

September 8, 2014

City of Ardmore Tennessee  
Ms. Mary Prier  
City Recorder  
25844 Main Street  
Ardmore, Tennessee 38449

VIA ELECTRONIC MAIL

Dear Ms. Prier:

Please be advised that TCA § 6-54-111 authorizes a municipal governing body to appropriate funds for the financial aid of a nonprofit charitable or civic organization. In order to be eligible for funding, the nonprofit organization must submit (1) a copy of an annual audit, (2) a description of the program that serves the residents of the municipality, and (3) the proposed use of the municipal assistance. Appropriations may only be made following notice in a newspaper of general circulation of the intent to make an appropriation to a nonprofit, but not charitable, organization specifying the intended amount of the appropriation and the purposes for which the appropriation will be spent. A copy of the statute is enclosed for ease of reference.

The statute requires the Tennessee Comptroller of the Treasury to promulgate guidelines for appropriating funds for Nonprofit Corporations. Title 5, Chapter 29 of the Internal Control and Compliance Manual for Tennessee Municipalities reads in full as follows:

<i>INTERNAL CONTROL AND COMPLIANCE MANUAL FOR TENNESSEE MUNICIPALITIES</i>		<i>TITLE 5</i>
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<b>TITLE 5</b>	<b>CONTROL ACTIVITIES</b>	
<b>CHAPTER 29</b>	<b>NONPROFIT CONTRIBUTIONS</b>	
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Section 1	Municipal officials should ensure that all organizations requesting an appropriation of funds for financial aid are either nonprofit charitable or nonprofit civic organizations (TCA 6-54-111).	
Section 2	Municipal officials should develop guidelines addressing the purpose(s) for which money disbursed to nonprofit organizations may be expended.	
Section 3	The city clerk should have complete files on all nonprofit organizations requesting financial assistance. Those files should include, at a minimum, an annual audit, a description of the program that serves the residents of the municipality, and the proposed use of the municipal assistance.	
Section 4	Municipal officials should ensure that notices are published in a newspaper of general circulation notifying residents of the intent to make an appropriation to a nonprofit, but non-charitable, organization. The notification should include the name of the organization and the amount of the proposed appropriation and the purposes for which the appropriation will be spent.	

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Please find enclosed as requested an example of an appropriation agreement and resolution providing funding for a non-profit charitable organization:

- An appropriation agreement with the Birthplace of Country Music Alliance Inc. for the Birthplace of Country Music Museum; and
- A resolution authorizing an appropriation agreement with the Birthplace of Country Music Alliance, Inc., for the Birthplace of Country Music Museum

The use of an agreement is recommended to provide clarity on the use of the funds as required by statute while the resolution is the legal mechanism to approve. Since the intended recipient is the Ardmore Boys and Girls Club - a charitable organization - no publication notice of the intent to grant funds is required in the instant case.

Please let me know if you require additional information regarding this matter.

Very truly yours,



Jeffrey J. Broughton  
Municipal Management Consultant

**APPROPRIATION AGREEMENT WITH THE BIRTHPLACE OF COUNTRY MUSIC  
ALLIANCE INC. FOR THE BIRTHPLACE OF COUNTRY MUSIC MUSEUM**

This Agreement, made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Bristol, Tennessee, a Tennessee municipal corporation, hereinafter referred to as the "City" and Birthplace of Country Music Alliance, Inc., a Virginia Nonprofit Corporation, hereinafter referred to as the "BCMA."

**Witnesseth:**

WHEREAS, Tennessee Code Annotated Section 6-54-111 authorizes municipalities to appropriate funds for the financial aid of nonprofit charitable organizations; and

WHEREAS, the BCMA is a nonprofit charitable organization with the mission of preserving and promoting the region's musical heritage by way of education and support of live music, which includes the construction of a Country Music Museum ("museum"); and

WHEREAS, the City Council of Bristol, Tennessee is desirous of supporting the museum project; and

WHEREAS, the City desires to set forth the terms and conditions of its appropriation of funds for the BCMA and the purposes for which these funds may be used by the BCMA.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties and the benefits to be derived therefrom, the City and the BCMA agree as follows:

1. The City shall pay to BCMA the sum of \$300,000, in three equal installments of \$100,000, with such first payment to be made within sixty (60) days following the award of a construction contract for the museum and the second and third payments to be made 12 and 24 months following the first installment, respectively.

The funds so provided shall be used for pre-opening expenses incurred by the BCMA for the museum, not to exceed 50% of the total amount paid, with all remaining unspent funds to be placed in an operating reserve for use following the opening of the museum.

2. In addition, the City shall pay to BCMA up to \$300,000 during the first 60 months after the museum has opened for business on a fulltime basis for the purpose of temporarily covering any operating losses incurred by the museum.

Any funds to be paid by the City to cover such operating losses shall be made only after the City has received an independent auditor's report identifying the amount of the operating loss and certifying the lack of funds in reserve or otherwise available to cover such loss; provided however, that the City Manager may advance such funds upon

request of BCMA when he determines in his discretion that the financial situation of the museum warrants early action.

Any City funds paid to BCMA under this Paragraph 2 shall be repaid by BCMA without interest under such terms agreed to by the City and BCMA at the time such funds are advanced. The City Manager shall require the execution of a promissory note and such other documents as he may deem appropriate to secure such repayment.

3. All funds paid to BCMA under this Agreement shall be used to promote the general welfare of the residents of the City by constructing and operating the museum.
4. The funds shall be used by BCMA without regard to race, color, religion, national origin, age, sex, or disability. In expending these funds, BCMA will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, or disability. The BCMA will seek to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, or disability. Such action shall include but not be limited to the following: employment, upgrading, demotion or termination; rate of pay and other forms of compensation; and selection for training. The BCMA will post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this equal opportunity clause.
5. The BCMA agrees to contract with a qualified, venue management company with experience in museum or like entertainment facilities to operate the museum for a minimum period of sixty (60) months following its opening.
6. The City is authorized to audit or otherwise examine the books and records of BCMA during normal business hours to verify that the funds are being expended in accordance with the terms of this Agreement upon reasonable notice not less than five (5) business days in advance. As required by Tennessee Code Annotated Section 6-54-111(c), BCMA shall file with the city recorder a copy of an annual report of its business affairs and transactions, which shall include a copy of an annual audit, a description of the program that serves the residents of the City and the proposed use of the funds provided by the City under this Agreement. Such report will be open for public inspection during regular business hours of the city recorder's office.
7. Notwithstanding anything in this Agreement to the contrary, the City's obligation to pay BCMA under this agreement is contingent upon and subject to each of the following:
  - a. the annual appropriation of funds by the City Council; and
  - b. the receipt by BCMA of a robust level of funding for the museum from the City of Bristol Virginia; and
  - c. BCMA's compliance with the terms and conditions of this Agreement and its use of the funds provided by the City for the museum in accordance with this Agreement

8. This Agreement may be terminated by the City, upon at least 30 day's written notice, in the event the museum is abandoned, substantially delayed, or the City of Bristol Virginia does not provide funding at similar levels. In the event of such termination, BCMA shall reimburse the City for all sums paid under this Agreement in excess of those actually expended for the museum, less any funds obligated but not yet paid to a third party. Any notice of termination shall be sent by first class certified mail to BCMA, P.O. Box 216, Bristol, TN/VA 37621.
  
9. This Agreement does not create a joint venture between the parties, nor do the parties have a principal/agency relationship, a master/servant or employer/employee relationship, nor any other type of legal relationship which may be construed to be such that the parties are involved in joint activities by virtue of this Agreement. The BCMA shall be an independent contractor for the City.
  
10. Each party represents that this Agreement has been approved by its governing body, and that it has full authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement to be effective as of the as of the day and year first above written.

APPROVED AS TO FORM  
AND LEGALITY:

CITY OF BRISTOL, TENNESSEE

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

BIRTHPLACE OF COUNTRY MUSIC  
ALLIANCE INC.

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name and Title)

**Resolution No. 12-\_\_**

**A Resolution Authorizing an Appropriation Agreement with the Birthplace of Country Music Alliance, Inc., for the Birthplace of Country Music Museum**

WHEREAS, the Birthplace of Country Music Alliance, Inc., (BCMA) is a nonprofit charitable organization with the mission of preserving and promoting the region's musical heritage by way of education and support of live music, including the planned construction of a country music museum; and

WHEREAS, the Cultural Heritage Center is seen as a key element in branding Bristol as the "birthplace of country music"; and

WHEREAS, Resolution No. 11-95 previously committed financial support to the project and the City now desires to appropriate funds for the project; and

WHEREAS, the City of Bristol desires to set forth guidelines specifying the purpose and conditions for the use of city funds; and

WHEREAS, Tennessee Code Annotated Section 6-54-111 authorizes municipalities to appropriate funds for the financial aid of nonprofit charitable organizations; and

WHEREAS, the City Manager recommends approval of the accompanying appropriation agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bristol, Tennessee that the recommendation of the City Manager is hereby accepted, and the attached Appropriation Agreement with the Birthplace of Country Music Alliance, Inc., for the Birthplace of Country Music Museum, is hereby approved.

WHEREUPON, Mayor Staton declared the Resolution adopted, signed and affixed the date thereto, and directed that the same be recorded.

\_\_\_\_\_  
Joel Staton, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Tara E. Musick, City Recorder

**Approved as to Form and Legality  
this \_\_\_\_ day of November 2012**

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Jack W. Hyder, Jr.,  
City Attorney

[West's Tennessee Code Annotated](#)

[Title 6. Cities and Towns](#)

[Municipal Government Generally](#)

[Chapter 54. Municipal Powers Generally](#)

[Part 1. General Provisions](#)

T. C. A. § 6-54-111

§ 6-54-111. Charities; appropriations

Effective: August 5, 2011

[Currentness](#)

(a)(1) The legislative body of each municipality may appropriate funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization in accordance with the guidelines required by subsection (b).

(2)(A) For the purposes of this section, “nonprofit charitable organization” is one in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and that provides year-round services benefiting the general welfare of the residents of the municipalities.

(B) For the purposes of this section, “nonprofit civic organization” means a civic organization exempt from taxation pursuant to [§ 501\(c\)\(4\) or \(c\)\(6\) of the Internal Revenue Code of 1954](#), codified in [26 U.S.C. § 501\(c\)\(4\) or \(c\)\(6\)](#), which operates primarily for the purpose of bringing about civic betterments and social improvements through efforts to maintain and increase employment opportunities in the municipality by promoting industry, trade, commerce, tourism and recreation by inducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational, and agricultural enterprises to locate in or remain in the municipality. The statement of public policy set forth in Acts 1955, ch. 209, § 3 is hereby incorporated into and made a part of this section, and it is hereby determined and declared that appropriations authorized by this section are needed to relieve the emergency created by the continuing migration from Tennessee and its municipalities of a large number of its citizens in order to find employment elsewhere, and to enable the municipalities of the state to assist nonprofit organizations in furthering the economic development, social welfare, and common good of its residents.

(b) The comptroller of the treasury shall devise standard procedures to assist a municipality in the disposition of funds that are appropriated under the provisions of this section. Each legislative body of a municipality shall devise guidelines directing for what purpose the appropriated money may be spent. These guidelines shall provide generally that any funds appropriated shall be used to promote the general welfare of the residents of the municipality. Any funds appropriated under the provisions of this section shall be used and expended under the direction and control of the legislative body of a municipality in conjunction with the guidelines and procedures of the comptroller of the treasury.



(c) Any nonprofit organization that desires financial assistance from a municipality shall file with the city clerk a copy of an annual report of its business affairs and transactions, which includes, but is not limited to, a copy of an annual audit, a description of the program that serves the residents of the municipality and the proposed use of the municipal assistance. Such report will be open for public inspection during regular business hours of the city clerk's office.

(d) Appropriations to nonprofit organizations other than charitable organizations may be made only once notices have been published in a newspaper of general circulation in the municipality of the intent to make an appropriation to a nonprofit, but not charitable, organization specifying the intended amount of the appropriation and the purposes for which the appropriation will be spent.

### **Credits**

1978 Pub.Acts, c. 838, § 1; 1984 Pub.Acts, c. 820, §§ 2, 4; [1995 Pub.Acts, c. 297, §§ 1, 2, eff. May 26, 1995](#).

**Formerly** § 6-662.

[Notes of Decisions \(3\)](#)

T. C. A. § 6-54-111, TN ST § 6-54-111  
Current through end of the 2014 Second Reg. Sess.

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