

## O.C.G.A 36-44-21 – Redevelopment Powers

**Section 36-44-21** - Public employees and officials prohibited from holding interest disclosures; voidability of prohibited transactions; misconduct in office

(a) No elected or appointed official or employee of a political subdivision or a board, commission, or redevelopment agency thereof shall voluntarily acquire any interest, direct or indirect, in any property included or planned to be included in a redevelopment area, or in any contract or transaction or proposed contract or transaction in connection with the redevelopment of that redevelopment area. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local legislative body and such disclosure shall be entered upon the minutes of the local legislative body. Any such elected or appointed official or employee who, within two years immediately prior to the date the plan is submitted to a local legislative body under subsection (b) of Code Section 36-44-7, acquires ownership or control of any interest, direct or indirect, in any property which is included in the redevelopment area designated in that plan and who retains that ownership or control at the time that such plan is so submitted shall, at least 30 days prior to the date scheduled for the local legislative body to adopt the plan, disclose the interest in writing to the local legislative body and such disclosure shall be entered upon the minutes of the local legislative body, and that person shall not participate in any action by the political subdivision, board, commission, or redevelopment agency thereof which affects that property. Any disclosure required to be made by this subsection shall concurrently be made to the redevelopment agency.

(b) Any contract or transaction in violation of subsection (a) of this Code section or disclosure of which is not made as provided in that subsection (a) shall be voidable by the local legislative body. This subsection shall not apply to any indenture, agreement, contract, or transaction which constitutes security, direct or indirect, for payment of bonds or other obligations incurred pursuant to a redevelopment plan, and the judgment and order confirming and validating any such bonds or other obligations shall constitute a final and conclusive adjudication as to any such security.

(c) Failure by an official or employee to comply with subsection (a) of this Code section shall constitute misconduct in office.

**EXHIBIT "B"**

Response Letter from Asst. Atty  
General Zachary Johnson



**GEORGIA DEPARTMENT OF LAW**  
40 Capitol Square SW  
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR  
ATTORNEY GENERAL

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February 4, 2021

**VIA REGULAR U.S. MAIL**

Clifton C. Fay, Esq.  
City Attorney for the City of Columbus  
Post Office Box 1340  
Columbus, Georgia 31902-1340

Re: Request for Unofficial Opinion/Conflict of Interest Provision of Redevelopment Powers Law

Dear Mr. Fay,

I write in response to your letter of January 8, 2021, to provide some informal interpretation of the Redevelopment Powers Law, O.C.G.A. § 36-44-1 *et seq.* This letter analyzes O.C.G.A. § 36-44-21 and the responses you have provided to the questions posed in your letter.

In your letter, you noted that the Columbus Council is the governing authority of Columbus, Georgia, and that it is also the redevelopment agency designated in accordance with O.C.G.A. § 36-44-4(a) under the Redevelopment Powers Law. The Council has recently approved a Tax Allocation District and discovered that an elected member of the Muscogee County School District is an employee or board member of a non-profit entity that may ultimately develop property within the TAD. You asked for our guidance concerning two issues related to prohibited transactions of public officials and employees in redevelopment areas.<sup>1</sup>

Initially, as you pointed out in your letter, while the School Board member may arguably be considered an "elected official" pursuant to O.C.G.A. § 36-44-21, the Muscogee County School District is an independent creation of the local legislation of the General Assembly, and is not "a board, commission or redevelopment agency" of the Columbus Consolidated Government. Because the Columbus Consolidated Government is the political subdivision which is exercising redevelopment powers in this instance, it appears that the School Board has no applicable

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<sup>1</sup> As you correctly note, there are different issues posed if the School Board itself, as opposed to the Columbus Council, was required to approve the Tax Allocation District. I do not address that question in this letter, but highlight that local school board members are also statutorily prohibited from certain transactions that pose conflicts of interest. *See, e.g.*, O.C.G.A. § 20-2-63.

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association that would present a possible conflict of interest under O.C.G.A. § 36-44-21. *See also* O.C.G.A. § 36-44-7(a) (requiring “local legislative body” to approval redevelopment plan). You also mention that you believe that the individual’s School Board membership would not be disqualifying since she “in no way exercises decision making authority” on behalf of the Columbus Consolidated Government. Your interpretation appears to be a correct if the School Board is not the “local legislative body” approving the redevelopment plan.

The second issue you raised is whether, assuming a School Board member is an “elected official” for purposes of O.C.G.A. § 36-44-7, his or her employment by or board membership of a 501(c)(3) nonprofit would prohibit that nonprofit from acquiring property and receiving TAD funds. The conflict of interest provision in O.C.G.A. § 36-44-21 prohibits any such elected official from “voluntarily acquire[ing] any interest, direct or indirect” in any property in a redevelopment area. That provision further requires disclosures and recusal of an elected official who, within two years prior to the date a redevelopment plan is submitted, “acquires an ownership or control of any interest, direct or indirect, in any property which is included in the redevelopment area ....” The issue, then, is whether board membership or employment with a nonprofit entity constitutes “direct or indirect interest” in property or “ownership or control of any interest” in any property located within a redevelopment area. In your letter, you stated that you were of the opinion that a board member or an employee of a non-profit whose compensation is not contingent on the success of the project has no “financial interest, direct or indirect” for purposes of O.C.G.A. § 36-44-21, and thus the non-profit should not be prohibited from acquiring property in the Tax Allocation District or receiving Tax Allocation District 5funding for its redevelopment project.

In the broadest of terms, it appears that you are correct that a single board member or employee of a nonprofit entity is unlikely to have the type of interest or control contemplated by O.C.G.A. § 36-44-21. That determination, however, is highly fact dependent and your letter does not provide sufficient information as to the individual’s precise role in the non-profit, i.e., does the employee have managerial authority or have control over any direction or direct aspect of the development of the property within the Tax Allocation District, how long as he or she had such control/interest, etc. In the absence of more specific factual background, it is difficult to address your second issue with any more specificity.

I hope that this informal guidance responds to your inquiry. Please keep in mind that this letter is not an official or unofficial opinion of the Attorney General and does not constitute legal advice.

Sincerely,

/s/ Zachary Johnson

Zachary Johnson  
Assistant Attorney General



OFFICE OF THE CITY ATTORNEY

# Columbus, Georgia

## Georgia's First Consolidated Government

City Atty Fay's letter for Opinion  
on Redevelopment Powers

Post Office Box 1340  
Columbus, Georgia 31902-1340  
(706) 653-4025

**SENT VIA REGULAR U.S. MAIL**

The Honorable Christopher M. Carr  
40 Capitol Square, SW  
Atlanta, GA 30334  
United States

January 8, 2021

RE: Request for Unofficial Opinion/Conflict of Interest Provision of Redevelopment Powers Law

Dear Attorney General Carr:

I am writing to request an unofficial opinion on issues regarding the Redevelopment Powers Law, O.C.G.A. 36-44-1 *et. Seq.*, which have come up in Columbus, Georgia. The Columbus Council is the governing authority of Columbus, Georgia, a consolidated government ("CCG"), and it is also the designated redevelopment agency designated in accordance with O.C.G.A. § 36-44-4 (a) under the Redevelopment Powers Law. The Council has recently approved a Tax Allocation District (TAD) where an elected School Board member is an employee of a non-profit entity which may ultimately develop some of the property in the TAD. The TAD redevelopment plan which approved the District provides that any subsequent use of TAD funds in the development will come back to Council for approval. Issues regarding the interpretation of O.C.G.A. §36-44-21 which addresses prohibited transactions of public officials and employees in redevelopment areas have been raised, and our Mayor and Council have asked that I seek an unofficial opinion on the following two questions:

- 1) Is an elected member of an independent School Board in the same jurisdiction an "elected or appointed official or employee of a political subdivision or a board commission, or redevelopment agency thereof" for the purposes of O.C.G.A. § 36-44-21?
- 2) For anyone who is considered such an elected official within the purview of the code section, does board membership on or employment by a 501(c)(3) non-profit corporation prohibit the non-profit from acquiring property and receiving TAD funding for projects within the TAD?

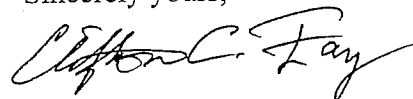
Hon. Christopher Carr  
January 8, 2021  
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The advice that I have provided in response to these questions is presented for your consideration:

- 1) Although this individual arguably is “an elected official” under the broadest interpretation of O.C.G.A § 36-44- 21, and there might be some appearance of a conflict, it would appear that a careful reading of the statute would not include the School Board member as an elected official. The elected Board of the Muscogee County School District is an independent creation of local legislation of the General Assembly and is not “a board, commission or redevelopment agency of the Columbus Consolidated Government” which is the political subdivision exercising redevelopment powers here. I also believe that this official’s School Board membership is not disqualifying since she in no way exercises decision making authority on behalf of the CCG with respect to the TAD or its projects. (A different question would be presented in the case of any School Board action to approve participation in the TAD, but we leave that issue to the School Board and its attorneys when any matter related to this TAD comes before the School Board.)
- 2) I am also of the opinion that a board member or an employee of a non-profit whose compensation is not contingent on the success of the project, has no “financial interest, direct or indirect” for purposes of O.C.G.A. § 36-44-21, and thus the non-profit should not be prohibited from acquiring property in the TAD or receiving TAD funding for its redevelopment project. This is in contrast to the situation where the governmental official is also a participant in a for-profit development project which would create the type of financial interest, direct or indirect, which would prohibit them from acquiring property in the TAD or receiving any sort of TAD funding for its development as required by O.C.G.A. §36-44-21.

I know that your office is very busy during the General Assembly Session, but we would appreciate a response at your earliest convenience.

Sincerely yours,



Clifton C. Fay  
City Attorney

Cc: Mayor B.H. Henderson, III