

Official Opinion No. 2010-3

August 31, 2010

OFFICIAL OPINION 2010-3

Mr. Bruce A. Hartman, CPA
State Examiner
State Board of Accounts
302 West Washington Street, Room E418
Indianapolis, Indiana 46204-2769

RE: Requirements for a legislative body to approve certain transactions undertaken by a redevelopment commission or a redevelopment authority

Dear State Examiner Hartman:

Your letter requesting an advisory opinion posed the following three questions:

1. *Must the legislative body of a city approve an economic development loan in the amount of \$6.5 million obtained by city's redevelopment commission or redevelopment authority?*
2. *Under what circumstances must the legislative body of a city approve a loan, the issuance of bonds or notes, or any other borrowing undertaken by the city's redevelopment commission or redevelopment authority?*
3. *Must the legislative body of a city approve a lease rental agreement with a term in excess of 20 years in the amount of approximately \$174 million between the city's redevelopment authority, as lessor, and the city's redevelopment commission, as lessee?*

Your letter included materials related to a specific project; however, the questions in your letter were stated in more general terms. For that reason, this opinion analyzes the basic issue raised by your questions which we restate as follows:

To what extent is a city redevelopment commission or redevelopment authority authorized to incur financial obligations without the approval of the city common council?

SHORT ANSWER

As a general rule, redevelopment commissions and redevelopment authorities have statutory authority to incur financial obligations related to local redevelopment projects without the approval of the city common council. Approval of the common council is required only for those transactions enumerated in the statutes as requiring such approval.

ANALYSIS

The planning and development statutes in Title 36, Article 7, of the Indiana Code provide a framework for units of government to undertake redevelopment projects and promote economic development. Indiana Code section 36-7-14-3 authorizes a local unit of government to establish a department of redevelopment which is controlled by a redevelopment commission. A unit of government may also create a redevelopment authority under [IC 36-7-14.5-7](#). The issues you raise concern the interrelation of the redevelopment commission, the redevelopment authority and the legislative body of a unit in which the commission and authority are established; specifically, whether approval of the legislative body is required for certain transactions undertaken by the commission or the authority. The common council is the legislative body and fiscal body for a city other than a consolidated city. Ind. Code §§ 36-1-2-6, -9.

In 2003 the Indiana Attorney General issued *Official Opinion No. 2003-8*¹ addressing the question of whether a redevelopment commission is able to acquire and dispose of property and appropriate non-property tax revenues for purposes of redevelopment or economic development without the approval of the governmental unit's legislative body. That opinion noted that approval of the fiscal or legislative body of the unit is required for some

transactions of a redevelopment commission but that other transactions of the commission do not require such approval. With respect to acquiring and disposing of property, the opinion concluded that approval of the legislative body was not required.

Your questions are similar to those presented in the above-referenced opinion and call for a similar analysis; however, some amendments have been made to the relevant statutes since that opinion was issued.

Redevelopment commissions have been granted broad powers which are set forth in Ind. Code § 36-7-14-12.2. 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 areas needing redevelopment that are 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 areas needing redevelopment 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;...
- (21) Expend, on behalf of the special taxing district, all or any part of the money of the special taxing district;...
- (24) 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.

Official Opinion No. 2003-8, referenced above, concluded that:

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. Indiana 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 approval

Under the current statutory framework, this conclusion is still accurate. However, statutory changes made by the legislature in Public Law 146-2008 specified additional transactions that are subject to approval of the fiscal or legislative body of the unit.

For example, the commission's exercise of its power of eminent domain to acquire real property in a redevelopment project area is now subject to the approval of the legislative body of the unit. Ind. Code § 36-7-14-20(a). The commission's authority to issue bonds to raise money for property acquisition or redevelopment in a redevelopment project area is also subject to approval of the legislative body of the unit.

If the total principal amount of bonds authorized by a resolution of the redevelopment commission adopted before July 1, 2008, is equal to or greater than three million dollars (\$3,000,000), the bonds may not be issued without the approval, by resolution, of the legislative body of the unit. Bonds authorized in any principal amount by a resolution of the redevelopment commission adopted after June 30, 2008, may not be issued without the approval of the legislative body of the unit.

Ind. Code § 36-7-14-25.1(p).

"Bonds" means "any evidences of indebtedness, whether payable from property taxes, revenues, or any other source, but does not include notes or warrants representing temporary loans that are payable out of taxes levied and in the course of collection." Ind. Code § 36-1-2-2.

The "implementation of an amendment to the resolution or plan for an existing redevelopment project area" is also now subject to the approval of the legislative body. Ind. Code § 36-7-14-16(b).

Legislative changes also added a requirement that the redevelopment commission have approval of the fiscal body to apply for and accept any form of financial assistance from the federal government and for the issuance of bonds, notes, or warrants to the federal government to evidence short term or long term loans. Ind. Code § 36-7-14-35(a) & (b).

Leases of property entered into by the redevelopment commission as lessee still must be approved by an ordinance of the unit's fiscal body. Ind. Code § 36-7-14-25.2(c). The term of a lease allowed under this section has been revised.

A redevelopment commission may enter into a lease of any property that could be financed with the proceeds of bonds issued under this chapter with a lessor for a term not to exceed:

- (1) fifty (50) years, for a lease entered into before July 1, 2008; or
- (2) twenty-five (25) years, for a lease entered into after June 30, 2008.

The lease may provide for payments to be made by the redevelopment commission from special benefits taxes levied under section 27 of this chapter, taxes allocated under section 39 of this chapter, any other revenues available to the redevelopment commission, or any combination of these sources.

Ind. Code § 36-7-14-25.2(a).

Except for the approvals required under section 25.2, no approvals of any governmental body or agency are required before the redevelopment commission enters into a lease. Ind. Code § 36-7-14-25.2(h).

Redevelopment commissions are special taxing districts and not municipal corporations. Ind. Code § 36-1-2-10². A "special taxing district" means "a geographic area within which a special tax may be levied and collected on an ad valorem basis on property for the purpose of financing local public improvements that are not political or governmental in nature, and of special benefit to the residents and property of the area." Ind. Code § 36-1-2-18.

All of the commission's powers are conferred by statute. A redevelopment commission may generally carry out its powers without approval by any other body, including a city council. *See generally, Dedelow v. Pucalik*, 801 N.E.2d 178 (Ind. Ct. App. 2003). The powers conferred on a redevelopment commission under section 12.2 are broad, but not without limitation. The legislature has identified those transactions that require the redevelopment commission to obtain approval of the legislative or fiscal body. Under the rules of statutory construction, it can be presumed that approval of the commission's transactions by another body is required only where expressly indicated. *See generally, Brandmaier v. Metro. Dev. Comm. of Marion Co.*, 714 N.E.2d 179, 180-81 (Ind. Ct. App. 1999) (noting the principle of statutory construction *expressio unius est exclusio alterius*, meaning that the expression of one thing implies the exclusion of another thing not expressed). In addition, under the rules of statutory construction, the fact that the legislature amended Article 14 to require approval of certain transactions indicates that those transactions did not previously require approval and that approval by another body is required only for transactions specifically indicated by the legislature. *See generally, Local No. 133 v. Ralston*, 872 N.E.2d 682, 688 (Ind. Ct. App. 2007) (noting that an inference that may be drawn from an amendment adding a provision to a statute is that the statute, as originally drafted, did not contain the provision). Court guidance on this issue leads to the conclusion that a redevelopment commission has authority to make decisions with respect to transactions to carry out its enumerated statutory powers and is not required to obtain approval of any other body, except for those specific transactions where the legislature has required the approval of others.

Related to the redevelopment commission, but a separate body corporate and politic, is the redevelopment authority. A redevelopment authority is created by ordinance of the legislative body of the unit, is an instrumentality of the unit, and may exercise any power granted under chapter 14.5. Ind. Code § 36-7-14.5-7. A redevelopment authority is organized for the following purposes:

- (1) Financing, constructing, and leasing local public improvements to the commission.
- (2) Financing and constructing additional improvements to local public improvements owned by the authority and leasing them to the commission.
- (3) Acquiring all or a portion of one (1) or more local public improvements from the commission by purchase or lease and leasing these local public improvements back to the commission, with any additional improvements that may be made to them.
- (4) Acquiring all or a portion of one (1) or more local public improvements from the commission by purchase or lease to fund or refund indebtedness incurred on account of those local public improvements to enable the commission to make a savings in debt services obligations or lease rental obligations or to obtain relief from covenants that the commission considers to be unduly burdensome;....³

Ind. Code § 36-7-14.5-11.

The statutory purposes of a redevelopment authority are more limited than those of a redevelopment commission and are primarily directed at financing local public improvements. In order to accomplish its statutory purposes, the redevelopment authority has been given the power to:

- (1) Finance, improve, construct, reconstruct, renovate, purchase, lease, acquire, or equip local public improvements.

- (2) Lease those local public improvements to the commission.
- (3) Sue, be sued, plead, or be impleaded, but all actions against the authority must be brought in the circuit or superior court of the county in which the authority is located.
- (4) Condemn, appropriate, lease, rent, purchase, or hold any real or personal property needed or considered useful in connection with local public improvements.
- (5) Acquire real or personal property by gift, devise, or bequest and hold, use, or dispose of that property for the purposes authorized by this chapter.
- (6) Enter upon any lots or lands for the purpose of surveying or examining them to determine the location of a local public improvement.
- (7) Design, order, contract for, or construct, reconstruct, or renovate any local public improvements or improvements thereto.
- (8) Employ managers, superintendents, architects, engineers, attorneys, auditors, clerks, construction managers, or other employees necessary for construction of local public improvements or improvements to them.
- (9) Make and enter into all contracts or agreements necessary or incidental to the performance of its duties or the execution of its powers under this chapter.
- (10) Take any other action necessary to implement the authority's purposes as set forth in section 11(a) of this chapter.

Ind. Code § 36-7-14.5-12.

The redevelopment authority's ability to lease local public improvements to the redevelopment commission is specified in section 36-7-14.5-14. Chapter 14.5 provides full and complete authority for leases between the authority and the commission.

No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the board or the commission or any other officer, department, agency, or instrumentality of the state or any political subdivision is required to enter into any lease, except as prescribed in this chapter and [IC 36-7-14-25.2](#) [leased facilities; procedures] or [IC 36-7-30-20](#) [reuse of military bases].⁴

Ind. Code § 36-7-14.5-15.

Chapter 14.5 also contains full and complete authority for the redevelopment authority to issue bonds.

No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the board of any other officer, department, agency, or instrumentality of the state or of any political subdivision is required to issue any bonds, except as prescribed in this chapter.

Ind. Code § 36-7-14.5-20(a).

As used in chapter 14.5, "bonds" means bonds, notes, or other evidence of indebtedness issued by the redevelopment authority. Ind. Code § 36-7-14.5-5.

Under the rules of statutory construction, it can be presumed that when the legislature stated specifically that the redevelopment authority has full and complete authority for leases and issuance of bonds, they intended that those specific transactions be the only ones not subject to other approvals. *See generally, Brandmaier, supra.*

CONCLUSION

As a general rule, neither a redevelopment commission nor a redevelopment authority is required to obtain approval of the legislative body to carry out transactions pursuant to the powers granted to them by statute. However, certain transactions have been enumerated by the legislature as specifically requiring approval by another body, or conversely, specifically not requiring the approval of others. With regard to the specific transactions referenced in your letter:

- (1) A loan of any type or amount obtained by the redevelopment commission does not require approval of the common council except when the source of the loan is federal assistance. Any loan obtained by the redevelopment authority requires approval of the common council.
- (2) Bonds issued by the redevelopment commission may require approval of the common council depending on the principal amount of the bonds and the date of the commission's resolution authorizing the bonds. Bonds issued by the redevelopment authority do not require approval of the common council.
- (3) Any lease in which the redevelopment commission is the lessee requires approval of the common council. The redevelopment authority is not required to obtain approval of the common council to enter into a lease with the commission.

Sincerely,

Gregory F. Zoeller
Attorney General

Elizabeth A. Brown
Deputy Attorney General

¹ The opinion can be accessed at <http://www.in.gov/attorneygeneral/files/2003-08.pdf>.

² Although not an issue in this opinion, it is noted that the Indiana Constitution's debt limitation provision does not apply to special taxing districts. *See generally, Eakin v. State ex rel. Capital Imp. Bd. of Managers of Marion County*, 474 N.E.2d 62, 65 (Ind. 1985).

³ Subsection (5) concerning a county with a U.S. government military base that is scheduled for closing is not applicable to this opinion and is omitted.

⁴ As noted previously, section 25.2 requires approval of the unit's fiscal body for leases when the redevelopment commission is the lessee.

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