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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 11, 2006

The Honorable Shirley Jones
Chairperson, Board of Trustees
Pickens County School District
1348 Griffin Mill Road
Easley, South Carolina 29640

Dear Ms. Jones:

We received your letter containing several questions regarding Tax Increment Financing (TIF) and the use of such funding mechanism by the City of Easley. Specifically, you requested a response to the following five questions:

- #1) Do projects that had already begun count in the T.I.F.?
- #2) Do projects, like an apartment complex, count in the T.I.F. if any part of the project was already inhabited even if the entire project was not complete?
- #3) Specifically, does the date that a project begun serve as the date used to decide if a project falls under the T.I.F.?
- #4) Can an elected official on City Council in Easley obtain funds from the T.I.F. for personal business or property use?
- #5) Can the family members of an elected official of City Council of Easley obtain funds from the T.I.F. for personal business or property use?

Although we are not familiar with the specific use of TIF by the City of Easley, we will attempt to provide a general answer to your questions under the applicable law.

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General Overview of Tax Increment Financing Law

The South Carolina General Assembly enacted the Tax Increment Financing Law (the "TIF Law"), South Carolina Code sections 31-6-120 (1991 & Supp. 2005), "to establish authorization for municipalities to incur indebtedness to revitalize blighted and deteriorating areas within the municipalities." Wolper v. City Council of the City of Charleston, 287 S.C. 209, 336 S.E.2d 871 (1985). The TIF Law allows municipalities to issue obligations to finance a redevelopment project within a redevelopment project area. See S.C. Code Ann. § 31-6-40 (1991). The TIF Law defines a redevelopment project as "any buildings, improvements, including street, road and highway improvements, water, sewer and storm drainage facilities, parking facilities, tourism and recreation-related facilities, energy production or transmission infrastructure, communications technology, and public transportation infrastructure including, but not limited to, rail and airport facilities." S.C. Code Ann. § 31-6-30(6) (Supp. 2005). In addition, public works authorized under the Revenue Bond Act for Utilities also qualify as a redevelopment project. Id. (citing S.C. Code § 6-21-50). Section 31-3-60(7) of the South Carolina Code (Supp. 2005) defines a redevelopment project area as

an area within the incorporated area of and designated by the municipality, which is not less in the aggregate than one and one-half acres and in respect to which the municipality has made a finding that there exist conditions that cause the area to be classified as an agricultural area, a blighted area, or a conservation area, or a combination thereof.

However, the TIF Law allows a redevelopment project to be located outside the redevelopment project area "provided the municipality makes specific findings of benefit to the redevelopment project area and the project area is located within the municipal limits." S.C. Code Ann. § 31-6-30(6).

It is expected that the assessed value of the property contained in the redevelopment project area will be enhanced by the redevelopment project and therefore, increase the assessed value of the property and the tax revenues generated by the property. See S.C. Code Ann. § 31-6-20(A)(5) (1991). Prior to issuance of any obligations under the TIF Law, the county auditor determines the value of the taxable real property located in the redevelopment project area, which becomes the initial equalized assessed value of the property. See S.C. Code Ann. § 31-6-100(B) (1991). The obligations are paid from a special tax allocation fund, which is funded with all taxes collected for the redevelopment project area in excess of the initial equalized assessed value of the property. See S.C. Code Ann. § 31-6-70 (Supp. 2005).

Law/Analysis

Projects Eligible for TIF

Prior to the issuance of any obligations under the TIF Law, the municipality must adopt an ordinance, which among other requirements, mandates approval of a redevelopment plan. S.C. Code Ann. § 31-6-30 (Supp. 2005). The redevelopment plan, which is defined in the TIF Law, shall set forth in writing

the program to be undertaken to accomplish the objectives and shall include, but not be limited to, estimated redevelopment project costs including long-term project maintenance, as applicable, the anticipated sources of funds to pay costs, the nature and term of any obligations to be issued, the most recent equalized assessed valuation of the project area, an estimate as to the equalized assessed valuation after redevelopment, and the general land uses to apply in the redevelopment project area.

S.C. Code Ann. § 31-6-30(5). In addition, the ordinance must also list all real property included in the redevelopment project area, as defined above.

The TIF Law presumes any affected taxing district, which includes any county, municipality, schools, special purpose district, or other municipal corporation or district with the power to levy taxes or in the case of a school district, having taxes levied on its behalf, consents to the redevelopment plan, unless it objects to the redevelopment plan after receiving proper notice. S.C. Code Ann. § 31-6-80 (Supp. 2005). Once the municipality adopts the ordinance, it must gain approval of any taxing district for "any alteration in the exterior boundaries, general land uses established pursuant to the redevelopment plan, maximum term of maturity of obligations to be issued under the plan" S.C. Code Ann. § 31-6-80 (Supp. 2005)

Thus, based on our review of the statutory law cited above, the determination of what redevelopment projects are eligible for TIF is determined by whether the redevelopment plan adopted by the municipality encompasses such projects and if such projects are located in the redevelopment project area. Therefore, if the projects you refer to in your first and second questions are encompassed in the redevelopment plan, as adopted by the City of Easley, and are located within the redevelopment project area described in the ordinance, they are eligible for TIF. Furthermore, with regard to your third question, the date a project begins does not necessarily determine whether a project is eligible for TIF. However, the TIF Law provides for a statement as to the duration of the redevelopment plan in the ordinance, but no indication is given elsewhere in the statute that a project

will be precluded if it is not accomplished within a specified period of time. See S.C. Code Ann. § 31-6-80 (Supp. 2005).

Redevelopment Project Costs

In your fourth and fifth questions, you inquired as to whether a city council member or a family member of a city council member may receive funds from TIF “for personal business or property use.” The TIF Law does not specifically address this issue, however it affords some guidance as to the allocation of proceeds received from obligations issued under the TIF Law.

Section 31-6-50 of the South Carolina Code (1991) provides:

The proceeds from obligations issued under authority of this chapter must be applied only for the purpose for which they were issued. Any premium and accrued interest received in any such sale must be applied to the payment of the principal of or the interest on the obligations sold. Any portion of the proceeds not needed for redevelopment project costs must be applied to the payment of the principal of or the interest on the obligations.

(emphasis added). Pursuant to the TIF Law, “redevelopment project costs” include:

the sum total of all reasonable or necessary costs incurred or estimated to be incurred and any costs incidental to a redevelopment project. The costs include, without limitation:

(a) costs of studies and surveys, plans, and specifications; professional service costs including, but not limited to, architectural, engineering, legal, marketing, financial, planning, or special services.

(b) property assembly costs including, but not limited to, acquisition of land and other property, real or personal, or rights or interest therein, demolition of buildings, and the clearing and grading of land.

© costs of rehabilitation, reconstruction, repair, or remodeling of a redevelopment project.

(d) costs of the construction and long-term maintenance of a redevelopment project.

(e) financing costs including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under the provisions of this chapter accruing during the estimated period of construction of any redevelopment project for which the obligations are issued and including reasonable reserves related thereto.

(f) relocation costs, including relocation or removal costs of federal, state, or local government facilities or activities, to the extent that a municipality determines that relocation costs must be paid or required by federal or state law.

Thus, any expenditure of proceeds from TIF obligations must fall within the parameters as set forth above, regardless of to whom such payments are made.

To obtain guidance with regard to a council members financial dealings with a municipality, we must look outside the TIF Law to other sections of the South Carolina Code. Section 5-7-130 of the South Carolina Code (2004), dealing with conflicts of interest of a municipal officer, require any municipal officer "who has a substantial financial interest in any business which contracts with the municipality for sale or lease of land, materials, supplies, equipment or services or who personally engages in such matters" must disclose such interest and "refrain from voting upon or otherwise participating in his capacity as a city officer or employee in matters related thereto." In addition, the State Ethics Act contains a statute describing the rules of conduct for public officers and employees. S.C. Code Ann. § 8-13-700 (Supp. 2005). This statute is applicable to city council members as they meet the definition of public officials as provided in section 8-13-100 of the South Carolina Code (Supp. 2005). With regard to public officials, this statute provides:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

....

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

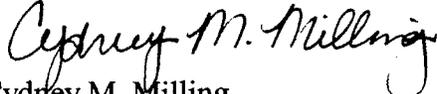
S.C. Code Ann. § 8-13-700.

Thus, if a council member were conducting business with the City of Easley, he or she must, at a minimum, disclose his or her interest and refrain from voting on such a matter. Further, the council member must also comply with the rules of conduct as recited above, which also pertain to family members of a City Council member's dealings with the City. Of course, by way of information we note the jurisdiction to make a determination as to whether the State Ethics Act is complied with rest with the State Ethics Commission. See S.C. Code Ann. § 8-13-320 (Supp. 2005).

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We hope the information provided above on TIF is sufficient to answer your questions and proves to be helpful to you and the Pickens County School Board.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General