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The Texas Senate
Business and Commerce Committee

FILE # ML-43307-03
I.D. # 43307

October 17, 2003

The Honorable Greg Abbott
Attorney General of the State of Texas
Attn: Nancy Fuller
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

RQ-0120-GA

Re: Board membership for Tax Increment Reinvestment Zones

Dear General Abbott:

Please allow this letter to serve as a request for an Attorney General's opinion regarding the legality of city council members sitting on the board of a Tax Increment Reinvestment Zone.

Chapter 311 of the Texas Tax Code provides for the creation of a Tax Increment Reinvestment Zone (TIRZ). The creation of a TIRZ can be initiated by a petition of owners of property that constitutes at least 50 percent of the appraised property value within the proposed zone. If a zone is created in this manner, the board of directors of the TIRZ must consist of nine members. The board is comprised of one appointee from each school district or county that levies property taxes in the zone and has approved the payment of all or part of the tax increment. The local state senator and representative in whose district the zone is located are each members of the board, or they may appoint a substitute to serve them. The remaining members are appointed by the governing body of the municipality which created the TIRZ.

Under Tax Code Sec. 311.009(e)(2), to be eligible to serve on a board where the TIRZ is initiated by petition of the property owners, an individual must (A) be at least 18 years of age and (B) own real property in the zone or be an employee or agent of a person that owns real property in the zone.

It appears to be common practice in certain municipalities to appoint sitting city council members to serve as TIRZ board members, satisfying the eligibility requirements under Chapter 311 by being designated as agents of a person owning real property in the zone. In your opinion, does the common law "doctrine of incompatibility" prevent a council member from serving in the dual capacity as a director of the TIRZ and a member of the governing body?



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Similar issues have been previously addressed by the Attorney General's Office. General John Cornyn previously opined (JC-0339) that a director of a municipal utility district is a public officer and, thus, disqualified from serving as a member of a Planning and Zoning Commission since the doctrine of incompatibility bars one person from holding two offices if the duties of the two offices conflict. You opined (GA-0015) that the office of county commissioner and the office of council member of a city located in the county are incompatible as a matter of law.

Your attention to this question will be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Fraser", with a long horizontal flourish extending to the right.

Troy Fraser
Chairman
Senate Committee on Business & Commerce