



Frank Madla
Texas State Senate
District 19

RECEIVED
FEB 08 2006
OPINION COMMITTEE

1313 S.E. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 927-9464
FAX (210) 922-9521
P.O. Box 12068
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-1017
Dial 711 For Relay Calls

February 6, 2006

FILE # ML-44606-06
I.D. # 44606

Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, TX 78711-2548

RQ-0442-GA

Re: Request for an opinion Tax Increment Reinvestment Zones created by petition under TEX. TAX CODE ANN. §311.005(a)(5) and TEX. CONST. art. VIII, §1-g.

Dear General Abbott:

Please accept this letter as one of request for Opinion on Section 311.005 (a)(5) of the Tax Code. My specific questions is:

Whether a municipality may designate an area as a reinvestment zone under TEX. TAX CODE ANN. §311.005(a)(5):

- (i) if the area is not blighted or does not satisfy the criteria set forth in §311.05(a)(1)-(3) or TEX. CONST. art. VIII, §1-g(b), and
- (ii) if no bonds or notes are issued for financing.

DISCUSSION:

This issue arises after reading The Honorable John Cornyn's 1999 opinion on a similar question (JC-0152). The opinion has been cited by your office as standing for the concept that article VIII, §1-g(b) limits tax increment financing to an area that is "unproductive, underdeveloped, or blighted" see Tex. Att'y Gen. Op. No. GA-0276 (2004) at 2.

However, Mr. Cornyn's opinion (JC-0152) does not specifically address a reinvestment zone, created by petition under §311.005(a)(5), in which the plan for financing does not include the issuance of bonds or notes. As you know, TEX. CONST. art. VIII, §1-g(b) allows for a city or town "to issue **bonds or notes** to finance the development or redevelopment of an unproductive, underdeveloped or blighted area... and to pledge for repayment of those **bonds or notes** increases in ad valorem tax revenues imposed on property in the area..." [emphasis added]. When there are no bonds or notes being issued it follows that article VIII, §1-g(b) should not apply. Therefore the "unproductive,



underdeveloped or blighted area” description included in part (b) should also not apply to such a plan.

Section 1-g also has part (a). That part allows for cities and towns to “grant exemptions *or other relief* from ad valorem taxes on property located in a reinvestment zone for the purpose of encouraging development or redevelopment and improvement of the property” [emphasis added]. While part (a) was created as the mechanism to make Tax Code Chapter 312 constitutional (part (b) did the same for Chapter 311), the language used, specifically the terms “or other relief,” seems to give constitutional support for the lack of “unproductive, underdeveloped or blighted” language in §311.005(a)(5).

I emphasize certain phrases in parts (a) and (b) to stress how I believe they can be read together. Both parts are designed for the promotion of development or redevelopment. Part (a) allows a mechanism for financing, part (b) allows a mechanism for other types of encouragement. Read as a whole article VIII, §1-g allows local governments to create and encourage development and redevelopment zones either by creating exemptions *or other relief* (part (a)) OR by issuing bonds or notes (part (b)). It is clear that the “unproductive, underdeveloped or blighted” language applies only to part (b), the part allowing for the issuance of bonds or notes.

The “unproductive, underdeveloped or blighted” language is noticeably absent from §311.005(a)(5), which indicates that the legislature intended to create the framework for a petition-driven TIF zone in an area that did not meet those criteria. However, in order for a local government to allow the issuance of bonds or notes for development or redevelopment of a zone, it seems the zone must be “unproductive, underdeveloped or blighted” to satisfy article VIII, §1-g(b)

Please call me or Lori Flores Mannion, the Senate Intergovernmental Relations Committee Director assigned to this issue, if you have any questions or require further information. Thank you for your consideration of this matter.

Yours truly,



Frank Madla

FM/lfm