

Community Redevelopment Agency, sale of property

Number: INFORMAL

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Mr. John C. Dellagloria
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Dear Mr. Dellagloria:

On behalf of the board of the Bayfront Community Redevelopment Agency of Palm Bay, Florida, you have asked for this office's assistance in determining whether a community redevelopment agency may lease or sell development agency property to a private developer. I understand your concerns to involve the relationship of Article VII, section 10 of the Florida Constitution to the involvement of private interests in redevelopment plans undertaken pursuant to Part III, Chapter 163, Florida Statutes.

The following informal comments are provided in an effort to assist you in advising your client, the Bayfront Community Redevelopment Agency of Palm Bay. No comment is expressed herein on the authority of a municipality to sell or lease municipal property. Further, Brevard County is a home rule charter county. Section 163.410, Florida Statutes, provides for the exercise of redevelopment powers in counties with home rule charters. Nothing contained herein should be read as a comment on the redevelopment authority of Brevard County or its delegation to any other governmental entity.[1]

The Florida Constitution, in Article VII, section 10, prohibits the state or a county, municipality, special district, or any agency thereof from lending or using its taxing power or credit to aid any private corporation, association, partnership, or person. The purpose of this provision is "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefited." [2] Thus, the applicability of the prohibitions contained in the Constitution are dependent in part on whether a valid public purpose is involved. The determination of what constitutes a valid public purpose for the expenditure of public funds is, at least initially, a determination for the legislative body of the governmental entity. [3] A legislative declaration of public purpose is presumed to be valid and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislative body. [4] With respect to community redevelopment pursuant to Part III, Chapter 163, Florida Statutes, the Legislature has determined such activity to be a proper subject for the expenditure of public funds. [5] If the purpose to be achieved constitutes a valid public purpose, then the means to be applied to obtain such a purpose are largely within the discretion of the Legislature. [6]

Part III, Chapter 163, Florida Statutes, the "Community Redevelopment Act of 1969," represents the state's response to the threat to the public health, safety, morals, and welfare from the

development or spread of slums and urban blight.[7] The act encourages community redevelopment and provides for the redevelopment of slums and blighted areas.[8] Part III of Chapter 163, Florida Statutes, provides for the creation of community redevelopment agencies;[9] the powers to be exercised by local governmental agencies under the act;[10] the issuance of revenue bonds by governmental entities to finance community redevelopment;[11] and certain activities and areas of cooperation by public bodies for aiding in the planning, undertaking, or carrying out of community redevelopment and related activities.[12]

Section 163.370(2), Florida Statutes, gives counties and municipalities powers the Legislature has determined may be necessary to carry out and effectuate the provisions of the act, including:

"(c) To undertake and carry out community redevelopment and related activities within the community redevelopment area, which may include:

1. Acquisition of property within a slum area or a blighted area by purchase, lease, option, gift, grant, bequest, devise, or other voluntary method of acquisition.

* * *

4. Disposition of any property acquired in the community redevelopment area at its fair value as provided in s. 163.380 for uses in accordance with the community redevelopment plan."

Section 163.380(1), Florida Statutes, grants authority to any county, municipality, or community redevelopment agency to "sell, lease, dispose of, or otherwise transfer real property or any interest therein acquired by it for community redevelopment in a community redevelopment area *to any private person . . .*" (e.s.) The statute further states, however, that "such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the community redevelopment plan by the governing body." The purchasers or lessees must devote such real property only to the uses specified in the community redevelopment plan and may be obligated to comply with such other requirements as the county, municipality, or community redevelopment agency determines to be in the public interest. Section 163.380(2), Florida Statutes, requires that "[s]uch real property or interest shall be sold, leased, otherwise transferred, or retained at a value determined to be in the public interest for uses in accordance with the community redevelopment plan and in accordance with such reasonable disposal procedures as any county, municipality, or community redevelopment agency may prescribe."

Section 163.380(3)(a), Florida Statutes, provides:

"Prior to disposition of any real property or interest therein in a community redevelopment area, any county, municipality, or community redevelopment agency shall give public notice of such disposition by publication in a newspaper having a general circulation in the community, at least 30 days prior to the execution of any contract to sell, lease, or otherwise transfer real property and, prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from, and make all pertinent information available to, *private developers or any persons interested in undertaking to redevelop or rehabilitate a community redevelopment area or any part thereof.* Such notice shall identify the area or portion

thereof and shall state that proposals must be made by those interested within 30 days after the date of publication of the notice and that such further information as is available may be obtained at such office as is designated in the notice. The county, municipality, or community redevelopment agency shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out; and the county, municipality, or community redevelopment agency may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by it in the community redevelopment area. The county, municipality, or community redevelopment agency may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this part. . . ." (e.s.)

Generally, the legislative intent of a statute is to be determined from the plain language of the statute and a statute will be construed and applied in the form enacted.[13] Where the legislative intent is manifested by the language employed in a statute when considered in its ordinary and grammatical sense, resort to rules of statutory construction is unnecessary.[14] Words in a statute should be given the meaning accorded them in common usage unless, however, a different connotation is expressed in or necessarily implied from the context of the statute in which they appear.[15]

It appears clear from the legislative language employed in Part III, Chapter 163, Florida Statutes, that involvement in redevelopment plans by private concerns is contemplated and authorized. The sale of real property or interests therein to private redevelopers is specifically authorized in the provisions of Part III, Chapter 163, Florida Statutes, as reflected above. Further, in eminent domain cases, the Legislature has determined that projects to clear blighted areas and provide for the ultimate disposition of substantial portions of the acquired properties for use by private concerns in profit-making activities serve a public purpose.[16] Thus, the Legislature has recognized that the involvement of private interests in these activities may accomplish a public purpose and further the purposes of Part III, Chapter 163, Florida Statutes.

I trust that these informal comments will assist you in advising your client.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/srh

[1] See *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980).

[2] *Bannon v. Port of Palm Beach District*, 246 So. 2d 737, 741 (Fla. 1971). Cf. *Poe v. Hillsborough County*, 695 So. 2d 672, 675 (Fla. 1997) (bond issue does not violate Art. VII, s. 10, Fla. Const., so long as the project serves a "paramount public purpose," and any benefits to private parties from the project are incidental).

[3] *State v. Housing Finance Authority of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979). And see *Jackson Lumber Co. v. Walton County*, 116 So. 771 (Fla. 1928).

[4] See *State v. Housing Authority of Polk County*, *supra*. And see *Wald v. Sarasota County Health Facilities Authority*, 360 So. 2d 763 (Fla. 1978).

[5] See s. 163.335(3), Fla. Stat. ("the powers conferred by this part are for public uses and purposes for which public money may be expended . . . and the necessity in the public interest for the provisions herein enacted is declared as a matter of legislative determination"); s. 163.335(6), Fla. Stat. ("the elimination or improvement of [housing shortages for low or moderate income residents and the elderly] is a proper matter of state policy and state concern and is for a valid and desirable public purpose"). See also *State v. Leon County, Florida*, 410 So. 2d 1346 (Fla. 1982); *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980).

[6] See generally 81A C.J.S. *States* s. 205(b), p. 729. Cf. *Florida Power Corporation v. Pinellas Utility Board*, 40 So. 2d 350 (Fla. 1949).

[7] See s. 163.335(1), Fla. Stat.

[8] See s. 163.340(9), Fla. Stat., defining "[c]ommunity redevelopment" as "undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan." See also s. 163.340(10) and (11), Fla. Stat., respectively, defining "[c]ommunity redevelopment area" and "[c]ommunity redevelopment plan."

[9] Section 163.356, Fla. Stat.

[10] Section 163.370, Fla. Stat.

[11] Section 163.385, Fla. Stat.

[12] Section 163.400, Fla. Stat.

[13] *Thayer v. State*, 335 So. 2d 815 (Fla. 1976).

[14] See *Reino v. State*, 352 So. 2d 853 (Fla. 1977); *Miami Bridge Co. v. Railroad Commission*, 20 So. 2d 356 (Fla. 1944); *Clark v. Kreidt*, 199 So. 333 (Fla. 1940).

[15] *Gaulden v. Kirk*, 47 So. 2d 567 (Fla. 1950).

[16] See *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980), *State v.*

Housing Finance Authority of Polk County, 376 So. 2d 1158 (Fla. 1979); *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971); *State v. Reedy Creek Improvement District*, 216 So. 2d 202 (Fla. 1968); *State v. Daytona Beach Racing and Recreational Facilities District*, 89 So. 2d 34 (Fla. 1956).