



HENRY McMASTER  
ATTORNEY GENERAL

January 8, 2009

The Honorable Nelson Hardwick  
Member, House of Representatives  
714 Cedar Drive North  
Surfside Beach, South Carolina 29575

Dear Representative Hardwick:

We understand from your letter to Attorney General Henry McMaster that you desire an opinion of this Office on behalf of a constituent, George Edwards. You present your question as follows:

Is an agreement by a landowner with a local government other than by use of a residential improvement (special tax) district ordinance legally enforceable to pay the costs, or to put his land into a special tax district obligating future owners of the landowner's land to special taxes to pay the costs of the additional public school facilities that a new development on the original owner's land requires?

In addition to your request letter, we received an email from you in which you rephrased the question as follows:

Do strictly financial agreements between a county and an original landowner (such as the landowners agreeing to pay for the public school facilities that new development on their land requires or obligating future owners of their land to pay additional special taxes to cover those costs) fall under the Development Agreement Act - - such as, the requirements that they can only be used for developments of 25 or more acres and must be limited in the time period they cover?

### **Law/Analysis**

Chapter 31 of title 6 of the South Carolina Code contains the South Carolina Local Government Development Agreement Act (the "Act"). S.C. Code Ann. §§ 6-31-10 et seq. (2004). According to section 6-31-10 of the South Carolina Code, the purpose of the Act is to provide certainty to developers by allowing them to enter into agreements with local governments under

which if the local government approves the development plan, the developer is protected against changes in local laws that may impact the development process. In section 6-31-10, the Legislature states its findings and intent with regard to the Act. Among these findings, the Legislature recognizes that in addition to providing certainty and assurances to developers, development agreements benefit the public by providing “affordable housing, design standards, and on and off-site infrastructure and other improvements.” S.C. Code Ann. § 6-31-10(4). This provision adds: “These public benefits may be negotiated in return for the vesting of development rights for a specific period.” Id.

Section 6-31-60, under the Act, explains what the development agreement must contain and what it may contain. Included in the list of items the agreement must contain is the following provision:

(4) a description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;

S.C. Code Ann. § 6-31-60(4).

Section 6-31-20(12) of the South Carolina Code defines “public facilities” as “major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.” (emphasis added). Presumably, a school is an educational facility. Thus, as educational facilities, according to section 6-31-60(4), the development agreement will state who will provide for any additional schools needed by the development. Therefore, the Act contemplates the inclusion of a term in the development agreement calling for the developer to provide a public school to serve the development. However, we note that the Act itself does not place a requirement on the developer to construct new schools. Moreover, in our examination of the Act, we did not find a mechanism by which a local government may establish a special tax district to finance the cost of building such a public school. Thus, while the development agreement may contain a term stating the developer will construct a school, we do not believe the developer or the local government has authority under the Act<sup>1</sup> to obligate future owners of the property to pay special taxes or an assessment to finance the cost of the school.

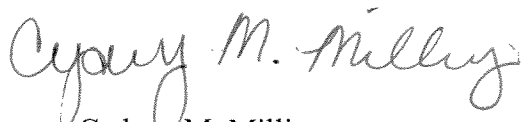
<sup>1</sup>As noted in Mr. Edwards’ question, in 2008, the Legislature passed the Residential Improvement District Act. 2008 S.C. Acts 3438. This act allows local governments to create improvement districts and collect assessments in those improvement districts to finance public infrastructure improvements, including new public schools and the renovation and expansion of existing public schools. Id. However, the scope of this opinion is limited to whether or not the Local Government Development Agreement Act allows for the creation of special tax district. Accordingly, we do not address the implications of the Residential Improvement District Act in this opinion.

### Conclusion

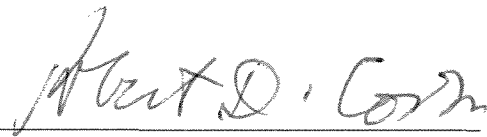
Based on our reading of the Act, a developer may agree to construct a public school as part of the terms of a development agreement with a local government. However, we do not believe the Act requires developers to pay for the construction of schools. Furthermore, we do not believe the Act allows local governments or developers to place property within the development into a special tax district for purposes of levying a special tax or assessment to finance the cost of such a school.

Very truly yours,

Henry McMaster  
Attorney General

  
By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Deputy Attorney General