

From: abo.sm.info

Sent: Thursday, October 27, 2011 11:45 AM

Subject: Authorities Budget Office Announces Webinar Training for the Public Authorities Reporting Information System (PARIS)

The Authorities Budget Office will be conducting Public Authorities Reporting Information System (PARIS) online webinar training for Authority staff members. Training sessions will be available beginning Wednesday, November 9th. This training is intended for staff responsible for entering information into PARIS, but others involved in filing and certifying PARIS reports are also encouraged to attend. This training will be live, interactive and online.

Participants can expect to learn about and discuss the following topics:

- ▶ What is PARIS
- ▶ How to navigate through PARIS screens and data fields
- ▶ How to complete and submit reports in PARIS
- ▶ ABO expectations for accurate and complete information
- ▶ How to generate reports from PARIS for posting on web sites

Participation in each training class will be limited to 20 people. Training will be provided on a first come first served basis, with priority given to new staff of public authorities who are not familiar with PARIS.

To register for a training session, please visit www.abo.state.ny.us/paris/parisonlinetraining.html

You will need the following to participate in the training:

- A telephone
- A quiet setting such as an office where you can close the door
- A computer with internet access

To participate in this training you must set aside ***approximately 1.5 hours*** of uninterrupted time. Participants will be expected to ask and answer questions in the same manner as if they were in a classroom setting. You will receive the training materials by email prior to the training session.

From: abo.sm.info

Sent: Thursday, December 01, 2011 11:58 AM

Subject: Authorities Budget Office Releases Winter 2012 Schedule for Webinar Training for Authority Board Members

The Authorities Budget Office has released a schedule of its next 12 online webinar training sessions for Authority board members. These sessions will be available beginning Friday, January 6, 2012 and will continue through the end of March. The Spring 2012 schedule will be released in March. This training will be live, interactive and online. Completion of the session will satisfy the requirement that directors must participate in State approved training regarding their legal, fiduciary, financial and ethical responsibilities as board members of an authority.

Participants can expect to learn about and discuss the following topics:

- ▶ What it Means to be a Public Authority Board Member Today
- ▶ Responsibilities of the Board under the Public Authorities Reform Act and Related Laws
- ▶ How Public Authority Boards Can be Effective
- ▶ The Principles of Effective Corporate Governance

Participation in each training class will be limited to 15 persons. Training will be provided on a first come first served basis, with priority given to board members.

To register for a training session, please visit

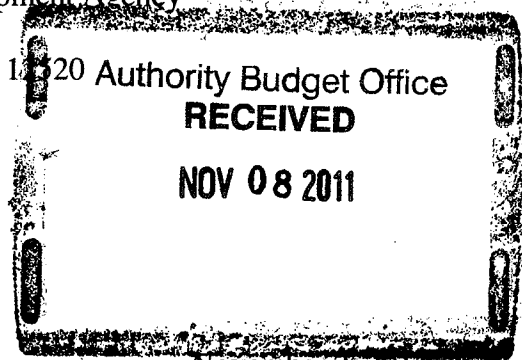
<http://www.abo.state.ny.us/training/onlinetraining.html>

WHAT YOU WILL NEED TO PARTICIPATE:

- 1) A telephone
- 2) A quiet setting such as an office where you can close the door
- 3) A computer with internet access

To participate in this training you must set aside **approximately 3 hours** of uninterrupted time. Participants will be expected to ask and answer questions in the same manner as if they were in a classroom setting. You will receive the training materials by email before the training that will be used during the training session.

Philip A. Crotty
Attorney
Orange County Industrial Development Agency
P.O. Box 363
Cornwall-on-Hudson, NY 12520 Authority Budget Office
845-401-8000



November 2, 2011

Mr. David Kidera
NYS Authority Budget Office
P.O. Box 2079
Albany, NY 12220-0076

Re: IDA Grant Report Dated October 17, 2011

Dear Mr. Kidera:

I am the attorney for the Orange County Industrial Development Agency. The IDA Chairman and Executive Director have requested that I respond to the ABO report and also endorse the response letter submitted by Brian McMahon, Executive Director of the NYS Economic Development Council, on October 25, 2011.

I would like to assure the ABO that each of the grants listed in the ABO report as regards the Orange County IDA is for the purpose of economic development in Orange County. Each falls under the provisions of NYS General Municipal Law Section 852 and Section 858. Most are for tourism-related activity, and entail construction. All are subject to a contract between the IDA and the receiving entity.

Our Chairman is quick to remind all concerned that the IDA is not the United Way—that IDA funds are only for economic development purposes. The IDA follows that guidance.

However economic development may occur in a variety of forms contemplated by the enabling statute. We submit that if you were to take a drive down Broadway in the City of Newburgh here in Orange County with representatives from a Chinese manufacturing company looking for a site, you would see how much primary economic development work must be done before such a manufacturer will consider Newburgh. Newburgh is the most dangerous in the State on a per capita basis. It is simply not Scarsdale or Saratoga, where primary economic development can take off from a much higher plateau.

The Orange County IDA is doing its best to create jobs for our people young and old, whether they are gang members, community college graduates, four-year college graduates, or laid-off employees in need of a fresh start. We have a huge task.

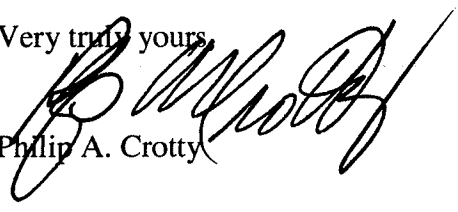
From a legal standpoint, we have proceeded carefully. I personally have thirty-five years' municipal law experience. I still remember from law school, "when in doubt, check the

statute." I have checked repeatedly General Municipal Law Sections 852 and 858. As a double check I requested this year that the IDA authorize second opinions from an experienced counsel with extensive appellate experience. The attorney, Richard B. Golden, Esq. has provided two opinions to which we adhere. I am enclosing both opinions for your reference at his suggestion.

Incidentally the \$250 cited in your report for the Marlboro High School Band was not this IDA's disbursement.

Thank you for your consideration of our position and views.

Very truly yours,


Philip A. Crotty

Enclosures

cc. IDA Chairman James R. Petro, Jr.
IDA Members
IDA Executive Director James D. O'Donnell
NYSEDC Executive Director Brian McMahon
Richard B. Golden, Esq.

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DENNIS J. MAHONEY, III
KELLY M. NAUGHTON**
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REPLY TO: ORANGE CO.
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Respond to Post Office Box

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August 1, 2011

Philip Crotty, Esq.
Orange County Industrial Development Agency
Orange County Government Center
255 Main Street
Goshen, New York 10924

Re: IDA Financial Assistance to Newburgh Armory Project.

Dear Mr. Crotty:

You have asked me as special counsel to the Orange County Industrial Development Agency ("IDA") to provide an opinion as to the propriety of certain financial support for the Newburgh Armory improvement contemplated by the IDA. This letter serves as that opinion.

In providing this opinion I have relied upon the following facts you have provided to me, or that I was able to glean from various documents, but which I have not personally verified by any independent investigation or review as to their truth or accuracy:

1. The City of Newburgh is in need of economic stimulus to assist it in reviving its commercial and/or industry activity, and other economic development.
2. The Newburgh Armory building is located in, and owned by, the City of Newburgh.
3. The City of Newburgh has entered into a twenty-five year license agreement with the Newburgh Armory Unity Center, Inc. ("NAUC"), a not-for-profit organization, for NAUC to operate recreation programs at the Newburgh Armory building.
4. Consistent with General Municipal Law §§ 854 and 858, the recreation activities at the Newburgh Armory will not include automobile or horse racing or other similar activities, will be accessible by the general public as spectators or participants, will improve the quality of life and safety in the City of Newburgh, and will thereby advance job opportunities, assist in attracting tourism, and generally advance the prosperity, standard of living, and economic welfare of the people of the City of Newburgh and the State of New York.
5. The IDA is contemplating, or has decided, that it will provide \$500,000 over several years in financial support for the construction, reconstruction, or improvements to the Newburgh Armory building, or to equip, maintain, or furnish the Newburgh Armory

building, either by providing funding to the City of Newburgh or by direct payments by the IDA, to promote the Newburgh Armory building's use for recreation programs and activities.

6. The Newburgh Armory recreation building project will not result in the removal of such recreation services from one area of the state to another area of the state or in the abandonment of any such recreation services presently located within the state.

Orange County IDA, like any IDA throughout the State of New York, is limited in its powers to those granted to it by Article 18-A of New York General Municipal Law, and as clarified or otherwise limited by its own policies and procedures. Generally, the purpose of an IDA is "to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities"¹ Orange County IDA was created by special State legislation which provided that it was created "[f]or the benefit of the county of Orange and the inhabitants thereof . . . [for] the purposes specified in [N.Y. Gen. Mun. Law §§ 850 – 888]." The IDA was given those powers and duties, and is "in all respects governed by" N.Y. Gen. Mun. Law §§ 850 – 888.² Therefore, the touchstone for guidance regarding the propriety of IDA authority will always be these sections of General Municipal Law for the IDA's express powers, especially Section 858. Although Section 858 also contains an implied powers subsection, authorizing the IDA to do all things necessary or convenient to carry out its purposes and exercise the powers expressly given to it, this implied power is not without bounds and must be exercised in relation to the IDA's purposes and its express powers.³

There are two basic issues that are necessary to address in order to discern the scope of the power and authority of the IDA to fund the Newburgh Armory recreation project: (i) whether the project is a type of project to which the IDA is empowered to provide financial support and, if so, (ii) a determination of the authorized conduits by which the IDA may provide such financial support to the project.

General Municipal Law § 858 includes "recreation facilities" as one of several specifically identified types of projects that are appropriate to receive assistance from the IDA. Further, the specific benefits of a particular recreation facility need not be identified in order to justify project assistance. The IDA's authorizing legislation clearly declares that industrial development agencies were created in part to further "the policy of this state to protect and promote the health of the inhabitants of this state and to increase trade through promoting the development of facilities to provide recreation for the citizens of the state The use of all such rights and powers is a public purpose essential to the public interest, and for which public funds may be expended."⁴ Recreation facilities are defined to include those facilities "for the use [by] the general public as spectators or participants in recreation activities . . . , together with all buildings, structures, machinery, equipment, facilities and appurtenances thereto which the [IDA] may deem necessary, useful or desirable in connection with the construction,

¹ N.Y. Gen. Mun. Law § 858. See also *Grossman v. Herkimer County Indus. Development Agency*, 60 A.D.2d 172 (4th Dept. 1977); *Op. St. Compt.* 2011-1.

² N.Y. Gen. Mun. Law § 912.

³ See *General Municipal Law § 858* [17]; *Op. St. Compt.* 2011-01; 1991 *Ops St Comp No.* 91-32.

⁴ N.Y. Gen. Mun. Law § 852.

improvement or operation of any such facility” It is clear that the Newburgh Armory is the type of project that the IDA is empowered to afford financial support.

It is also clear that the IDA may provide such financial support directly for, *inter alia*, the intended renovation and other improvements to the Newburgh Armory, as it is specifically provided that the IDA has the power to “acquire, construct, reconstruct, lease, improve, maintain, equip or furnish” a recreation facility.⁵ Alternatively, the IDA may provide the same financial support to the City of Newburgh as a conduit, for the City to carry out the renovation and other improvements to the Newburgh Armory, although it may not simply provide a general gift of such monies to the City. The State Comptroller has opined that “[w]hile we conclude that an IDA is not authorized to make gifts of its moneys to municipalities, we have recognized that IDA moneys may be expended to make improvements to municipal facilities, at no cost to the municipality, when those improvements are intended primarily for the benefit of the IDA project.”⁶ The State Comptroller, upon the express authorization in General Municipal Law § 858(6), has also concluded that the IDA may financially support an appropriate project by paying an agreed portion of the City’s personnel or consultants dedicated to the project:

“We also note that an IDA, with the consent of the municipality, may use agents, employees and facilities of the municipality, paying the municipality an agreed proportion of the compensation or costs (General Municipal Law § 858[6]). Thus, for example, if an IDA, in furtherance of its corporate purposes, required the services of a planner or an engineer, it may utilize the services of a planner or engineer employed by the [municipality] and make payments to the [municipality] for an agreed proportion of the planner’s or engineer’s compensation.”

However, the IDA cannot provide direct financial assistance to NUAC to support the recreation facilities, by grant or otherwise, as NUAC is a not-for-profit corporation, and not-for-profit corporations are no longer able to receive IDA monies.⁷

⁵ N.Y. Gen. Mun. Law § 858(10)

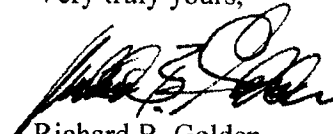
⁶ Ops. St. Compt. 99-4 (5-27-99).

⁷ In 1986 the State Legislature expanded the powers of industrial development agencies across the State by amending General Municipal Law §§ 854, 858, allowing them to provide financial assistance and other support to not-for-profit corporations. This was accomplished by the addition of a new category of authorized IDA projects, entitled “civic facilities.” “[A] review of the legislative history of chapter 905 of the Laws of 1986, which added the definition of ‘civic facility’, makes it clear that it was primarily intended to authorize IDA financing of the headquarters for not-for-profit organizations.” Ops. St. Compt. 91-13. It should be underscored that when this expansion of IDA authority to fund not-for-profit “civic facilities” was allowed to finally sunset on January 31, 2008, it only thereafter prohibited the continued IDA funding of not-for-profit ventures, defined as “civic facilities”; it did not prohibit the use of IDA funds for all facilities that were civic in nature. This distinction between not-for-profit “civic facilities,” as previously and restrictively defined in General Municipal Law § 854(13), and those facilities generally of a civic nature, was clearly set forth in an opinion of the Attorney General. *See Op. Atty. Gen. 89-93 (1989 WL 435031)* (“The proposal [for the inclusion of not-for-profit ‘civic facilities’] was prompted by the difficulties experienced by not-for-profit corporations in obtaining affordable financing for renovations or expansions of their facilities in New York State which resulted in the exodus of a number of these corporations, particularly from the City of New York. * * * We conclude that amendments in 1986 expanding industrial development agency projects to include civic facilities were intended solely to permit projects on behalf of not-for-profit corporations.”) (Emphasis added). Consequently, since the addition of this IDA power in 1986 only related to the direct funding of not-for-profit projects, the lapsing of this same power in 2008 only related to the same direct funding of not-for-profits, and not to civic projects generally.

In light of the facts, findings and reasoning noted above, it is my opinion that the IDA itself may expend monies (including the \$500,000 intended) *directly* to support financially the construction, reconstruction, and improvement of the Newburgh Armory building, or to furnish, equip or maintain the building, in order to advance the recreational project activities intended to occur by the operation of those activities by and through a license agreement between the City of Newburgh and NAUC. Alternatively, the IDA may provide direct financial support to the City of Newburgh for the Newburgh Armory renovations or other improvements. The IDA may also provide financial support to the City of Newburgh for City personnel costs related to the project. However, the IDA may not provide IDA personnel or other personnel directly to assist the project, or to provide direct financial support to NUAC, whether by grant or otherwise, as it is a not-for-profit corporation ineligible to receive IDA funds.

In conclusion, within the bounds as outlined above, the IDA has the legal authority to provide financial support for the Newburgh Armory renovations to further the recreation facilities project. If you have any questions concerning the above, please do not hesitate to contact me.

Very truly yours,



Richard B. Golden

cc: James O'Donnell, IDA Executive Director
James Petro, Jr., IDA Chairman

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October 4, 2011

Philip Crotty, Esq.
Orange County Industrial Development Agency
Orange County Government Center
255 Main Street
Goshen, New York 10924

Re: IDA Financial Expenditures to Not-For-Profits

Dear Mr. Crotty:

You have asked me as special counsel to the Orange County Industrial Development Agency ("IDA") to provide an opinion as to the propriety of certain financial expenditures to various not-for-profit corporations and other entities whose purposes and activities relate to economic development in Orange County. You have indicated that the IDA has received requests from various not-for-profit corporations and other entities for financial assistance, and the IDA desires to provide financial assistance to certain of these not-for-profit corporations and entities in relation to their economic development activities that will further the purposes and policies of the IDA. This letter serves as that opinion.

In providing this opinion I have relied upon the following facts you have provided to me, or that I was able to glean from various documents, but which I have not personally verified by any independent investigation or review as to their truth or accuracy:

1. The Orange County Partnership is an I.R.C. § 501(c)(6) corporation that has the ability to provide economic development sales and marketing resources for the IDA, and has requested financial assistance to assist it in carrying on its business and commercial transactions.
2. The Hudson Valley Economic Development Corporation is an I.R.C. § 501(c)(6) corporation and has requested financial assistance for its project expenses. This

corporation is co-located with the IDA's business accelerator and contributes to its overall success.

3. The Hudson Valley Agribusiness Development Corporation is an I.R.C. § 501(c)(6) corporation and has a specific focus on the viability of the agricultural economy in the region, assisting both new and existing agribusinesses, and supporting policies and regulations that recognize and support New York State's agricultural economy. This corporation is seeking financial assistance to assist it in achieving its goals.
4. Pattern for Progress is an I.R.C. § 501(c)(3) corporation, a regional planning and policy organization, is working on numerous projects in Orange County, including Stewart Airport and regional transportation needs, which will benefit economic development in Orange County. Pattern for Progress is requesting financial assistance in that regard.
5. The Rockland County Economic Development Corporation, an I.R.C. § 501(c)(3) corporation, desires to expand its existing Procurement Technical Assistance Center (PTAC) resources to Orange County businesses through an outreach office at the Orange County Business Accelerator. PTAC is a comprehensive resource for small businesses to access critical information needed to sell products and services to the federal government. It is requesting financial assistance to assist in its Orange County outreach.
6. The Gateway to Entrepreneurial Tomorrows, Inc. (GET), an I.R.C. § 501(c)(3) corporation, is a City of Newburgh based incubator to assist minorities set up small businesses. GET is requesting funding as a one-time grant for a micro-loan program to assist minority entrepreneurs with small loans; and has also requested assistance in acquiring a Community Investment Bank.
7. Orange County Community College, an entity organized and existing under the Education Law of the State of New York, has previously requested a grant amount for the purpose of "putting together a comprehensive proposal for approximately \$2.5 million in grant funding" for the College's Business Solutions and Professional Development Department; and is presently requesting that the IDA co-venture with an Advanced Manufacturing program and curriculum.
8. The Orange County Foreign Trade Zone is requesting financial assistance for the purpose of furthering economic development and international trade in Orange County.
9. The Newburgh-Stewart Empire Zone is requesting financial assistance for the purpose of encouraging economic development in Orange County.
10. The County of Orange operates an Office of Business Assistance to assist in the economic development in Orange County. The County is requesting a contract with the IDA, whereby the IDA would pay to the County certain portions of the salary and

expenses of its administrative personnel that services the IDA, specifically the IDA Executive Director and its Chief Financial Officer.

Orange County IDA, like any IDA throughout the State of New York, is limited in its powers to those granted to it by Article 18-A of New York General Municipal Law, and as clarified or otherwise limited by its own policies and procedures. Generally, the purpose of an IDA is “to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities”¹ Orange County IDA was created by special State legislation which provided that it was created “[f]or the benefit of the county of Orange and the inhabitants thereof . . . [for] the purposes specified in [N.Y. Gen. Mun. Law §§ 850 – 888].” The IDA was given those powers and duties, and is “in all respects governed by” N.Y. Gen. Mun. Law §§ 850 – 888.² Therefore, the touchstone for guidance regarding the propriety of IDA authority will always be these sections of General Municipal Law for the IDA’s express powers, especially Section 858. Although Section 858 also contains an implied powers subsection, authorizing the IDA to do all things necessary or convenient to carry out its purposes and exercise the powers expressly given to it, this implied power is not without bounds and must be exercised in relation to the IDA’s purposes and its express powers.³

In addition to the various forms of tax relief that an IDA may accomplish, and in addition to the funding of qualified projects by an IDA (either directly or through a municipality), an IDA has the power, by virtue of N.Y. Gen. Mun. Law § 858, to provide, under certain restricted circumstances, direct financial assistance to not-for-profit corporations or other entities.

There are two basic issues that must be addressed to discern the scope of the power and authority of the IDA to provide direct financial assistance to a not-for-profit corporation or other entity: (i) whether the IDA’s expenditure of funds to such an entity is entirely consistent with the Section 858 purposes of the IDA as quoted above and, if so, (ii) a determination of the authorized conduit by which the IDA may provide financial support to such an entity.

As made clear in a recent opinion of the New York State Comptroller’s Office, one of the express powers of an IDA is to appoint and use agents on its behalf to carry out its purposes.⁴ Specifically, N.Y. Gen. Mun. Law § 858(6) provides that an IDA may use agents and employees of a municipality to carry out an IDA purpose, and pay that municipality a proportion of the compensation. The arrangement by which the IDA provides financial assistance to Orange County for portions of the salary and expenses of certain administrative personnel that directly services the IDA is a good example of a proper expense in this regard.

Also, Section 858(7) provides that an IDA may generally appoint officers, agents and employees, prescribe their qualifications, fix their compensation, and pay the compensation out of IDA funds.

¹ N.Y. Gen. Mun. Law § 858. See also *Grossman v. Herkimer County Indus. Development Agency*, 60 A.D.2d 172 (4th Dept. 1977); *Op. St. Compt.* 2011-1.

² N.Y. Gen. Mun. Law § 912.

³ See N.Y. Gen. Mun. Law § 858 [17]; *Op. St. Compt.* 2011-01; 1991 *Ops St Comp No.* 91-32.

⁴ *Op. St. Compt.* 2011-1; N.Y. Gen. Mun. Law. § 858(6), (7).

Section 858(9) also provides that the IDA has the power to contract with entities to carry out its powers.⁵

In light of the facts and authority above, it is my opinion that the IDA may provide financial assistance to not-for-profit corporations and other entities by appointing employees of such organizations or others to act as agents of the IDA, and providing by contract for the funding mechanism by which the IDA will compensate such appointed agents. Importantly, the only funding that is authorized is the funding of the work of such agents that will further the specific purposes and policies of the IDA as authorized by N.Y. Gen. Mun. Law § 858.

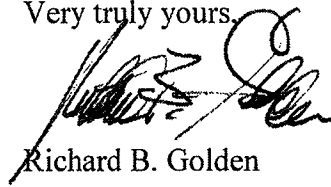
For example, but not by way of limitation, if the IDA desires to fund certain work of the Orange County Partnership that is consistent with the specifically enumerated powers of the IDA set out in N.Y. Gen. Mun. Law § 858, it may by contract appoint the President & CEO of the Partnership, or its Director of Business Attraction or Retention, as an IDA agent, setting out the responsibilities of the agent and paying the Partnership appropriate compensation for such agent to accomplish the work. This agency contract may set out general responsibilities of such agency engagement, consistent with broad Section 858 purposes (*e.g.*, “to promote, develop, encourage and assist in acquiring, constructing, reconstructing and improving . . . industrial, manufacturing, warehousing, commercial, research and recreation . . . [and] educational or cultural facilities . . .”), or the contract may identify specific goals, projects or facilities that the IDA is desirous of promoting, again consistent with the Section 858 purposes. What the IDA cannot do is simply provide undesignated funds to an organization simply because that organization happens to have similar goals as the IDA. The clear intent of a prohibition on such general grant funding is to ensure that none of the IDA monies are used in whole or in part to underwrite or further goals, projects or facilities that are not clearly within the ambit of the IDA’s specific statutory purposes set out in Section 858. Again, by way of one example, it would not be appropriate for the IDA to provide grant monies as requested by Orange County Community College for the purpose of funding a proposal to obtain unspecified grant monies that may or may not be coincident with the IDA’s Section 858 powers.

Based upon the above, prior to authorizing any financial assistance to these not-for-profit or other entities, the IDA should analyze each request for funds and only approve funding that, by contract, will be used to sustain the activities of agents that will be performing the authorized work of the IDA. Also, although not specifically required by Article 18-A of N.Y. General Municipal Law, it would be prudent for the IDA to require in the contract of agency engagement some type of after-the-fact accounting, such as an hourly breakdown and certification by the agent or by the entity receiving such funds, to ensure that the funds were actually expended in accordance within their agency powers. Indemnification and other liability issues surrounding the agency relationship should also be addressed in the contract of agency engagement.

In conclusion, within the bounds as outlined above, the IDA has the legal authority to provide financial assistance to not-for-profits and other entities. If you have any questions concerning the above, please do not hesitate to contact me.

⁵ See also, Op. St. Compt. 2011-11.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard B. Golden". The signature is stylized and written over a horizontal line.

Richard B. Golden

cc: James O'Donnell, IDA Executive Director
James Petro, Jr., IDA Chairman