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TAXATION: Tax increment financing of Downtown Development Act.

MUNICIPALITIES: Downtown Development Authority Act.

DOWNTOWN DEVELOPMENT AUTHORITIES: Tax increment financing.

INCOMPATIBILITY: Members of Downtown Development Authority Board/member of county board of commissioners, member of governing board of municipality wherein a downtown development authority district is located, and member of school board of a district which extends into the downtown development district.

CONSTITUTION OF MICHIGAN: Art 9, § 3.

The fact that a uniformity clause of the Constitution mandates that city, county and school taxes must be uniformly imposed, does not mandate uniform expenditure of moneys raised by taxation.

The tax increment financing provisions of the Downtown Development Authority Act do not violate the rule of tax uniformity mandated by Const 1963, art 9, § 3.

A member of a downtown development authority board may not simultaneously serve as a member of the county board of commissioners of the county wherein the district is located, a member of the governing body of the municipality wherein the district is located, or a member of a school board of a school district which extends into the development area.

Opinion No. 5087 December 6, 1976.

Honorable Thomas G. Sharpe
House of Representatives
State Capitol
Lansing, Michigan

You have asked my opinion upon the following:

"1. Do the tax increment financing provisions of the Downtown Development Act (Act 197, P.A. 1975) violate the provisions of Article IX, Section 3 of the Michigan Constitution? Specifically; since the uniform general ad valorem taxes levied on the 'Captured assessed value' are returned to the development district, *is the net effect non-uniform?*

"2. May funds of a Downtown Development Authority, whether raised thru special assessment, taxes on captured valuation or the issuance of bonds be used for the benefit of private parties rather than the public?

"3. Can an elected official serve on the board of a Downtown Development Authority?"

1975 PA 197[1] provides that a municipality may establish a public body

[1] MCLA 125.1651 et seq; MSA 5.3010(1) et seq.

corporate with enumerated powers and duties to promote the economic growth and development within downtown development districts. Section 12 of the act[2] authorizes "[a]n authority with the approval of the municipal governing body," to levy an ad valorem tax not to exceed one mill upon property in the district if the downtown district is in a municipality having a population of one million, or more. If the downtown district is in a municipality having a population of less than one million, the levy may not exceed two mills. The tax is to be collected by the municipal treasurer and credited to the general fund of the downtown development authority.

In addition to the proceeds of this uniform tax upon property in the district, the authority may derive funds under a tax increment financing plan prepared, submitted and adopted in accordance with §§ 14 through 19 of the act.[3] Such plan is prepared by the authority, submitted to the governing body of the municipality, subject to discussion prior to public hearing thereon by the governing body of the municipality, members of the county board of commissioners and board members of school districts which extend into the development area. After public hearing on the tax increment financing plan, which is governed by § 18,[4]

> "The governing body * * * shall determine whether the * * * tax increment financing plan constitutes a public purpose. If it determines that the * * * tax increment financing plan constitutes a public purpose, it shall then approve or reject the plan, or approve it with modification, by ordinance * * *."[5]

If the plan is approved, a "tax increment" is transmitted annually to the downtown development authority, which may expend it "only in accordance with the tax increment financing plan."[6]

The tax increment consists of a mathematically calculated amount equivalent to the total millages levied by all taxing units upon that valuation of property in the district which exceeds the valuation of the district's taxable property at the time of its establishment. In other words, the tax increment consists of the total millage levied upon property values in the district added since its establishment.

The authority, consequently, receives some tax proceeds which would otherwise have been received and expended by the county, municipality and schools. Section 14 of the act provides:

> "* * * The authority may enter into agreements with the county board of commissioners, the school boards, and the governing body of the municipality in which the development area is located to share a portion of the captured assessed value of the district."[7]

You have asked whether the foregoing scheme violates the uniformity

[2] 1975 PA 197, § 12; MCLA 125.1662; MSA 5.3010(12).

[3] 1975 PA 197, §§ 14-19; MCLA 125.1664-125.1669; MSA 5.3010(14)-5.3010(19).

[4] 1975 PA 197, § 18; MCLA 125.1668; MSA 5.3010(18).

[5] 1975 PA 197, § 19; MCLA 125.1669; MSA 5.3010(19).

[6] 1975 PA 197, § 15; MCLA 125.1666; MSA 5.3010(15).

[7] 1975 PA 197, § 14; MCLA 125.1664; MSA 5.3010(14).

clause of the Constitution. Although the uniformity clause of the Constitution mandates that city, county and school taxes be uniformly imposed, this mandate does not apply to *expenditures* by counties, schools and cities. In other words, the tax uniformity clause of Const 1963, art 9, § 3, mandates uniform taxation, and not uniform expenditure of the monies raised by taxation.

Under the plan described in 1975 PA 197, *supra,* all of the property in the district is subject to assessment at a uniform standard and imposition of a uniform school, city and county tax rate. Duly approved tax increment financing plans merely provide that a portion of the proceeds from a uniform levy, namely, the millages levied upon "new" or, in statutory language, "captured assessed value," be transmitted to the authority and expended in accordance with the financing plan. As noted, *supra,* the downtown development authority may share a portion of these tax increments with the municipality, county and schools.

My answer to your first question is that the tax increment financing provisions of the Downtown Development Act do not violate the rule of tax uniformity mandated by Const 1963, art 9, § 3.

Before a board of a downtown development authority may finance a project in the district by the use of revenue bonds, it must prepare a development plan.[8] This plan may be adopted by ordinance of the municipal governing body after a public hearing.[9] Its adoption is premised, as is the adoption of a tax increment financing plan, upon a determination by the municipal governing body, that it "constitutes a public purpose."[10]

Careful analysis of 1975 PA 197 constrains me to conclude that the Downtown Development Authority Act does not contemplate the expenditure of public funds for private parties.

Your third question addresses the compatibility of simultaneous service as a member of a development authority board and other elective office. Section 4 of the act[11] provides for the composition of the board. It consists of a chief executive officer of the municipality in which the district is located and eight members appointed by that chief executive officer, subject to approval by the governing body of the municipality. At least five members must have an interest in property located in the district and at least one of the members must reside in the district if it contains one hundred or more residents.

In the above discussion of the tax increment financing provisions of the act *supra,* it was noted that the development authority may enter into agreements with the county board of commissioners, school boards and the governing body of the municipality to share the tax increment proceeds. In the formation of such agreement, the development authority board represents interests which are incompatible with those of the county, school and municipality.

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[8] 1975 PA 197, § 17; MCLA 125.1667; MSA 5.3010(17).
[9] 1975 PA 197, § 18; MCLA 125.1668; MSA 5.3010(18).
[10] 1975 PA 197, § 19; MCLA 125.1669; MSA 5.3010(19).
[11] 1975 PA 197, § 4; MCLA 125.1654; MSA 5.3010(4).

It is my opinion that a member of a downtown development authority board may not simultaneously serve as a member of the county board of commissioners of the county wherein the district is located, a member of the governing body of the municipality wherein the district is located, or a member of a school board of a school district which extends into the development area.

FRANK J. KELLEY,
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761207.1

RACES AND RACING: Allocation of harness racing dates.

CONSTITUTION OF MICHIGAN: Art 4, § 25.

A provision in an appropriation act describing the method by which the state racing commissioner is to allocate harness racing dates is in violation of Const 1963, art 4, § 25, which provides that no law may be revised, altered or amended unless the section or sections of the act altered or amended are re-enacted and published at length.

Opinion No. 5146 December 7, 1976.

Honorable George Cushingberry, Jr.
State House of Representatives
Capitol Building
Lansing, Michigan

You have requested my opinion on the validity of section 21 of 1976 PA 243.[1] This section provides:

"The state racing commissioner in allocating harness racing dates as authorized under Act No. 27 of the public acts of 1959 as amended, being sections 431.31 to 431.56 of the Michigan Compiled Laws, shall allocate racing dates to licensees whose average daily pari-mutual handle has exceeded $500,000.00 consecutively within 6 calendar days preceding or following a race meet which meets these requirements."

Horse racing in Michigan is controlled by the provisions of the Racing Law of 1959, 1959 PA 27 (as amended by 1974 PA 136), MCLA 431.31 *et seq;* MSA 18.966(1) *et seq.* Section 9 of the Racing Law of 1959, *supra,* provides:

"(1) A person desiring to conduct a race meeting shall apply to the commissioner for a license to do so. The application shall be filed with the secretary on or before September 1 of the year preceding the year in which it is proposed to conduct racing. The application shall specify the location and the days on which racing is desired to be held. Racing dates shall not be allocated to permit more than 6 days

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[1] This is an act appropriating money to the Department of Agriculture.