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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 19, 1997

The Honorable Mike L. Fair
Senator, District No. 6
P.O. Box 14632
Greenville, South Carolina 29610

Re: Informal Opinion

Dear Senator Fair:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that a private developer owns approximately 350 acres of land located outside the City of Greenville city limits. This developer plans to develop this land into residential and commercial subdivisions. With these facts in mind, you have asked two questions.

QUESTION 1

May the City of Greenville use public funds from the sale of bonds under the Tax Increment Financing Law to serve the private purpose of the developer by providing infrastructure, i.e. roads, storm drainage, water and sewer improvements, etc., within the subdivision?

Article X, Section 14(10) of the South Carolina Constitution provides that the General Assembly may authorize by general law that indebtedness for the purpose of redevelopment within incorporated municipalities may be incurred, and that debt service of such indebtedness be provided from the added increments of tax revenue to result from any such project. (emphasis added). The General Assembly subsequently enacted the Tax Increment Financing Law (hereinafter "TIFL"), codified at S.C. Code Ann. Section 31-6-10 to 120, to establish authorization for municipalities to incur indebtedness to revitalize blighted and deteriorating areas within the municipalities. (emphasis added). See Wolper

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v. City Council of City of Charleston, 287 S.C. 209, 336 S.E.2d 871 (1985)(this case discusses the TIFL).

In enacting the TIFL, the General Assembly found that blighted and conservation areas existed in many municipalities throughout the State. S.C. Code Ann. 31-6-20(3). The General Assembly further found that in order to promote and protect the health, safety, morals and welfare of the public, blighted conditions need to be eradicated and conservation measures instituted and redevelopment of such areas undertaken. S.C. Code Ann. § 31-6-20(4). "Blighted area" means any improved or vacant area within the boundaries of a redevelopment project area located within the territorial limits of the municipality which meets a number of standards set forth in the statute. S.C. Code Ann. § 31-6-30(1)(emphasis added). "Conservation area" means any improved area within the boundaries of a redevelopment project area located within the territorial limits of the municipality that is not yet a blighted area but because of a number of factors listed in the statute may become a blighted area. S.C. Code Ann. § 31-6-30(2)(emphasis added). A "Redevelopment project area" means an area within the incorporated area of and designated by the municipality where conditions exist to classify the area as a blighted area or conservation area, or a combination of both and meets certain other listed requirements. Further, the total aggregate amount of all redevelopment project areas within any one municipality may not exceed five percent of the total acreage of the municipality. S.C. Code Ann. § 31-6-30(7).

The words of the constitution and a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Where the terms are clear, the court must apply those terms according to their literal meaning. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d 890 (1995).

The clear language of Article X, Section 14(10) and the TIFL provides that this method of financing is for those redevelopment project areas located within the incorporated area of the municipality. This requirement is evidenced by its repeated mention throughout the legislation. The only exception to this requirement is that if a redevelopment project is located within more than one municipality, the municipalities may jointly adopt a redevelopment plan. S.C. Code Ann. § 31-6-120.¹

¹ You have not indicated that the City of Greenville is working with another municipality to jointly adopt a redevelopment plan. Therefore, this opinion will not address the applicability of Section 31-6-120.

According to the facts that you have provided, the land which is the subject of this financing is situated outside the incorporated limits of the City of Greenville. Therefore, since the Constitution and the TIFL specifically require that the redevelopment project area be located within the incorporated limits of the municipality, unless subject to Section 31-6-120, a municipality may not use funds derived from the sale of bonds under the TIFL to redevelop areas situated outside the incorporated limits of the municipality. Accordingly, because this particular subdivision is located outside the incorporated limits of the City of Greenville, the City may not use public funds from the sale of bonds under the TIFL to provide infrastructure within this particular subdivision.

QUESTION 2

May the City of Greenville use the promise of these funds derived from the TIFL for such multi-million dollar improvements as an inducement to entice the developer to annex the 350 acres into the City?

As previously stated, Article X, Section 14 authorizes that indebtedness for the purpose of redevelopment within incorporated municipalities may be incurred. The purpose of the TIFL is to provide an essential method for financing the redevelopment of blighted and conservation areas within the municipalities. The General Assembly found that in order to promote and protect the health, safety, morals and welfare of the public, blighted conditions need to be eradicated and conservation measures instituted and redevelopment of such areas undertaken. S.C. Code Ann. § 31-6-20(4). Further, the General Assembly declared the eradication of blighted areas and treatment and improvement of these areas by redevelopment projects is essential to the public purpose. Id. Pursuant to the legislation, the governing bodies of incorporated municipalities are vested with all powers consistent with the Constitution necessary, useful, and desirable to enable them to accomplish redevelopment in areas which are or threaten to become blighted and to sufficiently meet all constitutional requirements pertaining to incurring indebtedness for the purpose of redevelopment and funding the debt service of such indebtedness from the added increment in tax revenues. S.C. Code Ann. § 31-6-20(B).

The primary guide in interpreting a statute is to determine the intent of the legislature. Adams v. Clarendon County School District, 270 S.C. 266, 241 S.E.2d 897 (1978). When the terms of a statute are clear and unambiguous, such terms must be applied according to their literal meaning. Anders v. S.C. Parole and Community Corrections Board, 279 S.C. 206, 305 S.E.2d 229 (1983). The statute must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Commission, 273 S.C. 206, 255 S.E.2d 837 (1979).

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In my opinion, the purpose of the TIFL is to provide a municipality with a method to finance the redevelopment of blighted and deteriorating areas within the municipality. The General Assembly found that the public welfare would be protected by the eradication of these areas and the redevelopment thereof. I believe that if a court were to analyze this issue, it would likely determine the General Assembly did not intend the TIFL be used as a carrot to entice a developer to have his property annexed into the municipality. Thus, it is my opinion that a court would likely conclude that use as such would violate the intent and purpose of the law and would therefore be improper.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General