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LOCAL GOVERNMENT

General Provisions: Allow Municipal Governing Authorities To Empower Mayor To Enter Into Contracts On Municipal Corporation's Behalf

CODE SECTIONS: O.C.G.A. § 36-30-3(c) (amended)
BILL NUMBER: SB 706
ACT NUMBER: 975
SUMMARY: The Act empowers the governing authorities of municipal corporations to authorize the mayor to enter into contracts with public and private entities, involving property or facilities used for criminal justice purposes, on behalf of the municipal corporations. Monetary, durational and population, limitations on the exercise of this power are provided.
EFFECTIVE DATE: March 28, 1990

History

Prior to April 3, 1986, the governing authorities of Georgia's municipal corporations¹ were prohibited from entering into contracts binding themselves or binding succeeding city councils.² The only exception to this blanket prohibition applied to municipalities with populations between 100,000 and 135,000.³ The exemption was limited to contracts involving "street overpasses and underpasses of railroad properties."⁴

In 1986, the General Assembly gave municipal governing authorities in cities with populations in excess of 400,000 the power to enter into contracts regarding certain commercial facilities located in the city's

1. A municipal corporation "means *any* city or town in [Georgia]." O.C.G.A. § 36-42-3(5) (Supp. 1989) (emphasis added).

2. 1982 Ga. Laws 2107. The proscription in subsection (a) reads as follows: "One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government." *Id.*

3. *Id.* ("The governing authorities of municipal corporations having a population of not less than 100,000 and not more than 135,000 . . . may on behalf of such municipal corporations enter into contracts with respect to . . . street overpasses and underpasses of railroad properties which shall be binding upon such authorities and successors.").

4. *Id.*

downtown development area.⁵ The need for urban redevelopment in downtown development areas was highlighted in the legislative findings contained in the Code.⁶ These findings chronicled the deteriorating condition of certain "slum areas" and labeled such plight as "constitut[ing] a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of this state."⁷

In 1987, the General Assembly further refined the Code by adding a fifty-year time limit on the duration of the contracts allowed under this subsection.⁸ The General Assembly also added a directive instructing the governing authorities to empower the mayor to enter into contracts on behalf of the municipal corporations and added an exemption from coverage for contracts pertaining to property used for nonprofit museums.⁹

5. 1986 Ga. Laws 841. The General Assembly added subsection (c) to O.C.G.A. § 36-30-3:

(c) The governing authorities of municipal corporations having a population of not less than 400,000 . . . may[,] on behalf of such municipal corporations[,] enter into contracts with private or public entities which shall be binding on such authorities and successors, with respect to . . . property for retail facilities, restaurants, or office or other commercial use which is located in its downtown development area. . . .

Id.

6. O.C.G.A. § 36-61-3 (1987) (entitled "Legislative Findings and Declaration of Necessity").

7. O.C.G.A. § 36-61-3(a) (1987). The section went on to state:
[T]he existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities and counties, retards the provisions of housing accommodations, . . . ; and that the . . . elimination of slums is a matter of *state policy* and *state concern*

Id. (emphasis added).

The findings went on to state:

[C]ertain slum areas or portions thereof may require *acquisition, clearance, and disposition*, . . . since the prevailing conditions of decay may make impracticable the reclamation of the area by conservation or rehabilitation It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised.

O.C.G.A. § 36-61-3(b) (emphasis added).

8. 1987 Ga. Laws 275.

(c) The governing authorities of municipal corporations having a population of not less than 400,000 . . . may, on behalf of such municipal corporations, authorize the mayor to enter into contracts . . . for periods not exceeding 50 years . . . , which contracts shall be binding on such municipal corporations and on such authorities and successors The limitation . . . shall not apply to contracts for the use of property for nonprofit museum purposes

Id.

9. *Id.*

SB 706

Prompted by the City of Atlanta's need to build new criminal justice facilities, SB 706 was introduced to authorize municipal governing authorities to empower the mayor to enter into contracts allowing private developers to build these new facilities and then lease them back to the city.¹⁰ The City of Atlanta requested this measure because of the inadequacy of its criminal justice facilities.¹¹ The City may institute a building project that ultimately could result in the merging of locations for the municipal courts and the city's public safety administration, while also providing for an additional 1000 prison beds.¹²

The Act amends Code section 36-30-3(c) by labeling the section's original paragraph as (1) and inserting a new paragraph (2),¹³ authorizing the mayor to execute contracts on behalf of the municipal corporation.¹⁴ The new paragraph provides that those municipalities with populations of 400,000 or more can empower the mayor to enter into contracts on the city's behalf for "the development, construction, leasing, subleasing, maintenance, or management of property used for criminal justice purposes."¹⁵

As originally introduced, and subsequently passed by the Senate, SB 706 contained no monetary cap on the amount for which the mayor could contractually bind the municipal corporation.¹⁶ However, the House substitute bill inserted a clause limiting the principal amount of the contract to "not more than \$100 million."¹⁷ The House substitute retained

10. Telephone interview with Senator Arthur Langford, Jr., Consumer Affairs Committee Chairman, Senate District No. 35 (March 22, 1990) [hereinafter Langford Interview]. Undoubtedly, the desperate situation in Atlanta's jails also played a role in this plan, as evidenced by the following excerpt from an Atlanta newspaper:

Atlanta's city jails, built in 1983, [are] holding more than double [their] 524-prisoner capacity and will hold an estimated 2,000 within five years, officials say. To reduce the number of inmates being held, Atlanta has scheduled trials and bond hearings for Saturdays and evenings. . . . Local governments could have no choice but to build more cells or release prisoners if the overcrowding becomes too severe.

Curriden, *Like Closets, New Jails Fill Up*, Atlanta Const., Jan. 11, 1990, at D1, col.3.

11. Langford Interview, *supra* note 10.

12. *Id.*

13. Compare O.C.G.A. § 36-30-3(c) (Supp. 1990) with 1989 Ga. Laws 1287, formerly found at O.C.G.A. § 36-30-3(c) (1989).

14. O.C.G.A. § 36-30-3(c)(2) (Supp. 1990).

15. *Id.* The City of Atlanta is presently the only city in the state that satisfies the population requirement. See Rand McNally Green Guide: U.S. Places With Over 100 People at 69 - 72 (1983).

16. SB 706, as introduced, 1990 Ga. Gen. Assem.

17. O.C.G.A. § 36-30-3(c)(2) (Supp. 1990). This limitation was fueled by concern over possibly providing the city with an open window for unlimited financing. Telephone interview with Gary Holmes, Chief of Economic Development for the City of Atlanta (April 12, 1990) [hereinafter Holmes Interview].

the original version's fifty-year limitation on the length of the contract.¹⁸

The only other deviation between the original version of the bill and the enacted legislation was a small alteration made by a House Committee substitute. The House measure clarified that the "contracts" which the mayor can be authorized to enter into under this new subsection "shall be for" the building, leasing, management, or care of property used specifically for criminal justice purposes.¹⁹ These criminal justice facilities must be "located within the downtown development area of such municipal corporations."²⁰

Conclusion

This measure has been touted as being long overdue, specifically because of Atlanta's pressing need for a new criminal justice complex.²¹ Financing of major projects by the city usually requires a bond issue because of the restrictions on the governing authorities of municipal corporations embodied in Code section 36-30-3(a).²² Voters must pass a referendum in order to issue a municipal bond.²³

The Act provides an alternative financing method for the construction of the city's criminal justice complex by allowing the city to enter into long-term contracts with private developers.²⁴ The security and attractiveness of a long-term deal will provide an incentive for private developers to step in and build the criminal justice complex on city-

18. O.C.G.A. § 36-30-3(c)(2) (Supp. 1990). Compare SB 706, as introduced, 1990 Ga. Gen. Assem. with SB 706 (HCS), 1990 Ga. Gen. Assem.

19. Compare O.C.G.A. § 36-30-3(c)(2) (Supp. 1990) with SB 706, as introduced, 1990 Ga. Gen. Assem.

20. O.C.G.A. § 36-30-3(c)(2) (Supp. 1990). By restricting the location of these facilities to the downtown development area, the General Assembly maintained a level of consistency between the exceptions contained in subsections (c)(1) and (2) of Code § 36-30-3, as well as with the stated policy objectives outlined in Code § 36-61-3. See *supra* notes 6 — 8 and accompanying text.

21. Langford Interview, *supra* note 10.

22. See *supra* note 2.

23. Holmes Interview, *supra* note 17. A general obligation bond has the guarantee of the city behind it and requires the passage of a referendum. However, by state law, the city can issue up to \$8 million in bond debt without having to obtain approval through a referendum. This is how the city manages to fund such necessary services as road repairs. *Id.* To meet smaller scale needs, such as contracting for copy machines, the city will simply enter into a series of one-year contracts with a vendor, with the understanding that the contract's extension is contingent upon the continued appropriation of funds from the city council. Telephone interview with Don Roberson, Director of the Office of Construction Management for the City of Atlanta (April 12, 1990) [hereinafter Roberson Interview].

24. O.C.G.A. § 36-30-3(c) (Supp. 1990); Holmes Interview, *supra* note 17.

owned land and then lease the facility back to the city.²⁵ The private developer will recoup his capital outlay and earn a profit through the lease payments made by the city.²⁶ This arrangement will enable the city, through the issuance of certificates of participation,²⁷ to shift the burden of obtaining initial financing for the project onto the shoulders of the private developer.²⁸ The city's initial capital outlay will be significantly reduced, thereby avoiding the need to issue a bond and eliminating any need for a tax increase associated with the facility's construction.²⁹ Atlanta's facilities are outdated, and the act should remedy this problem by allowing private developers to build new criminal justice facilities and then lease them back to the city.³⁰

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25. Holmes Interview, *supra* note 17. The security of a long-range contract will assure private developers that they will recoup their investment. *Id.*

26. *Id.*

27. A certificate of participation differs from a bond in one important way: a bond is guaranteed by the city, whereas a certificate of participation is not. Because its only backing is from the institution that executed it, the citizens of Atlanta are relieved of any liability under its terms. Roberson Interview, *supra* note 23.

28. Holmes Interview, *supra* note 17; Roberson Interview, *supra* note 23. Under the plan the city forms a "special purpose corporation." The city then sells the land on which the criminal justice complex is to be built to the special purpose corporation for the appraised value of the land. The special purpose corporation then transfers the land to the private developer through either a conveyance, a ground lease, or an air lease. The developer then enters into a contract with the special purpose corporation to build the criminal justice facility and lease it back to the special purpose corporation. The developer will therefore be responsible for obtaining the initial financing for the project, but can point to the long-range contract with the city (acting through the special purpose corporation) as assurance for his financial backers that the deal is sound.

The city pays the special purpose corporation rental payments for the use of the facility, and the special purpose corporation, in turn, uses that money to make its leasing payments to the private developer. Since this will be a closed-end lease (i.e., the lessee retains the exclusive option to buy at the end of the lease), at the conclusion of the leasing period (which, because of statutory limitations cannot extend beyond 50 years), the property will revert back to the special purpose corporation, which will then sell it back to the city for a preset fee (probably one dollar). Roberson Interview, *supra* note 23. This arrangement appears to be beneficial to all involved. The developer will make a profit amounting to the difference between the lease payments from the city/special purpose corporation and the repayments to the bank on the original amount financed. On the other hand, the city will not have to engage in a huge bond issue in order to raise cash, or be a primary borrower on a note.

29. Holmes Interview, *supra* note 17.

30. *Id.*