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The State of South Carolina



Office of the Attorney General

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September 8, 1992

The Honorable Warren K. Giese
Senator, District No. 22
4627 Perry Court
Columbia, South Carolina 29206

Dear Senator Giese:

In a letter to this Office you raised questions regarding the redevelopment plan for the Congaree Vista which is funded by a tax increment financing plan authorized by S.C. Code Ann. § 31-6-10 et seq. In your letter you indicated that it was your impression that funds which would have accrued to the county are being redirected for the bond repayment for the improvements in the affected area. You questioned whether such use of funds is consistent with the referenced statutes.

In responding to your request, I contacted the Office of the City Attorney for input as to your questions. In their response it was stated:

S.C. Code Ann. §31-6-10, et seq. (1976) authorizes a municipality to undertake a redevelopment project with tax increment financing which may include tax increment bonds. These bonds are paid from the special fund established pursuant to Code §31-6-70. The County Treasurer is required to deposit into the special fund established by municipal ordinance all taxes collected for the County, City, schools, and special purpose districts, as a result of

the increase in assessed value of property in the redevelopment district after the initial assessed value is determined by the County Assessor in accordance with Code §31-6-100.

Section 31-6-70 states:

A municipality, within five years after the date of adoption of an ordinance providing for approval of a redevelopment plan pursuant to § 31-6-80, may issue obligations under this chapter to finance the redevelopment project upon adoption of an ordinance providing that:

- (1) after the issuance of the obligations; and
- (2) after the total equalized assessed valuation of the taxable real property in a redevelopment project area exceeds the certified "total initial equalized assessed value" established in accordance with § 31-6-100(B) of all taxable real property in the project area, the ad valorem taxes, if any, arising from the levies upon taxable real property in the project area by taxing districts and tax rates determined in the manner provided in § 31-6-100(B) each year after the obligations have been issued until obligations issued under this chapter have been retired and redevelopment project costs have been paid must be divided as follows:
 - (a) that portion of taxes levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the total initial

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equalized assessed value of all taxable real property in the redevelopment project area must be allocated to and when collected must be paid by the county treasurer to the respective affected taxing districts in the manner required by law in the absence of the adoption of the redevelopment plan; and

- (b) that portion, if any, of taxes which is attributable to the increase in the current total equalized assessed valuation of all taxable real property in the redevelopment project area over and above the total initial equalized assessed value of taxable real property in the redevelopment project area must be allocated to and when collected must be paid to the municipality which shall deposit the taxes into a special fund called the special tax allocation fund of the municipality for the purpose of paying redevelopment project costs and obligations incurred in the payment of the costs and obligations. The municipality may pledge in the ordinance the funds in and to be deposited in the special tax allocation fund for the payment of the costs and obligations.

As expressed by the City Attorney:

In other words, taxes collected on the initial assessed value of property in the redevelopment district are distributed and used in the normal manner

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without regard to tax increment financing pursuant to Code §31-6-70(a). It is only the new taxes collected as a result of increased assessed value of property in the tax increment district which must be used to fund the redevelopment project and pay bonds. This avoids an impact on the existing tax distributions by the County.

This Office is in agreement with the advice of the City Attorney. Of course, this Office is not in a position to review any distribution of tax revenues but can only advise as to the construction of the referenced provisions.

You additionally asked whether it is necessary for Richland County to implement similar action by means of a county ordinance regarding the tax increment financing plan. Section 5 of the City Ordinance which provides for the redevelopment plan for the Congaree Vista, No. 86-22, states "(t)he duration of the Redevelopment Plan shall be fifteen (15) years." Pursuant to Section 31-6-80, "(n)o consent is required of any taxing district if the term of the proposed initial obligations is fifteen years or less...." Therefore no consent of another taxing district, in this case Richland County, is necessary since the term of the bonds is fifteen years.

You additionally asked whether the requirements of S.C. Code Ann. § 4-9-130 which provides for public notice prior to action by a county council was met in the referenced circumstances. Based upon my review, it appears that Section 4-9-130 is inapplicable to adoption of a tax increment financing plan. Section 31-6-80(g) provides for public notice and a public hearing by a municipality before approving any redevelopment plan. The provision further specifies that notice is to be given to all taxing districts included in the taxable property covered by a redevelopment project. Such notice is to provide each such taxing district with an opportunity to submit comments regarding the matter prior to the date of the public hearing. According to the City Attorney's office "full notice was given by the City to all affected taxing entities and comments were invited prior to the public hearing conducted ... (regarding the redevelopment plan at issue)."

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I am enclosing a copy of the letter forwarded by the City Attorney's office along with the enclosures which are instructive regarding tax increment financing.

If there is anything further, do not hesitate to contact me.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions