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May 3, 2021

Executive Board
c/o Jim Dinkle, Executive Director
Kennebec Regional Development Authority
46 First Park Drive C
Oakland, ME 04963

Re: Ability of Kennebec Regional Development Authority (the "Authority") Member to
Withdraw Membership

Dear Board Members:

We have been asked to review the Authority's 1998 enabling legislation (P&SL 1997, c. 79) and an example of the Interlocal Revenue Sharing Agreement (the "Interlocal Agreement") that the Authority has entered into with the Town of Oakland and 23 other member municipalities, and to provide an opinion on the ability of a member municipality to withdraw from the Authority.

The Interlocal Agreement does not provide any guidance on the issue. It simply provides for the allocation of tax revenues to Oakland from First Park that exceed any negative fiscal impact to that Oakland might experience as the First Park host community (caused by an increased State Valuation due to the value of new real and personal property built or installed in First Park), unless and while this new value is exempted because of tax increment financing. The Interlocal Agreement is for a term of 99 years and has no provisions for termination.

The answer to the questions of whether, and if so, how, a municipality may cease to be a member of the Authority is in the Authority's enabling legislation, P&SL 1997, c. 79, Sec. 13 ("Other cities, towns and plantations may join; procedure for withdrawing from the authority"). This Section provides:

A city, town or plantation joining the authority pursuant to this section is legally obligated for its pro rata share of the operational part of all future authority budgets and any indebtedness of the authority incurred pursuant to sections 4, 8 and 10 of this Act after the city, town or plantation becomes a member of the authority. A city, town or plantation that is already a member of the authority may vote to withdraw its membership; however, it continues to be legally obligated on any outstanding indebtedness of the authority until such time as all of the indebtedness is paid in full. The withdrawal only becomes effective on the date that marks the end of a fiscal year of the authority that is preceded by a full fiscal

year in which the income was at least sufficient to pay the indebtedness and expenses of the authority for that fiscal year.

Under the last two sentences of Sec. 13, a municipality that is a member of the Authority may vote to withdraw, presumably at any time, but 1) it remains legally obligated on any outstanding Authority indebtedness incurred since it joined the Authority until the indebtedness “is paid in full,” and 2) the withdrawal only becomes effective as of the July 1 that follows a full July 1 through June 30 fiscal year “in which the income was at least sufficient to pay the indebtedness and expenses of the authority for that fiscal year.”

We understand First Park was financed by general obligation bonds, so that the indebtedness would have been authorized and incurred under Sec. 4. We also understand those general obligation bonds recently have been retired. Therefore, the first condition to withdrawal in Sec. 13 has been satisfied.

However, while the first condition may have been satisfied (since there currently is no outstanding indebtedness), the second condition, sufficiency of income, may be an impediment to a withdrawal becoming effective. The revenue from assessments paid by each municipality is not considered income – under Sec. 10, those assessments include “The amount over the estimated income of the authority that is required to meet the expenses in the approved budget” plus debt service. If there is an assessment in any fiscal year, then, it is because the Authority’s income is not sufficient to pay the Authority’s expenses, and so that fiscal year will not permit withdrawal to become effective on the following July 1. Also, while member municipalities may receive tax-sharing amounts under the Interlocal Agreement that equal or exceed their assessments, those tax-shared amounts are not “income” of the Authority.

In sum, a municipality that is a member of the Authority may withdraw its membership, but it remains obligated on any indebtedness incurred during its membership until the indebtedness is fully repaid, and that municipality’s withdrawal will not become effective until income from First Park is sufficient to pay all First Park expenses, without the need for revenue from assessments on Authority members, for a full July 1-June 30 fiscal year. Then, withdrawal will become effective on the following July 1.

However, while a member municipality may withdraw from membership in the Authority, with the effective date of that withdrawal being subject to the income sufficiency, that municipality still will remain a party (an “Approving Municipality”) to the Interlocal Agreement. There is a question as to whether an Approving Municipality under the Interlocal Agreement is entitled to receive shared property tax revenue after it withdraws from membership in the Authority. Section 1 of the Interlocal Agreement states the parties’ intention that property tax revenue from First Park received by Oakland will be shared “with the Approving Municipality,” and the second sentence of Section 4 directs Oakland or the Authority to twice each year “pay to the Approving Municipality a prorata share of said real and personal property tax revenue.” However, the first sentence of Section 4 of the Interlocal Agreement states that a pro rata share of property tax revenue will be distributed “to each Town or City which is a member of the

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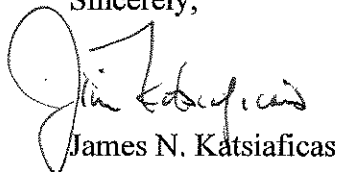
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Authority and is entitled to tax sharing under this Agreement.” If a member municipality ceases to be a member of the Authority, is it no longer entitled to receive shared tax revenue under the Interlocal Agreement, or does it continue to receive shared tax amounts (declining over time to reflect additional amounts remaining members pay for operating expenses and debt service) as an Approving Municipality?

Please note that both joining the Authority and withdrawing from the Authority will require a referendum vote by that municipality; those steps, along with the payoff of outstanding indebtedness and sufficiency of income for a full fiscal year prior to effectiveness of withdrawal, mean that the membership process is not an easy one, and it does not lend itself to annual municipal decisions as to whether to participate in the Authority.

I hope this analysis and advice are helpful. Please let me know if you have any questions or comments regarding this letter.

Sincerely,



James N. Katsiaficas