Community Redevelopment Agencies -- Audits

Number: INFORMAL

Date: March 12, 2014

The Honorable Joseph Abruzzo
Senator, 25th District
Room 222, Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Senator Abruzzo:

Thank you for your letter of March 5th, 2014, requesting that this office review Attorney General Opinion 2010-40 in light of the Auditor General's Operational Audit Report No. 2014-013 of the Delray Beach Community Redevelopment Agency. Attorney General Bondi has asked me to respond to your letter.

The Florida Attorney General is statutorily limited to providing legal advice and opinions to governmental officers on questions of law relating to their own duties and responsibilities.[1] Any comment from this office regarding an audit performed on the Delray Beach Community Redevelopment Agency and suggesting that the agency request an Attorney General's Opinion on matters covered by the audit would most appropriately come from the redevelopment agency itself. Thus, after reviewing the information you have submitted, it does not appear that this matter is appropriate for formal comment by this office.

However, in an effort to assist you, I offer the following informal comments.

You have specifically requested that this office review Attorney General Opinion 2010-40. I have reread the opinion and updated the statutory and case law cited therein and determined that there are no substantive changes to either that would change our conclusion in that opinion. Thus, I find that Attorney General Opinion 2010-40 continues to reflect this office's position as the current statement of the law on this question. As you know, Attorney General Opinions are, by statute, advisory, and are not binding. Attorney General Opinions constitute this office's best legal advice on the particular question presented and are considered persuasive by Florida courts.[2]

This office continues to consider promoting the use of a redeveloped area to be within the purposes of the Community Redevelopment Act of 1969. We would, of course, suggest that community redevelopment funds to pay entities promoting tourism or providing socially beneficial programs should demonstrate a nexus to carrying out the purposes of the act in order to justify the use of community redevelopment funds. It appears from the Operational Audit of the Delray Beach Community Redevelopment Agency that the Auditor General agrees with this conclusion. I note the following language from page 5 of the audit:

"The CRA provided us an opinion from its General Counsel characterizing the above-noted

contributions as being for promotional activities and indicating that through inclusion of these activities in the CRA Plan, the CRA's contributions were consistent with State law. However, neither the CRA Plan nor CRA records clearly demonstrated the CRA Board's determination of the extent to which the funds contributed to the above-noted organizations had been appropriately restricted to activities authorized by the Act."

Thus, the recommendation by the Auditor General that "the CRA should document in its records that these organizations' use of the funding is restricted to activities authorized by the Act." It appears that the CRA should implement more thorough documentation procedures ensuring the use of funding only for those activities authorized by the community redevelopment act.

As this office suggested in Attorney General Opinion 2010-40:

"[I]t would appear that the primary focus of a community redevelopment agency is to eliminate and prevent the development or spread of slums and blight. This may be accomplished by reducing or preventing crime, by providing affordable housing, clearing slums and redeveloping in a community redevelopment area, or by rehabilitating or conserving in a community redevelopment area, or any combination or part thereof. The enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving "bricks and mortar" in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished. However, to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process."

The opinion also suggests that "grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act." Ultimately, however, the determination of whether a particular project satisfies the terms of the act is to be made by the redevelopment agency itself.

Should either you or the Auditor General have concerns that these issues may reflect possible criminal misconduct, please forward this matter to the State Attorney for the 15th Judicial Circuit, The Honorable Dave Aronberg. Allegations of violations of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, should be forwarded directly to the Florida Commission on Ethics.

I trust that these informal comments will be helpful to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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Enclosures

[1] *See* section 16.01(3), Florida Statutes, and Department of Legal Affairs Statement Concerning Attorney General Opinions (copies enclosed).

[2] *See American Home Assurance Company v. National Railroad Passenger Corporation*, 908 So. 2d 459 (Fla. 2005); *State v. Family Bank of Hallandale*, 623 So. 2d 474, 478 (Fla. 1993) (although an opinion of the Attorney General is not binding on a court, it is entitled to careful consideration and generally should be regarded as highly persuasive).