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SUMMARY SHEET - CHEROKEE VILLAGE

Please note that this is a reference sheet and short summary of the information previously provided concerning the law that may affect the Cherokee Village Special Improvement District. A private attorney may be able to provide direct legal advice to your constituent as to how to resolve the legal issue presented.

I. Quick Facts on Special Improvement Districts (SID)

A suburban improvement district may:

- Sell or lease any improvement owned by it to any adjacent or nearby municipality or to any other corporation, organization, or person. Arkansas Code § 14-92-220(b).
- Make contracts with the inhabitants of nearby municipalities, or it may operate such improvements for utilities and connect sewers with the sewers of any adjacent municipality. Arkansas Code § 14-92-220(b).
- Join with any other political subdivision, municipality, district, or governmental agency, in the acquisition, construction, maintenance, operation, and financing of any of the facilities, works, or operations authorized by this subchapter. Arkansas Code § 14-92-210(2).

A suburban improvement district may sell property two ways:

- The commissioners may sell any land owned by the improvement district "for the price and on the terms it deems best". Arkansas Code § 14-92-223.
- The landowners of the SID may petition in writing for the board to sell all or a portion of the SID's real or personal property. The petition must be signed by a majority representing two-thirds (2/3) in value as shown by the last county assessment of the real property within the SID. Arkansas Code § 14-92-401.

Dissolution of the SID, See Arkansas Code § 14-92-237

- A SID may be dissolved by a unanimous vote of the board of commissioners. Upon dissolution, all future levies and assessments are cancelled, and the board is relieved from further duties.
- If the improvement district has any outstanding bonds or other indebtedness, "the assessed benefits being levied at the time of dissolution shall continue to be levied and collected until the outstanding bonds or other indebtedness is paid".

Remaining funds from the SID can be disbursed in two ways:

- The commissioners shall convert all assets into cash and may refund all remaining funds of the district, pro rata, to the property owners who hold title to the property in the district at the time the refund is made; OR

- The commissioners may transfer all remaining cash and other monetary assets and any real property and personal property to a school district located within ten (10) miles of any boundary of the district.

II. Quick Facts on Taxation

Tax that Does Not Require a Vote of the People

- Article 12, § 4 of the Arkansas Constitution, along with Arkansas Code § 26-25-102, permits a city to levy an ad valorem property tax of up to five (5) mills without voter approval. Revenue from this tax may be used for general or specific purposes.

Taxes that Require a Majority Vote of the People

- Arkansas Code §§ 26-75-207, 26-75-301, and 26-75-307 authorize municipalities to levy sales and use taxes on all that the state authorizes to be taxed, in the amounts of 0.125%, 0.25%, 0.5%, 0.75%, or 1%, or any combination of these; revenues from these taxes may be used for general revenue or special revenue, or pledged to bonded indebtedness.
- Arkansas Code §§ 26-82-102 and 26-82-103 allow cities to levy a local sales and use tax in the amount of 0.25%, 0.50%, 0.75%, or a maximum of 1% to fund "project costs" of economic development projects in the city.
- Arkansas Code § 26-75-403 allows cities to levy a temporary local sales and use tax of 0.5% or 1% for up to two (2) years to fund the acquisition, construction, and improvement of parks and recreational facilities.
- Arkansas Code § 26-73-113 provides an "alternative" sales and use tax levy for a city "in lieu of using all or a portion of its authority to levy a sales and use tax solely to pay bonded debt under § 14-164-327". The tax may be in the amount of 0.25%, 0.50%, 0.75%, or 1.0%. Revenues received may be used for, among other purposes, financing operation, maintenance, or rental expense of a capital improvement, and also "acquiring or constructing capital improvements of a public nature" for a maximum of two (2) years.
- Arkansas Code §§ 26-75-602 and 26-75-606 allow cities to levy an advertising and promotion tax of up to 3% on prepared food as well as hotels, motels, and "similar rental accommodations". Revenues from this tax may be used for, among other things, the construction, maintenance, and operation of parks, theme parks, and entertainment facilities designed to attract tourists.
- Arkansas Code §§ 26-75-701 and 26-75-705 allow certain small cities on the National Register of Historic Places to levy a maximum tax of 2% on rentals of lodging, establishments "selling prepared food for consumption on the premises", retail sales at businesses that derive most of their income from items made available for sale to tourists, and admission price to tourist attractions.
- Arkansas Code § 26-78-102 allows cities to levy a tax on vehicle owners of a maximum of $5.00 per year per vehicle. Arkansas Code § 26-78-109 states that 25% of revenues from this

tax must be used for "construction and maintenance of local parks and outdoor recreation areas."

Whether it is possible to enact some or all of the taxes in the above statutes simultaneously:

- This depends upon whether the city meets each statute's stated qualifications to levy the taxes in question and whether different taxes levied at the same time would conflict with each other or exceed established caps under the law.

Whether it is possible to levy the motor vehicle tax found at Arkansas Code § 26-78-102 when the associated county does not levy such a tax:

- It appears from the text of §§ 26-78-103 and 26-78-104 that this is possible.

III. Quick Facts on Other Types of Improvement Districts

Property Owners Improvement District, Arkansas Code § 14-93-101 et seq.

- This type of improvement district may be formed to build, purchase, or accept as a gift, recreational facilities and any other facilities to provide for the recreation and cultural needs of the owners of the lands within the district.
- Portions of municipalities may be included in this type of district if the portion of area located within municipality is *less than fifty percent (50%)* of the area of the entire district.
- A property owners improvement district may levy assessments to fund costs and maintenance of the benefits.

Municipal Property Owners Improvement District, Arkansas Code § 14-94-101 et seq.

- This type of district may be created for the purpose of purchasing, accepting as a gift, constructing, or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities.
- This type of district may be formed, *in whole or in part, outside any municipality.*
- An assessment on each property in the district is collected by the county collector each year the tax appears on the tax books until the levy is exhausted.

Municipal Improvement Districts, Arkansas Code § 14-88-201 et seq.

- This type of district may be created for improvements to waterworks, sewage, roads and "any other local improvement of a public nature in the manner set forth" under the subchapter.
- A petition to form this type of district requires signatures from persons owning a majority in value of the property to be included in the district.

- To collect an assessment, the governing body of the municipality shall pass an ordinance setting the timeline and requirements for property owners to pay the assessment. Arkansas Code § 14-90-801.

IV. Quick Facts on Municipal Authority to Contract

Statutes Applicable to Cities of the First Class

- Municipalities are authorized to buy real estate or personal property under Arkansas Code § 14-54-302(a)(2).
- All contracts, conveyances, and lease contracts shall be performed by the mayor and city clerk or recorder. Execution of the contract shall be "authorized by a resolution in writing and approved by a majority vote of the governing body of the municipality present and participating". Arkansas Code § 14-54-302(b).
- The Arkansas Code does not specifically address a procedure for when a city is accepting a donation. If a city of the first class has acquired or been donated lands for any object or purpose that has become impossible or impracticable to achieve, the city may use or devote land for other proper public or corporate purposes or sell the land by order of the city council and the proceeds applied for public or corporate purposes. Arkansas Code § 14-54-104(2).

V. Constitutional Considerations and Proposed Constitutional Amendment

Constitutional Considerations

- Art. 12, § 5 of the Arkansas Constitution states, "[n]o county, city, town or other municipal corporation, shall ... obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual". There are some exceptions to this provision if the money will finance an economic development project or provide economic development services.
- The Attorney General has opined that a suburban improvement district is a quasi-public corporation where "certain powers and duties of a public nature have been delegated, but which can only exercise the corporate functions which the statute has expressly conferred on them". Ark. AG. Op. 2005-126.
- If a city contract does not violate Art. 12, § 5, the contract must still satisfy the common-law "public purpose doctrine". Ark. AG Op. 2017-088, Question 2. The Attorney General has described this doctrine as that "which requires that all public transactions (including contracts) advance the 'welfare of the community and its inhabitants'". *Id.*

Proposed Constitutional Amendment SJR15

- The General Assembly approved a Constitutional Amendment that will be presented to voters in the November general election. The Amendment would allow for the creation of economic development districts to develop or improve "real estate in the State of Arkansas that contributes to economic development within the State of Arkansas". See SJR15, page 2, lines 5-13.

- The Amendment revises the language in Art. 12, § 5, of the Arkansas Constitution allowing cities and counties to obtain or appropriate money to private entities to "to provide funding and lend credit to economic development districts". *Id.* at page 3, line 11. The Amendment defines an economic development district as a "designated area within a city, county, or cooperative area established under authority granted by the General Assembly to promote economic development within the designated area". *Id.* at page 3, lines 14-17.