



OFFICE OF THE ATTORNEY GENERAL
CONNECTICUT

WILLIAM TONG
ATTORNEY GENERAL

January 24, 2023

By Email

Lawrence S. Fox
Chair, State Contracting Standards Board
165 Capitol Avenue, Suite 1060
Hartford, Connecticut 06106

Re: *Request for Formal Opinion*

Dear Chairman Fox:

You wrote seeking a formal legal opinion “concerning the Port Authority’s ability to enter into public-private partnerships via their enabling statutes.”

The Connecticut Port Authority is a quasi-public agency charged with, among other things, coordinating “the development of Connecticut’s ports and harbors, with a focus on private and public investments.” To achieve its goals, the Port Authority is broadly empowered to enter into contracts, joint ventures, and partnerships with both governmental and private entities.

In 2011, the legislature created a special type of “public-private partnership,” codified at Chapter 55d of the General Statutes, and authorized state agencies to enter into such partnerships under certain circumstances. The statute creating these partnerships expressly included a “quasi-public agency” in the definition of “state agency” for purposes of the section. Conn. Gen. Stat. § 4-255(a). As explained below, the Port Authority, as a quasi-public agency, was able to enter into these Chapter 55d partnerships to the same extent and on the same terms as other quasi-public agencies from the time the Port Authority was created until the statute was modified in June 2021.

The Port Authority’s Creation and Powers

In 2015, the General Assembly established the Connecticut Port Authority as a quasi-public agency. In 2018, the General Assembly explicitly gave the Authority the “duty and power” to:

- “Make and enter into all contracts and agreements that are necessary, desirable or incidental to the conduct of its business[.]”

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- “Enter into joint ventures and invest in, and participate with, any person or entity, including, without limitation, governmental or private business entities in the formation, ownership, management and operation of business entities, including stock and nonstock corporations, limited liability companies and general and limited partnerships, formed to advance the purposes of the authority.”

The Port Authority remains a quasi-public agency, and retains the authority to enter into “all... necessary, desirable, or incidental” contracts and into “partnerships” with “governmental or private” entities. Some of these partnerships might be characterized – colloquially, in business documents, and by the General Assembly – as “public-private partnerships,” since they are literally partnerships between government and private entities, even though they are not created under the authority of Chapter 55d of the General Statutes.

Chapter 55d Public-Private Partnerships

In 2011, the General Assembly defined a special category of public-private partnership, codified at Chapter 55d of the General Statutes. The legislature envisioned the Chapter 55d partnership as a formal “relationship” in which a “state agency” – including a quasi-public agency like the Port Authority – contracted with “a private entity” to “design, develop, finance, construct, operate or maintain one or more state facilities.”

Between October 2011 and June 2021, Chapter 55d’s provisions went largely unchanged. But legislation passed in 2021 provided that, as of June 28, 2021, only the Department of Transportation can enter into chapter 55d partnerships with private entities.

Legal Analysis: The Port Authority Has Always Been Able to Enter into Chapter 55d Partnerships to the Same Extent as Other Quasi-Public Agencies

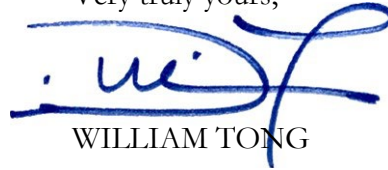
Chapter 55d, as passed in 2011, expressly authorized all quasi-public agencies to enter into public-private partnerships. The General Assembly presumably knew that when it established the Port Authority as a quasi-public agency in 2015. We conclude, then, that the General Assembly extended to the Authority the power of all quasi-public agencies to enter into Chapter 55d partnerships.

So the Port Authority was eligible for Chapter 55d partnerships to the same extent as other quasi-public agencies from 2015 until June 27, 2021. And after that date, pursuant to a legislative amendment, no quasi-public agency – including the Authority – can enter into new public-private partnerships. That prerogative is now limited to the Department of Transportation,

Lawrence S. Fox, Chair
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I trust this opinion responds to the Board's request.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'W. Tong', with a large flourish extending to the right.

WILLIAM TONG