



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Delaware Motion Picture &
Television Development Commission
June 30, 2015

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Part of Primary Government

Governmental Accounting Standards Board (GASB) Statements No. 14, 34, and 61 establish standards for defining and reporting on a government's reporting entity. Management is responsible for determining the reporting entity while preparing the government's financial statements. The Office of Auditor of Accounts (AOA) performed the analysis below to assess the State's reporting entity for audit purposes.

To complete our entity determination analysis, AOA reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 –¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- 148th General Assembly, Senate Joint Resolution No. 5 – *Creating a Delaware Motion Picture and Television Development Commission*

- 1. The PCU is not legally separate. (¶ 15)¹**
- 2. The PG holds the PCU's corporate powers. (¶ 15)**

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government.

Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name.

The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

¹ Paragraph references are from GASB 14, as amended by GASB 61.



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Application to Delaware Motion Picture and Television Development Commission

The Delaware Motion Picture and Television Development Commission (the Commission) is not legally separate from the State of Delaware because it is not established as a body corporate or a body politic (148th General Assembly, Senate Joint Resolution No. 5). The Commission has been formed under the Delaware Department of Finance (148th General Assembly, Senate Joint Resolution No. 5).

Legislation is silent on the Commission's ability to sue and be sued, as well as its right to buy, sell, lease, and mortgage property in its own name. Therefore, the State of Delaware holds its corporate powers.

Code and definition excerpts are as follows:

148th General Assembly, Senate Joint Resolution No. 5 – Delaware Motion Picture and Television Development Commission

BE IT RESOLVED by the Senate and the House of Representatives of the 148th General Assembly of the State of Delaware, with the approval of the Governor, that a Delaware Motion Picture and Television Development Commission is hereby created;

BE IT FURTHER RESOLVED that the Commission shall be established as follows:

1. This Commission shall be formed under the Delaware Department of Finance;
2. Eight members shall be citizens of the State of Delaware appointed by the Governor;
3. Appointed members shall serve terms up to three years, excepting the Chairperson and Co-Chairperson, who shall serve at the pleasure of the Governor;
4. Members shall be appointed for staggered terms, so that no more than five members' terms shall expire in any one calendar year;
5. Two members shall be ex-officio, one of which shall be the Secretary of Finance;
6. Members of the Commission shall serve without compensation;
7. Members of the Commission shall be eligible for reappointment;
8. The Commission may appoint such other representatives of government agencies and nonprofit organizations as it may deem appropriate to appoint and they shall be ex-officio, non-voting members; and
9. The Commission may create subcommittees, which may consist of nonmembers, to facilitate its work

BE IT FURTHER RESOLVED that the Commission shall organize itself in such manner as it deems desirable and necessary, but no action shall be taken or motion or resolution adopted by the Commission except by an affirmative vote of a majority of the authorized members of said body.

BE IT FURTHER RESOLVED that the Delaware Motion Picture and Television Development Commission shall have the following powers:

- (a) To adopt such rules and regulations as it deems advisable with respect to the conduct of its own affairs;



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- (b) To hold hearings, and to do or perform any acts which may be necessary, desirable or proper to carry out the purposes of this Commission;
- (c) To request and obtain from any department, division, board, bureau, commission, or other agency of the State or of any county, municipality, authority or other political subdivision within the State such assistance and data as will enable it to carry out its powers and duties hereunder;
- (d) To accept any federal funds granted, by Act of Congress, or by executive order, for all or any of the purposes of this Commission;
- (e) To accept any gifts, donations, bequests or grants of funds from private and public agencies for all or any of the purposes of this commission;
- (f) To coordinate the activities of similar councils or boards appointed by any city or county within the State for all or any of the purposes of this commission;
- (g) To create advisory councils necessary for the performance of responsibilities pursuant to this commission and to appoint members thereto; and
- (h) To directly secure any and all location permits from any department, division, board, bureau, commission or other agency of the State or from any county, municipality, authority, or other political subdivision within the State for applicants interested in motion picture and television production within the State.

BE IT FURTHER RESOLVED that the Delaware Motion Picture and Television Development Commission shall prepare and implement programs to promote a motion picture and television industry within the state. Such programs shall include, but not be limited to:

- (a) The preparation and distribution of promotional and informational materials pointing out desirable locations within the State, explaining the benefits and advantages of producing within the State, and detailing the services available at the State and local level and within the industry;
- (b) Facilitate cooperation from local government, State and Federal government agencies and private sector groups in regard to applications, locations, production and ancillary facilities;
- (c) Cooperate with all sections of management and labor engaged in the motion picture and television industry; and
- (d) Appear on its own behalf before boards, commissions, departments, or other agencies of municipal, county or state government, or the Federal Government.

BE IT FURTHER RESOLVED that the Delaware Motion Picture and Television Development Commission shall meet no less frequently than once each quarter of the calendar year, but may meet more often as set by the commission and that a majority of the members of the Commission shall constitute a quorum.

BE IT FURTHER RESOLVED that, on or before December 31 of each year, the Motion Picture and Television Development Commission shall make an annual report of its activities for the Governor and the General Assembly.



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