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OFFICIAL OPINION 2003-8

The Honorable Ralph Ayres
Indiana House of Representatives
Indiana State House
Indianapolis, Indiana 46204

RE: Redevelopment Commission's Acquisition and Disposition of Property

Dear Representative Ayres:

This letter responds to your request for an opinion on the following question:

Is a redevelopment commission of a unit (county, city or town), created pursuant to Indiana Code section 36-7-14-3, separate from such unit, and therefore able to acquire and dispose of property and appropriate non-property tax revenues for purposes of redevelopment or economic development within the boundaries of the unit, without the approval of the legislative body of that unit?

BRIEF ANSWER

Although initially established by a unit of government, a redevelopment commission created pursuant to Ind. Code § 36-7-14-3 is a special taxing district and a political subdivision, and not merely an agency of the unit. Redevelopment commissions have been granted broad powers by the General Assembly regarding acquisition and disposition of property, issuance of bonds for redevelopment, and the general conduct of business. Ind. Code chapter 36-7-14 contains comprehensive and detailed sections governing the powers of a redevelopment commission, its acquisition and disposition of property, and the various mechanisms available for funding its activities. While approval of the fiscal or legislative body of the establishing unit is required for some transactions, other transactions do not require such approval.

ANALYSIS

A redevelopment commission is established by a unit of local government and funded in part by a special benefits tax:

(a) A unit may establish a department of redevelopment controlled by a board of five (5) members to be known as "_____ Redevelopment Commission", designating the name of the municipality or county.

(b) . . . [A]ll of the territory within the corporate boundaries of a municipality constitutes a taxing district for the purpose of levying and collecting special benefit taxes for redevelopment purposes as provided in this chapter. . . . [A]ll of the territory in a county, except that within a municipality that has a redevelopment commission, constitutes a taxing district for a county.

(c) All of the taxable property within a taxing district is considered to be benefited by redevelopment projects carried out under this chapter to the extent of the special taxes levied under this chapter

Ind. Code § 36-7-14-3. Once established,

redevelopment commissions constitute special taxing districts and are not independent municipal corporations subject to Indiana constitutional debt limitations.

South Bend Public Transportation Corporation v. City of South Bend, 428 N.E.2d 217 (Ind. 1981); *Alanel Corporation v. Indianapolis Redevelopment Commission*, 154 N.E.2d 515 (Ind. 1958). See also 1989 Ind. OAG No. 3 ("A city department of redevelopment established pursuant to Indiana Code Section 36-7-14-3 is a special taxing district.")

Although sometimes characterized as a department of the establishing municipality or county, see, e.g., Ind. Code § 36-7-14-19(c) (instruments conveying title to land shall be to "the 'City (Town or County) of _____ for the use and benefit of its department of redevelopment'"); Ind. Code § 36-7-14-20(a) (petitions for eminent domain filed "in the name of the unit on behalf of the department of redevelopment"); Ind. Code § 36-7-14-28 (budget for tax levy shall be formulated and filed "in the same manner as executive departments of the unit are required to formulate and file budgets. This budget is subject to review and modification in the same manner as the budgets and tax levies formulated by executive departments of the unit."), the powers of a redevelopment Commission are quite broad.

Among other powers, a redevelopment commission may:

(1) acquire by purchase, exchange, gift, grant, condemnation, or lease, or any combination of methods, any personal property or interest in real property needed for the redevelopment of blighted areas located within the corporate boundaries of the unit;

(2) hold, use, sell (by conveyance by deed, land sale contract, or other instrument), exchange, lease, rent, or otherwise dispose of property acquired for use in the redevelopment of blighted areas on the terms and conditions that the commission considers best for the unit and its inhabitants;

(3) sell, lease, or grant interests in all or part of the real property acquired for redevelopment purposes to any other department of the unit or to any other governmental agency for public ways, levees, sewerage, parks, playgrounds, schools, and other public purposes on any terms that may be agreed on; . . .

(19) expend, on behalf of the special taxing district, all or any part of the money of the special taxing district; . . .

(22) accept loans, grants, and other forms of financial assistance from the federal government, the state government, a municipal corporation, a special taxing district, a foundation, or any other source. . . .

Ind. Code § 36-7-14-12.2.

Adding detail to the general powers granted by Indiana Code § 36-7-14-12.2, the General Assembly has provided that certain actions of a redevelopment commission require approval of the unit's executive and legislative bodies. For example, a redevelopment commission "may not proceed with the acquisition of a blighted area until the approving order of the plan commission is issued and approved by the municipal legislative body or county executive." Ind. Code § 36-7-14-16(b). In order to receive such approval, a redevelopment commission must have first submitted a comprehensive package of documentation, including maps and plats of the blighted area and an estimate of the cost of acquisition and development. Ind. Code section 36-7-14-15.

In addition, a redevelopment commission may enter into a lease (as opposed to purchase) of a property to serve the public purpose only with the approval "by an ordinance of the fiscal body of the unit." Ind. Code § 36-7-14-25.2(c). For such a lease,

(f) A redevelopment commission entering into a lease payable from allocated taxes under [Ind. Code § 36-7-14-39] or other available funds of the redevelopment commission may:

(1) pledge the revenue to make payments under the lease pursuant to IC 5-1-14-4; and

(2) establish a special fund to make the payments.

(g) Lease rentals may be limited to money in the special fund so that the obligations of the redevelopment commission to make the lease rental payments are not considered debt of the unit or the district for purposes of the Constitution of the State of Indiana.

Ind. Code §36-7-14-25.2 (f) and (g). Further, "except as provided" in the statutory sections cited above, "no approvals of any governmental body or agency are required before the redevelopment commission enters into a lease under this section." Ind. Code §36-7-14-25.2 (h). Petitions objecting to leases paid for by the levy of special benefits taxes are heard by the Department of

Local Government Finance, whose decision is final. Ind. Code § 36-7-14-15.2(e). It is important to note that Ind. Code §36-7-14-25.2 (f) and (g) is applicable only when the redevelopment commission will be the lessee and lease payments flow from the commission to a landlord; those subsections are not applicable when it is the redevelopment commission that is the landlord.

Otherwise, the statutes do not require a redevelopment commission to obtain approval of the municipality or county in acquiring property, although the commission is required to make certain filings from time-to-time. *See, e.g.*, Ind. Code § 36-7-14-13 (annual report to be filed with unit's executive); Ind. Code § 36-7-14-17(b) (hearing notices); Ind. Code § 36-7-14-17(c) (declaratory resolutions and other information relating to property tax allocations); Ind. Code § 36-7-14-28 (budget for tax levy).

Certain other activities of a redevelopment commission require the approval of the Department of Local Government Finance. For example, “[a]ll laws relating to the giving of notice of the issuance of bonds, the giving of notice of a hearing on the appropriation of the proceeds of the bonds, the right of taxpayers to appear and be heard on the proposed appropriation, and *the approval of the appropriation by the department of local government finance* apply to all bonds issued under this chapter that are payable from the special benefits tax levied pursuant to section 27 of this chapter or from taxes allocated under section 39 of this chapter” Ind. Cod § 36-7-14-25.1(k). Furthermore, a redevelopment commission may borrow money in anticipation of receipt of taxes by issuing warrants the amount of which has been certified or approved the department of local government finance. Ind. Code § 36-7-14-27.5, and it is the Department of Local Government Finance (and the State Board of Accounts) that makes “the rules and prescribe[s] the form and procedures they consider expedient for the implementation” of the distribution and allocation of property taxes in support of a redevelopment commission. Ind. Code § 36-7-14-39(h).

In the case of special tax levies for bonds issued by a redevelopment commission and leases entered into pursuant to Ind. Code § 36-7-14-25.2, such “tax levies . . . are reviewable by other bodies vested by law with the authority to ascertain that the levies are sufficient to raise the amount that, with other amounts available, is sufficient to meet the payments under the lease payable from the levy of taxes.” Ind. Code § 36-7-14-27(e).

As far as the disposal of property is concerned, the statutes do not require approval of the legislative body of the unit. The statute generally governing the disposal of real or personal property by a political subdivision¹ does not apply “to the disposal of property by a redevelopment commission established under IC 36-7.” Ind. Code § 36-1-11-1(a)(4). Moreover, while Ind. Code § 36-7-14-22 requires a redevelopment commission to follow appraisal, notice and bidding procedures quite similar to those required of a municipality, it may ultimately execute a deed, lease, land sale contract and other conveyances, “in the name of ‘City (or Town or County) of _____, Department of Redevelopment’” and such instrument “shall be signed by the president or vice president of the redevelopment commission and attested by its secretary. A

¹ “Political subdivision” means municipal corporation or special taxing district. Ind. Code § 36-1-2-13.

seal is not required on these instruments or any other instrument executed in the name of the department.” Ind. Code § 36-7-14-22(i).

When a redevelopment commission seeks the benefit of a property tax levy, it is required by Ind. Code § 36-7-14-28 (b) to formulate and file a budget. This property tax levy budget is subject to review and modification “in the same manner as the budgets and tax levies formulated by executive departments of the unit” by the legislative branch. Tax levy revenues obtained for the payment of land, rights-of-way, or other acquisition costs must be deposited in the redevelopment district capital fund; other revenues obtained from the tax levy are to be deposited in the redevelopment district general fund. Ind. Code § 36-7-14-28 (c). No such budget submission and review is required for non-property tax revenues.

A redevelopment commission may enter into a lease under Ind. Code § 36-7-14-25.2(c) either “payable from allocated taxes under [Ind. Code § 36-7-14-39]” or *other available funds of the redevelopment commission*”) (emphasis added).

CONCLUSION

Although initially established by a unit of government, a redevelopment commission created pursuant to Ind. Code § 36-7-14-3 is a special taxing district and a political subdivision, and not merely an agency of the unit. Recognizing that “the planning, replanning, development, and redevelopment of economic development areas are public and governmental functions that cannot be accomplished through the ordinary operations of private enterprise”, Ind. Code § 36-7-14-2.5(a), redevelopment commissions have been granted broad powers by the General Assembly regarding acquisition and disposition of property, issuance of bonds for redevelopment, and the general conduct of business. Ind. Code chapter 36-7-14 contains comprehensive and detailed sections governing the powers of a redevelopment commission, its acquisition and disposition of property, and the various mechanisms available for funding its activities. While approval of the fiscal or legislative body of the establishing unit is required for some transactions, other transactions do not require such approval.

Sincerely,

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