

James L. Keffer



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RQ-0238-GA

June 10, 2004

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711

FILE # Mh 43763-04
I.D. # 43763

RE: Request an Attorney General's Opinion

Dear General Abbott:

A question has arisen concerning a home-rule city's tax reinvestment zone created under Chapter 311 of the Tax Code. A particular city created the "TIF" zone in 1986, with a 22-year life. The city wishes to extend the life of the TIF zone beyond 2008 if legally possible.

Please find this letter as a request for an opinion from your office regarding this matter. Enclosed is a brief explanation and statement relating to the issue. I thank you for your attention to this matter and never hesitate to contact Representative Farabee or me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Keffer", written over a large, stylized flourish.

Jim Keffer
State Representative

cc. Representative David Farabee



COUNTIES: • BROWN • EASTLAND • HOOD • PALO PINTO • SHACKELFORD • STEPHENS

Question:

Whether a municipality may extend the termination date of a tax reinvestment zone created under Chapter 311 of the Tax Code.

Relevant Example:

A home rule city, by enactment of an ordinance, creates a tax reinvestment zone for a tract located in the downtown area. The ordinance provides a 22 year life for the zone. The participating taxing units include the City, the County and the Independent School District. No tax increment bonds or notes have been issued to finance the zone.

The tax increment board has helped fund projects in the reinvestment zone and the zone continues to serve the purposes identified in Chapter 311 of the Tax Code.

Argument:

A home rule city has the full power of self-government and looks to the legislature only for limitation on its power. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22 (Tex. 2003). The Tax Increment Funding Act does not mandate a specific life span for a reinvestment zone, but rather allows the municipality creating the zone to provide the termination date for the zone.¹ A home rule city should be free to amend its enacting ordinance to extend the termination date. The power to amend or repeal an ordinance is contained in its power to enact the ordinance. In addition, the power of a governing body of a municipality to amend its ordinance is specifically recognized by statute.²

Section 311.017, titled Termination of Reinvestment Zone provides:

(a) A Reinvestment Zone terminates on the earlier of:

(1) the termination date designated in the ordinance creating the zone, or an earlier termination date designated by an ordinance adopted subsequent to the ordinance creating the zone; or

(2) the date on which all project costs, tax increment bonds, and interest on those bonds have been paid in full.

(b) A tax increment pledge to the payment of bonds and interest on the bonds may be discharged and the Reinvestment Zone may be terminated if the municipality that created the zone deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in the amount that, together with the interest on the investment of the funds and direct obligations of the United States, will be sufficient to pay the principal of, premium, if any, and interest on all bonds issued on behalf of the Reinvestment Zone at maturity or at the date fixed for redemption

¹ Section 311.004(4) TAX CODE

²Section 51.001 LOCAL GOVERNMENT CODE

of the bonds, and to pay any other amounts that may become due, including compensation due or to become due the trustee or escrow agent.

There has not been any bonds or notes issued to fund projects in the City's Reinvestment Zone. Therefore, the issue is whether Section 311.017(a)(1) prohibits an extension of the termination date of the Zone. Although Section (a)(1) specifically permits the enactment of a subsequent ordinance to provide an earlier termination date of the Zone, Section (a)(1) does not include a similar process to provide a later termination date of the Zone. The failure to provide such a practice in the statute is not dispositive; rather, the converse is true because the statute does not expressly prohibit an extension of the Zone by subsequent ordinance, a home-rule city must be allowed to extend the termination date of the Reinvestment Zone by enactment of a subsequent ordinance. The result of the home rule amendment provided by Article XI, Section 5 of the Texas Constitution is that it is now necessary to look to the acts of the Legislature not for grants of power to home-rule cities, but only for limitation on their powers. *Forwood v. City of Taylor*, 147 Tex. 1612, 214 S.W. 2d 282, 286 (1948).