of this kind, since urban redevelopment is a risky venture with uncertain payoffs. Instead, many private economic development bodies prefer to develop the more attractive land that is available in an area, which is typically outside the inner city.

The Inner-City Business Development Committee of the Commercial Club of Chicago is another attempt by a not-for-profit economic development organization to stimulate and encourage employment growth in the inner city. The committee, comprising the senior executives in the Chicago business community, attempts to promote the formation and expansion of small businesses in inner-city neighborhoods. A key strategy in assisting these businesses is the development of business relations with the area's larger companies that form the Civic Committee. The end goal is that by increasing the level of business volume at these firms, employment opportunities will arise in inner-city neighborhoods.

WIRE-Net, the Westside Industrial Retention and Expansion Network, was incorporated in 1988 by neighborhood residents, businesses, and workers on Cleveland's west side. It was formed to create a community development strategy, which would promote further growth and retain existing small and medium-sized businesses by providing programs and services to meet their needs. WIRE-Net's 12 full-time staff focus on workforce development, industrial real estate development and specific business issues. Currently, 150 companies on Cleveland's west side are members of WIRE-Net. The program's annual budget of \$1.4 million comes from government, charitable foundations, and membership dues.

Colleges and Universities

For the most part, colleges and universities pursue their core mission of providing advanced education and conducting cutting-edge research. However, in some cases, they have partnered with local

governments and community organizations to help promote local economic growth. The most visible manifestation of this partnership is the development of business-research parks developed in part by universities. They offer attractive, campus-like business locations with easy access to the universities' many professional programs. Some of these parks are meant to serve as incubators for the university's faculty and students who have the desire to "spin-off" their research into a business opportunity. Evaluations of existing university-related research and business parks offer mixed results. While some of the earlier ones have become world renowned, others stand fallow. A recent study suggests that for university-related research and business parks to have a high probability of success, the area should also a) house a strong industrial base that has a large research and development sector, b) invest in good air transportation, c) maintain a well-developed network of business services, and d) nurture civic leadership (Luger and Goldstein, 1990).

Finally, in addition to providing professional, business, and scientific capabilities, universities also assist community development efforts. These activities draw upon the expertise of the university's urban planning, economic development, and community development departments. For instance, Michigan State University's Center for Urban Affairs and the Community Economic Development Program partner with local economic development organizations to provide them with training and research assistance.

THE IMPACT OF LOCAL PARTNERSHIPS

A strong network of partners characterizes both workforce development and economic development organizations in the United States. These partnerships have been formed within and between both public and private organizations. However, they have not crossed the line between workforce

development activities and economic development activities to any great extent, and thus the two functions have not been integrated. Workforce development organizations appear to have a more formalized partnership arrangement, which has been established and fostered by federal programs that have emphasized such networks particularly among federal, state, and local government agencies. The new legislation recently passed to reform many of the federal employment programs further reinforces partnership with more authority given to state and local governments and greater opportunities for private sector organizations to partner with government agencies.

Economic development efforts have been less formalized, since there are few federal economic development programs and thus little leadership from the federal government. However, the lack of top-down guidance has opened the way for local entities, both public and private, to step in and provide innovative approaches to enhancing their local economies. Nevertheless, the resulting partnerships are as much a product of cantankerous political in-fighting and interagency turf wars as they are a product of planned coordination of functions and responsibilities among organizations. Despite some glaring inefficiencies that result, it is reasonable to conclude that such a system has injected considerable flexibility within organizations that carry out workforce development activities and economic development activities.

Partnerships in the Midwest have four recognizable strengths:

- *The active involvement of the business community.* Businesses accept a leadership role in directing and designing many of the programs. Not only do they take on leadership responsibilities in funding and working with the various nonprofit organizations studied, they also play active and important advisory roles on governmental efforts.
- *Employment programs are market driven.* The active involvement of the business community is especially seen in the design of training programs. Training is offered in only those fields where an unmet demand exists. Equally important, business representatives

play a vital role in ensuring that both the training curriculum and the equipment being used will adequately prepare the program's graduates for employment.

- *The ability to respond locally to address local issues.* Local control over training and economic development programs leads to increased flexibility and a greater variety of programs. While many of the programs surveyed had similar components, each had a unique approach based, in part, on the strengths of the community and its organizations. Moreover, local decision makers are by definition stakeholders in the community and, hence, are more concerned about the success of their programs and their impact on their community. Partnerships are composed of empowered residents who live and work in the local area.
- *Efforts are pragmatic and innovative.* Pragmatism should be expected given that many programs are local responses to local issues. If one successfully mapped out all of the training programs being offered in even the smallest surveyed community, it is almost certain that the end product would show a highly uncoordinated, duplicated, and confusing delivery system. However, many of the programs would still be innovative, and most would show a pragmatic approach to the problems they set out to address. Another indication of how pragmatic programs are is the fact that most are designed to meet the needs of existing companies and industries.

The partnership arrangements examined have also a number of weaknesses, including the following:

- *Government resources and activities are often ignored or bypassed.* Millions of dollars of public funds are spent on elementary and secondary education, and yet, many of the program-makers view the public schools not as an opportunity but as a major obstacle to work around. Instead of working more closely with public schools to improve their lagging performance, businesses are more willing to duplicate the effort and spend millions of additional dollars on training workers who dropped out of school. This is not limited to public schools; in several communities, nonprofit organizations decide to ignore public economic development efforts, as well.
- *Lack of community or citizenry involvement.* The creation of programs in the public and nonprofit sectors is aimed at meeting the needs of the area's business community. Involvement of ordinary people is kept to a minimum. One troubling outcome of this is that if private and public resources dry up, none of these programs will have strong support from the people they are designed to assist. Another problem is that the partnerships may not include all the stakeholders that are affected by services they deliver. The emphasis on business involvement may be seen as crowding out groups that represent low-income and economically disadvantaged segments of the population. Furthermore, the emphasis on work may ignore those people who have more significant barriers to employment.

- *Programs are market dependent.* If and when the unemployment rate starts to rise, it is unclear if the business community will maintain its level of involvement in these programs. Businesses typically act in their own self-interest as they take on leadership roles in the provision of workforce development programs. When the current tight labor market eases, it is likely that some of the business involvement will wane.

The ability to enhance the existing strengths and weaknesses depends to a large extent upon the state and local political landscape and the strength of an area's civic and community assets. However, significant barriers may stand in the way of partnerships in reaching their full potential.

- Federal/state/city administering agencies may be unwilling to grant true authority to local organizations, restricting their ability to respond to changes in local conditions. Funding agencies are typically reluctant to grant complete autonomy to those who receive their support, primarily due to the public sector's requirement of accountability.
- Job-training providers and local economic developers are unable to work together because of their narrow focus. Job-training providers tend to focus on the needs of their clients, while often ignoring the needs of employers. Economic development professionals, on the other hand, are focused solely on addressing the needs of the area's existing and potential employers and often neglect the needs of local employees or the needs of less-advantaged population groups.
- The politicalization of the delivery programs creates an environment where solid evaluations are unlikely. It becomes very difficult for any organization to remain flexible and responsive to its changing environment when proper evaluations of its programs are discouraged due to the political or self-interest concerns of the program's administrators.
- Service providers may be "too close" to their customers, and hence, are unable to allocate resources properly. If the partnership is too closely connected to a neighborhood, an area employer, an employers' association, or a specific project, it is possible that it will allocate resources in a biased and inefficient manner.

CONCLUSIONS

Lessons have been drawn from the survey of partnerships in the Midwest on four issues: 1) the efficiency of partnerships; 2) the efficiency of service delivery; 3) the local management of programs; and

4) the proper roles of federal, state and local governments in the provision of workforce and economic development services.

The Efficiency of Partnerships

Two efficiency conditions have been identified for the management of federal and state employment and economic development strategies by partnerships. First, the importance of active business involvement is a key component in a partnership's ability to efficiently manage federal and state employment policies. Businesses, through their membership on WIBs and involvement in other organizations, identify occupations and industries experiencing labor shortages and skill deficiencies and recommend appropriate training programs and other employment services to address these needs. Second, the existing political environment of the local area plays a critical role. The ability of the partnerships in resolving conflicts between governmental units, community organizations and political parties determines, in large part, its success. Developing an atmosphere of cooperation where none existed before is one of the strongest challenges facing civic entrepreneurship. Such effort requires a high degree of trust and common vision among the partners.

Service Delivery

There is no one mechanism that will ensure the efficient delivery of local employment or economic development services. While the active participation of major stakeholders is a necessary condition, it is not sufficient. Guidelines on the composition of advisory boards and on procedures to establish linkages between the service provider and employers are useful, but can serve only as a starting point. At least three

conditions are associated with successful programs in the Midwest. First, there needs to be a strong commitment from the business community, stimulated in large part by economic necessities, such as finding employees or lowering costs. Second, effective civic entrepreneurs are needed to pull together the major stakeholders and keep them together. Finally, the successful partnership creates an environment where partners feel that they have ownership in the process and that their voices matter. If too many of a program's mechanisms are mandated by the federal or state government, it becomes more difficult for local partners to gain the necessary sense of ownership in the process that is needed to foster innovative and cooperative solutions to problems. At the same time, it must be acknowledged that the leadership from the federal government in establishing a strong federal/state/local partnership is instrumental in engineering the partnership arrangements among local workforce development organizations. The lack of such leadership in economic development activities most likely accounts for the wide variety of arrangements across states and localities.

Guidelines for Local Management

The local business community plays a critical role in employment and economic development partnerships in the United States. In fact, in some instances, it was found that the business community simply bypasses governmental efforts, if they think that they are unresponsive or cumbersome. While it is in the public interest to establish general guidelines such as targeting assistance at individuals and communities that are experiencing economic hardships, if state and federal governments mandate too many guidelines, reporting requirements and procedures, it is possible that the business community will not actively participate. A possible fruitful approach would be for the federal and state authorities to a) clearly

state the objectives of federal-or state-funded employment or economic development programs, b) grant local partnerships greater latitude in establishing and implementing the strategies to achieve these objectives, and c) fund third-party program evaluations.

Proper Roles of Federal, State, and Local Governments in the Provision of Workforce and Economic Development Services

In the United States, the federal government has been a major player in workforce development, while state and local governments and nonprofit organizations have traditionally conducted economic development activities. It seems reasonable for federal and state agencies to limit their involvement to posting broad outcome goals, supporting evaluation studies, providing staff training, and funding the program while leaving the administration and provision of services to partnerships facilitated by local government. The tasks of local government are very challenging. First, the potential success of locally directed partnerships depends on having a supporting community political decision making environment. Effective local governments facilitate, coordinate, and support business-driven (and community-driven) partnerships, while remaining the fiscal agency for the organization. When local governments fail in these duties, it is possible for the business and community leaders to go it alone, which can mean that the general community loses as federal and state monies are misallocated.

The federal government has played only a supportive role in economic development initiatives due to political considerations and the perception that local economic development is a “zero sum” game that has little to no net impact on the nation’s economy. Today, many state and local economic development organization are exploring ways to build on their area’s unique economic base instead of simply attracting

any employers into the area, regardless of how they contribute to the local economy. Furthermore, intense global competition is also pushing state and local government to refocus their resources on assisting economic-base firms in becoming more productive since they account for a substantial share of its tax base. Many local governments have identified their key industrial clusters and are working towards creating a more productive environment in which they can prosper. As state and local economic development focus on improving the competitiveness of their existing industries, the whole economy can benefit, which is more than can be expected if state and local governments spend their funds on enticing firms to relocate from one community to the next.

As state and local economic development efforts focus more and more on improving the competitiveness of their regions, economic development loses some of its zero-sum qualities and there is more reason for the federal government to reenter the game. Federal support of nationwide industry modernization programs and the development of regional industrial cluster initiatives seems reasonable. Finally, the federal government is in the best position to fund evaluation programs of local and state economic development initiatives.

To conclude, the effective pursuit of workforce and economic development efforts at the state and local levels tests the depth and strength of a community's civil assets. The ability to link businesses, governments and other stakeholders into effective partnerships depends upon an area's "civic entrepreneurs." Such individuals must come from government, business, and the broader community and be willing to work together through partnerships to address their local issues. Therefore, the challenge facing most local areas is the ability to foster such leadership and to encourage and support their active involvement in the delivery of these services.

References

- Balducchi, David E., Terry R. Johnson, and Mark R. Gritz. 1997. "The Role of the Employment Service." In *Unemployment Insurance in the United States: Analysis of Policy Issues*, Christopher J. O'Leary and Stephen A. Wandner, editors, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, pp. 457-501.
- Bartik, Timothy J. 1994. *What Should the Federal Government Be Doing about Urban Economic Development*. Working paper, W.E. Upjohn Institute for Employment Research, Kalamazoo, Michigan.
- Eisinger, Peter K. 1997. *The Rise of the Entrepreneurial State*. Madison, Wisconsin: University of Wisconsin Press.
- Hill, Edward W. 1998. "Principles for Rethinking the Federal Government Role in Economic Development." *Economic Development Quarterly* 12(4), pp. 299-312.
- Jarmin, Ronald S. 1999. "Evaluating the Impact of Manufacturing Extension on Productivity Growth." *Journal of Policy Analysis Management* 18(1), pp. 99-119.
- Levitan, Sar A., and Frank Gallo. 1988. *A Second Chance: Training for Jobs*. Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research.
- Luger, Michael, and Harvey Goldstein. 1990. "Technology in the Garden: Research Parks and Regional Economic Development." Final Report to the Ford Foundation, University of North Carolina, Chapel Hill, North Carolina.
- Melendez, Edwin, and Bennett Harrison. 1998. "Matching the Disadvantaged to Job Opportunities: Structural Explanations for the Past Successes of the Center for Employment Training." *Economic Development Quarterly* 12(1), pp. 3-11.
- O'Leary, Christopher, and Stephen Wandner, eds. 1997. *Unemployment Insurance in the United States: Analysis of Policy Issues*. Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research.
- O'Leary, Christopher, and Robert Straits. 2000. *Intergovernmental Relations in Employment Policy: The United States Experience*. Working paper, W.E. Upjohn Institute for Employment Research, Kalamazoo, Michigan.
- Porter, Michael E. 1990. *The Competitive Advantage of Nations*. New York: The Free Press.

Porter, Michael E. 2000. "Location, Competition, and Economic Development: Local Clusters in a Global Economy." *Economic Development Quarterly* 14(1), pp.15-34.

Thornburgh, Dick. 1998. "A Path to Smarter Federal Leadership in Economic Development: Learning, Leveraging and Linking." *Economic Development Quarterly* 12(4), pp. 291-298.

U.S. Department of Transportation. 1999. *National Transportation Statistics*. Washington, D.C.: Bureau of Transportation Statistics.

APPENDIX 1 Study Tour Information Details, United States (April 9-14, 2000)

Organizations, constituencies and projects visited/met

- Mayor’s Office of Workforce Development, Chicago Partnership, Civic Committee Inner City Business Development Initiative and Chicagoland Business Partners: managers and constituencies (municipality, public employment service, social services, employer organizations, private companies); Federal Reserve Bank of Chicago, Chicago, Illinois.

- Michigan Works! (Kalamazoo-St. Joseph Workforce Development Board), M-TEC Michigan Technical Education Center at Kalamazoo Valley Community College, Kalamazoo Regional Educational Services’ Education, Battle Creek Unlimited and Kellogg Community College’s Regional Manufacturing Technology Center: managers and constituencies (private companies), Kalamazoo and Battle Creek, Michigan.

- Right Place Program, Michigan Manufacturing Technology Center Partnership, Office Furniture Industry Council, Grand Valley Metropolitan Council and Urban Redevelopment Council: managers and constituencies (municipality, employer organizations, private companies), Grand Rapids, Michigan.

- Michigan Economic Development Corporation and Michigan State University for Urban Affairs and Economic Development Program (managers), Lansing, Michigan.

- Greater Cleveland Growth Association, Center for Employment Training (CET) and Wirenet: managers and constituencies (private companies); Federal Reserve Bank of Cleveland, Cleveland, Ohio.

Study team

- Denise Amyot, Human Resource Development Canada
- Angelo Baglio, European Commission, Brussels
- Martina Berger, Ministry of Economy and Labour, Austria
- Paul Cullen, Department of Enterprise, Trade and Employment, Ireland
- Andrzej Eliaz, Ministry of Economy, Poland
- Claudio Fornari, Sviluppo Italia, Italy
- Jan Hendeliowitz, Public Employment Service, Denmark
- Petter Knutzen, Ministry of Local Government and Regional Development, Norway
- Michal Kubisz, Ministry of Labour and Social Policy, Poland
- Miroslav Prikryl, Ministry of Regional Development, Czech Republic
- Paavo Saikkonen, Ministry of Labour, Finland
- George Tsobanoglou, Institute for Social Development (ISTAME), Greece
- Marion Vrijens, Ministry of Employment, Flanders Region, Belgium
- Sergio Arzeni, Head of the LEED Program, OECD Secretariat
- Sylvain Giguère, OECD Secretariat