CHAPTER 9

Improvement to Land by Municipalities

Editor's Note

1974 Act No. 1097, from which this Chapter (Sections 31‑9‑10) derived, was declared unconstitutional by the South Carolina Supreme Court in Anderson v Baehr (1975, SC) 265 SC 153, 217 SE2d 43, as being in derogation of former Article X, Section 6 of the South Carolina Constitution, on grounds the development projects for which bond issues were authorized by the Chapter did not constitute public purposes, but primarily benefited private developers.

**SECTION 31‑9‑10.** Definitions.

 Whenever used in this chapter, unless a different meaning clearly appears from the context, the following terms shall be given the following meanings:

 (1) "Bonds" shall include notes, bonds, refunding notes or bonds and other obligations authorized to be issued by this chapter.

 (2) "Governing board" shall mean the governing body of any city.

 (3) "Developer" shall mean any person, firm or partnership who enters into a loan agreement with the city whereby the developer agrees to construct, operate and maintain or procure the construction, operation and maintenance of buildings or other facilities or improvements upon land purchased with the proceeds of bonds.

 (4) "City" shall mean any incorporated municipality of the State.

 (5) "Loan agreement" shall mean any agreement, including without limitation, an agreement whereby the city shall lease land to a developer, made by and between a governing board and a developer by which the developer agrees to pay (and to secure if so required) the city or to any assignee thereof, the sums required to meet the payment of the principal, interest and redemption premium, if any, on any bonds.

 (6) "Land" shall mean any real estate, whether improved or unimproved, located within any city which the governing board of such city proposes to acquire from the proceeds derived from the issuance of bonds after making a determination that the acquisition of such land is necessary in connection with any slum clearance or redevelopment work.

HISTORY: 1962 Code Section 36‑451; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑20.** Powers of cities.

 Each city functioning through its governing board is empowered (1) to enter into agreements with any developer providing for the construction, operation and maintenance of buildings or other facilities or improvements on land; (2) to enter into a loan agreement with a developer prescribing the terms and conditions of the payments to be made by the developer to the city or its assignee, to meet the payments that shall become due on bonds; (3) to issue bonds for the purpose of defraying the cost of acquiring land and to secure the payment of such bonds as hereafter provided; and (4) to accept any State or Federal grants that might become available to defray any portion of the cost of any land or of the cost of the construction of any buildings or other facilities or improvements thereon.

HISTORY: 1962 Code Section 36‑452; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑30.** Terms, conditions, execution, sale, and other matters pertaining to bonds.

 All bonds issued by a governing board under authority of this chapter shall be limited obligations of the city. The principal, interest and redemption premium, if any, shall be payable solely out of the moneys to be derived by such city pursuant to the loan agreement. Bonds and interest coupons issued under authority of this chapter shall never constitute an indebtedness of the city within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the city or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. The bonds may be executed and delivered as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such times not exceeding forty years from their date, may be subject to such terms of redemption, may be payable at such places, may bear interest at such rates as the governing board and the developer shall agree upon without limitation, may be payable at such places and evidenced in such manner, may contain such provisions not inconsistent herewith, all of which shall be provided in the proceedings of the governing board authorizing the bonds. Any bonds issued under the authority of this chapter may be sold at public or private sale, at such price and in such manner, and from time to time as may be determined by the governing board to be most advantageous and the governing board may pay as a part of the cost of acquiring any land and out of the bond proceeds all expenses, premiums and commissions which the governing board may deem necessary or advantageous in connection with the authorization, sale and issuance of bonds. All bonds, except registered bonds which are registered otherwise than to bearer, and all interest coupons appurtenant thereto shall be construed to be negotiable instruments despite the fact that they are payable solely from a specified source. The proceedings authorizing the issuance of bonds may provide for the issuance in the future of further bonds on a parity with those initially issued.

 Pending the issuance of bonds, bond anticipation notes may be issued and to the end that a vehicle be provided therefor, the provisions of Sections 11‑17‑10 to 11‑17‑110 as now or hereafter amended shall be applicable to such bond anticipatory borrowing.

HISTORY: 1962 Code Section 36‑453; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑40.** Security for payment of bonds.

 The principal, interest and premium, if any, on any bonds shall be secured by a pledge of the revenues payable to the city pursuant to a loan agreement and may also be secured by a lien on any property (including the land) given as security by the developer pursuant to the loan agreement and any bonds may be issued pursuant to and secured by a trust indenture. The proceedings under which bonds are authorized to be issued or any trust indenture may contain any agreement or provisions customarily contained in instruments securing such obligations, without limiting the generality of the foregoing provisions respecting the fixing and collection of the sums payable by the developer to the city pursuant to the loan agreement; the construction, maintenance and operation of buildings or other facilities or improvements upon the land, the creation and maintenance of special funds by the developer, the rights and remedies available in the event of default to the bondholders or to the trustee under such trust indenture, all as the governing board shall deem advisable; provided, however, that in making any such agreements or provisions, no city shall have the power to obligate itself except with respect to any security pledged, mortgaged or otherwise made available by the developer for the securing of the bonds, and the application of the revenues from the loan agreement and shall not have the power to incur a pecuniary liability or charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds and any trust indenture securing bonds may provide that in the event of default in payment of the principal of, or interest on such bonds, or in the performance of any agreement contained in such proceedings or trust indenture, such payment and performance may be enforced by mandamus or by appointment of a receiver in equity with such powers as may be necessary to enforce the obligations thereof. No breach of any such agreement shall impose any pecuniary liability upon any city or any charge upon its general credit or against its taxing powers.

 The trustees under any trust indenture or any depository specified by such trust indenture may be such persons or corporations as the governing board shall designate, notwithstanding that they may be nonresidents of South Carolina, or incorporated under the laws of the United States or the laws of other states of the United States.

HISTORY: 1962 Code Section 36‑454; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑50.** Loan agreements; obligations of developer; issuance of additional parity bonds.

 Every loan agreement shall contain a covenant obligating the developer to effect the completion of the buildings or other facilities or improvements described therein upon the land at no cost to the city and each such loan agreement shall obligate the developer to make payments which shall be sufficient (a) to pay the principal of and interest on the bonds issued for such land, (b) to build up and maintain any reserves deemed by the governing board to be advisable in connection therewith and (c) in the event the city owns the land and leases it to the developer, to pay to the city and any other taxing bodies in which the land is located, annually an amount equal to the taxes which would be paid to the city and such taxing authorities if the land were privately owned. The loan agreement may provide for the issuance of additional parity bonds in order to acquire additional land.

HISTORY: 1962 Code Section 36‑455; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑60.** Loan agreements; leases between city and developer.

 Any loan agreement may provide that the land will be owned by the city and leased to the developer; may provide the developer with an option to purchase the land upon such terms and conditions as the governing board and the developer shall agree upon at a price which may be a nominal amount or less than the true value at the time of purchase; may provide that the land shall become the property of the developer upon the acquisition thereof. In the event the loan agreement consists of a lease between the city and the developer of the land acquired with the proceeds of the bonds, the city may subordinate its right to receive rental payments to the lien of any mortgages upon the land or the buildings or other facilities or improvements constructed or to be constructed thereon.

HISTORY: 1962 Code Section 36‑456; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑70.** Proceeds from sale of bonds.

 The proceeds derived from the sale of any bonds shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of and interest on the bonds; and provided, further, that if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds are issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or interest on the bonds. The cost of acquiring any land shall be deemed to include the following: the actual cost of purchasing the land, the cost of clearing the land, including the cost of demolishing any buildings, facilities or improvements thereon, the cost of grading the land, all expenses in connection with the authorization, sale and issuance of bonds, and the interest to become due on the bonds for a period of not exceeding one year from the date of issuance.

HISTORY: 1962 Code Section 36‑457; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑80.** Bonds as lawful investments.

 It shall be lawful for all executors, administrators, guardians, committees and other fiduciaries to invest any moneys in their hands in bonds.

HISTORY: 1962 Code Section 36‑458; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑90.** Bonds, trust indentures, mortgages, and loan agreements shall be exempt from taxation; exceptions.

 The bonds authorized by this chapter and the income therefrom and all trust indentures and mortgages executed as security therefor, all loan agreements made pursuant to the provisions hereof (including lease agreements) and the revenues derived from any loan agreement, shall be exempt from all taxation in the State except for inheritance, estate or transfer taxes and all trust indentures, mortgages and loan agreements made pursuant to the provisions of this chapter shall be exempt from South Carolina stamp and transfer taxes.

HISTORY: 1962 Code Section 36‑460; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑100.** Publication of notice of bond issues; challenging validity of proceedings.

 Upon the adoption of proceedings providing for the issuance of bonds hereunder, notice of the adoption of such proceedings shall be published at least once in a newspaper having general circulation in the city specifying the amount of bonds to be issued, generally describing the land to be acquired, and the purposes for which it will be used. Any interested party may within ten days after the date of publication of such notice, but not afterwards, challenge the validity of such action by the governing board and the validity of the proposed bonds by action de novo in the court of common pleas in the county wherein the land is located.

HISTORY: 1962 Code Section 36‑461; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.

**SECTION 31‑9‑110.** Provisions in this chapter construed as cumulative.

 Neither this chapter nor anything contained shall be construed as a restriction or limitation upon any powers which a city might otherwise have under any laws of this State, but shall be construed as cumulative. The authorization herein granted may be carried out by any governing body acting at any regular or special meeting, and without publication of the proceedings, by resolution to become effective upon its adoption at the meeting at which it is presented, notwithstanding any restriction, limitation or other procedure imposed upon the governing board by any other statute.

HISTORY: 1962 Code Section 36‑460; 1974 (58) 2337.

Editor's Note

See Editor's Note following chapter heading.