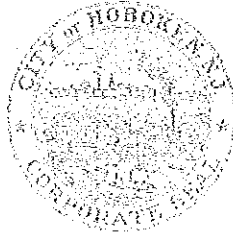


City Council
City of Hoboken
94 Washington Street
Hoboken, NJ 07030



Theresa Castellano
Michael Russo

October 28, 2004

Honorable David Roberts, Mayor
Hoboken City Hall
94 Washington Street
Hoboken, NJ 07030

**Re: Proposed Sale of City
Property to Raise Revenue**

Dear Mayor Roberts:

We write with respect to recent press articles suggesting that, in order to generate revenue to balance the City's budget, you intend to enter into a sale-leaseback transaction with the Hudson County Improvement Authority ("HCIA") whereby the HCIA would purchase the Municipal Garage and the Department of Environmental Services building and then lease them back to the City. We further understand that the City would continue to operate the garage and utilize the building, and that, should the HCIA subsequently sell the garage to a third-party, it would be obligated to pay to the City any consideration exceeding the original purchase price and at which point the city would have to purchase land and build a new Municipal Garage. We believe that this proposed course of action is illegal for any of several reasons, as we explain more fully below.

As an initial matter, we do not dispute that municipalities may sell property to generate revenue. Our Legislature has provided that "[a] local unit may anticipate as a miscellaneous revenue the total amount of all payments due and payable to the local unit during the fiscal year, directly or indirectly as a result of the sale of property by the local unit, when the obligation to make such payment is entered into prior to the adoption of the budget." N.J.S.A. 40A:4-27. "Miscellaneous revenue" includes "such amounts as may reasonably be expected to be realized in cash during the fiscal year from...sources reasonably capable of anticipation, and lawfully applicable to the appropriations made in the budget, other than dedicated revenues, revenues from taxes to be levied to support the budget, receipts from delinquent taxes, and surplus." N.J.S.A. 40A:4-25. In addition to referring to a "sale of property by a local unit," New Jersey law in at least two separate statutes provides the procedural mechanism governing how municipalities may sell property. N.J.S.A. 40A:12-13 & N.J.S.A. 40A:12-13.4. We do not believe the proposed sale-leaseback transactions cannot and do not satisfy the letter or spirit of these statutes.

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First, the Appellate Division made clear in *Newark City Council v. James*, 232 N.J. Super. 449 (App. Div.), *certif. denied*, 117 N.J. 166 (1989), that our Legislature vested the *city council* – and not the mayor – with the power and discretion to sell municipal assets. Specifically, N.J.S.A. 40A:12-13 provides that “Any ... municipality may sell any real property, ... not needed for public use, *as set forth in the resolution or ordinance authorizing the sale* ... and, except as otherwise provided by law, all such sales shall be made by one of the following methods[.]” The Appellate Division cited the highlighted provision as confirming the intent to place within the legislative arm of municipal government the decision whether (and, if so, how) to sell municipal property.

Second, that same statute provides for the sale of property “not needed for public use,” as does N.J.S.A. 40A:12-13.4 which refers to land that is not then needed for municipal purposes” As such, even if New Jersey law allowed a City Mayor to sell municipal property (which it does not), such a sale can take place only where the property is no longer needed for a public purpose. According to our understanding, which was presented by Interim Business Administrator, Richard England, at the Public Budget meeting, the City would lease the real property from the HCIA and then operate the garage to generate revenue as well as continue to occupy and use the Municipal Garage Building for the same purpose it is used now. This means that properties would be used in precisely the same fashion they were used prior to the contemplated sale-leaseback transaction. Since operating a parking garage is considered a public use of property under New Jersey law, *Camden Plaza Parking v. City of Camden*, 16 N.J. 150 (1954), we fail to see how Hoboken’s operating the garage as tenant is different from its operation of the garage as owner. The same would hold true for the Municipal Garage building.

Finally, as you well know, the City is not allowed to borrow in order to raise the revenue necessary to fund ordinary municipal operations. For that reason, the statutes cited above all refer to *bona fide sales* of property. The sale-leaseback transactions under consideration, however, appear to be nothing more than loans prohibited by the Local Budget Law: the City would draw the equity out of the Municipal Garage Building in order to generate the revenue necessary to balance the budget on a “one-off” basis but would lease the real properties for municipal purposes. So understood, these transactions are not sales, but sham loan transactions intended to circumvent the budgetary constraints our Legislature wisely enacted to control spending and mandate fiscal restraint at the local level.

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If you disagree with our understanding of these issues, please inform us as soon as possible. Otherwise, we will ask the Council to take appropriate legal action to prevent the unauthorized pledging of City property as collateral for illegal loans in the manner now being contemplated.

The time has come to end the uncontrolled spending and gimmicks, which are mortgaging the future of our City. As Mayor you should have learned by now that it is spending that must be controlled first before any other actions are taken. To sell off the few assets that the City has acquired over the last 100 years to cover over-extended debt budgeting is financial suicide.

We look forward to your prompt reply.

Sincerely;

Theresa Castellano
Hoboken City Councilwoman

Michael Russo
Hoboken City Councilman

cc: Richard England – Interim Business Administrator City of Hoboken
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