

**HOUSING: HOUSING AUTHORITIES LAW.**

**ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.**

**CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE.**

**Charlottesville Redevelopment and Housing Authority partially financed loan to developer of Charlottesville Omni Hotel Project as part of urban renewal project. Authority's assignment of loan to hotel owner in effort to prevent foreclosure and assure continued operation of project may be viewed as promoting purposes of Housing Authorities Law and as not violating public trust imposed on Authority's assets. Authority properly entered into executive session to discuss and consider financing of project because of Authority's discussion of ownership of land on which project is located.**

The Honorable Mitchell Van Yahres

Member, House of Delegates

October 20, 1998

You ask whether the City of Charlottesville Redevelopment and Housing Authority (the "Authority") may release or forgive a loan which the Authority made to the developer of a project partially financed by the Authority. You ask also whether the Authority properly entered into executive session to discuss and consider the financing.

You advise that your inquiry relates to the Charlottesville Omni Hotel Project (the "Project"). You include with your request a letter from the Charlottesville city attorney explaining the history of the Project and providing background information regarding the Authority's release of the loan.<sup>1</sup> Additional information regarding the Project and the difficulty the Authority and the city experienced in obtaining a developer for the Project is contained in detail in *City of Charlottesville v. DeHaan*.<sup>2</sup>

The city attorney explains that the Project was undertaken by the Authority in the 1960s as part of an urban renewal project. The undertaking was an effort by the Authority, with the assistance of the city, to promote the redevelopment of an area in the heart of the city. The original financing for the Project consisted of a loan to the developer from the Authority and a loan from a private lender. The Authority was to retain ownership of the 4.386 acres of land on which the Project is located and to enter into a ground lease with the developer who was to construct the hotel. The hotel opened in 1985. The financing of the Project has been restructured at least three times in the past fifteen years. Under the terms of the restructurings, the Authority had agreed to reduce its lien priority on its outstanding loan and to loan a limited amount of new money to the Project.

The city attorney further explains the background for the recent Authority action that is the subject of your inquiry. In 1996, the first lien note holder, who was owed \$12 million or more in principal and unpaid interest, sent a notice of default to the hotel owner and to the Authority. After a year of negotiations in an attempt to avoid foreclosure, the Authority agreed to a proposal under which it would receive full payment for the new money loaned to the Project and would assign its reduced lien notes to the hotel. The Authority would retain ownership of the land and thus would continue to receive the ground rent established in the original financing.<sup>3</sup>

The city attorney also advises that he advised the Authority that the transaction was in the best interest of the city, both because it would result in a new private lender agreeing to assume the

loan payable to the existing first lien lender, thus avoiding foreclosure, and because it would provide the greatest financial benefit to the city that could be expected under the circumstances. Although the Authority would agree to relinquish payment of a portion of its loan, the portion was secured by fifth and sixth liens and, in light of the amount owed prior lien holders and the value of the property, would remain unpaid in the event of foreclosure. On the other hand, the Authority would receive full payment of the amount of new money loaned, money which the Authority also would likely lose in a foreclosure. The Authority also would retain ownership of the land and the right to continue to receive the ground rent.

The Authority operates pursuant to the powers granted by the General Assembly under the Housing Authorities Law set out in Chapter 1 of Title 36 of the *Code of Virginia*.<sup>4</sup> The Housing Authorities Law grants broad powers to redevelopment and housing authorities. Section 36-19 provides that an authority shall have "all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter," and §§ 36-48 and 36-48.1 declare that the redevelopment of "blighted areas"<sup>5</sup> in a community constitutes a public purpose for which public money may be spent.

Section 36-19 also enumerates specific powers of a redevelopment and housing authority. Included within § 36-19 are the power "to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein"<sup>6</sup> and the power "[t]o make loans or grants for the prevention and elimination of slum or blighted areas and for assistance in housing construction or rehabilitation by private sponsors of any and all funds received through federal programs and any and all funds received from other sources, public or private."<sup>7</sup> Section 36-49 enumerates additional powers of an authority in the undertaking of redevelopment projects. Included within § 36-49 is the power

[t]o assist the reconstruction of project areas by making loans or grants of funds received from any public or private source, for the purpose of facilitating the construction, reconstruction, rehabilitation or sale of housing or other improvements constructed or to be constructed on land situated within the boundaries of a redevelopment project.<sup>8</sup>

In recognition of the scope of the powers the General Assembly has granted redevelopment and housing authorities, a prior opinion of the Attorney General concludes generally that an authority has broad discretion in the control of its assets and property, provided the discretion is exercised in accordance with the underlying purpose of the legislation and does not violate the public trust impressed upon an authority's assets.<sup>9</sup> Whether a transaction is consistent with the purpose of the housing authority legislation is a question of fact.<sup>10</sup> In this instance, the Supreme Court of Virginia has determined that the primary purpose of the Authority's loan to the developer of the Project was to promote the development of a blighted area and to serve the purposes of the housing authority legislation.<sup>11</sup> Moreover, legislation does not expressly prohibit an authority from releasing a loan and, in fact, expressly permits an authority to assign any interest in real property and, in both §§ 36-19 and 36-49, to make grants for the prevention and elimination of slum and blighted areas.

Considering the language of the Housing Authorities Law and the circumstances that you present, it is my opinion that the actions taken by the Authority in an effort to prevent foreclosure and to assure the continued operation of the Project may be viewed as promoting the purposes of the chapter and as not violating the public trust imposed on the Authority's assets.<sup>12</sup> Accordingly, I find no legal basis, based upon the limited facts that you present, for concluding that the Authority abused its discretion in assigning the loan to the owner of the hotel.<sup>13</sup>

You ask also whether § 2.1-344(A)(3), a portion of The Virginia Freedom of Information Act,<sup>14</sup> permitted the Authority to discuss and consider the transaction in executive or closed session. Section 2.1-344(A)(3) authorizes a public body to conduct an executive or closed meeting for the "[d]iscussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property." The city attorney indicates that a major purpose and focus of the discussion in the executive session was the Authority's ownership of the land on which the Project is located. Since this was a principal component of the transaction, § 2.1-344(A)(3) authorizes the Authority to meet in executive session to discuss and consider the transaction.

<sup>1</sup>Letter from W. Clyde Gouldman, II, Charlottesville City Attorney, to the Honorable Mitchell Van Yahres, Delegate, Virginia House of Delegates (Mar. 4, 1998).

<sup>2</sup>228 Va. 578, 323 S.E.2d 131 (1984). The Supreme Court of Virginia ruled in *City of Charlottesville v. DeHaan* that the city's issuance of bonds and its appropriation of the bond proceeds to the Authority for the Project did not violate the credit clause of Article X, § 10 of the Constitution of Virginia (1971). 228 Va. at 592, 323 S.E.2d at 138. The credit clause prohibits the Commonwealth or any county, city, town, or regional government from lending its credit in aid of any person, association, or corporation. No violation of the credit clause occurs when the underlying purpose of the financial commitment is to benefit the general public, notwithstanding that a private individual or corporation may receive an incidental benefit. *Almond v. Day*, 197 Va. 782, 791, 91 S.E.2d 660, 667 (1956).

<sup>3</sup>Upon the completion of the transaction, neither the city nor the Authority would have any further lending relationship with the hotel.

<sup>4</sup>Sections 36-1 to 36-55.6.

<sup>5</sup>"Blighted areas" are defined as "areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community." Section 36-49(1).

<sup>6</sup>Section 36-19(4).

<sup>7</sup>Section 36-19(7).

<sup>8</sup>Section 36-49(7); see also § 36-49.1(5), (6) (authorizing authority to make grants to assist in prevention and elimination of blight and rehabilitation of land situated within conservation project).

<sup>9</sup>See 1989 Op. Va. Att'y Gen. 242, 244; see also 1995 Op. Va. Att'y Gen. 97, 99-100 (legislation establishing and granting powers to Virginia Coalfield Economic Development Authority places few prohibitions on Authority, and decision whether to make grant is within discretion of Board of Authority).

<sup>10</sup>See 1987-1988 Op. Va. Att'y Gen. 192, 195 (whether particular transaction is executed in performance of proper governmental function is to be determined by circumstances of each case).

<sup>11</sup>City of Charlottesville v. DeHaan, 228 Va. at 591-92, 323 S.E.2d at 137-38; see *also* 1993 Op. Va. Att'y Gen. 84, 88 (Supreme Court is deferential to legislative findings of public purpose, such as those stated in redevelopment and housing authorities statutes).

<sup>12</sup>The Authority's actions were in accord with the advice that the city attorney, as the Authority's counsel, provided the Authority.

<sup>13</sup>I assume that the assignment of the loan will have no effect on the payment of the debt service on the bonds the city issued to provide financing for the Project.

<sup>14</sup>Sections 2.1-340 to 2.1-346.1.