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OPINION COMMITTEE

WEBB COUNTY ATTORNEY'S OFFICE

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LAREDO, TEXAS 78040

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**RQ-1187-GA**



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February 18, 2014

**VIA EMAIL: [Opinion\\_committee@texasattorneygeneral.gov](mailto:Opinion_committee@texasattorneygeneral.gov)**

Honorable Greg Abbott  
Attorney General of Texas  
Open Records Division  
209 W. 14<sup>th</sup> Street, 6<sup>th</sup> Floor  
Austin, Texas 78701

*Re: Request for Attorney General Opinion on the Constitutional funding of a County Energy Transportation Reinvestment Zone.*

Dear Mr. Abbott:

This is a request for an opinion regarding the amendment to the Texas Transportation Code §222 and §256 by Senate Bill 1747. Does the funding of projects by any of the questions stated below resolve the possibility of constitutional challenges for violating the equal and uniform taxation requirement of article VIII of the Texas Constitution? See Exhibit 3. In light of the conflict of these areas of law what is the enabling statutory authority to use such tax increment financing methodology contrary to the equal and uniform taxation provision of the Texas Constitution.

1. If a County is authorized to form a County Energy Transportation Reinvestment Zone (CETRZ), collect the increased ad valorem tax increments, and pledge and assess all or part of the incremental valuations to pay for the costs of an energy project, then do the constitutional principles of "equal and uniform" taxation apply to a 'special assessment district' such as a (CETRZ)?
2. Does the pledging by a County of the 100% of the incremental increase of the additional ad-valorem tax value of the real property located within the County Energy Transportation Reinvestment Zone (CETRZ), for a period of ten years, plus general fund monies to provide for the expected funding shortfall that will be needed to provide for the construction costs of energy transportation projects located solely within the designated energy reinvestment zone, violate the equal and uniform taxation provision in the Texas Constitution by creating a disparate treatment

of similarly situated tax payers within the County, i.e., the taxpayer participating in the CERTZ, has dual access to both the 1.) incremental increase in additional ad-valorem tax value for a ten year period, plus the ability to tap into 2.) additional revenues from the county general fund, due to the inability of the CERTZ to provide for 100% of the total transportation projects costs needed to fund the project, while 3.) the taxpayer that is not within the CERTZ, has only access to the County general fund monies thereby possibly violating the equal and uniform taxation provision of the Article VIII, Section I, of the Texas Constitution?

3. Senate Bill 1747 allows a County to form a County Energy Reinvestment Transportation Zone (CERTZ), to fund roadway projects with the incremental increases in the tax valuations from the zone for a minimal ten year period. Does the formation of a County Energy Transportation Reinvestment Zone (CETRZ), violate the constitutional requirement that ad-valorem taxes are to be assessed for the purpose of meeting “current annual wants” instead of the general purpose and scheme of tax increment financing which is to currently exempt a portion of the value of the property from its share of general revenue taxes until the cost of improvements are paid.’ Taylor v. Boyd, supra. in direct violation of the constitutional requirement that the taxes necessary to meet the current annual want are those which the Texas Constitution insists be equal and uniform. Tex. Const. art. VIII, § 1. It seems to appear that a ten year payout for project costs would be in direct violation of the “current annual wants” provision of the Texas Constitution which requires that taxes are necessary only to meet the current annual wants, not a 10 year payout for the costs of the project which the Texas Constitution insists be equal and uniform? Is a County authorized to fund the roadway improvements to be located solely within the zone from a hybrid funding source comprised of the incremental increase in property tax valuations from the real property located within the County Energy Transportation Reinvestment Zone (CETRZ), plus money from the County’s General Fund?
4. If a County is prohibited from funding either a County Transportation Reinvestment Zone (TRZ), and/or a County Energy Transportation Reinvestment Zone (CETRZ) by collecting an ad valorem tax increment, and pledging and assessing all or part of the increment increase in valuation to secure bonds to pay the costs of an energy project due to violation of the equal and uniform taxation provision in the Texas Constitution by creating a disparate treatment of similarly situated tax payers (as stated in prior Tex. Atty. Gen. Op. GA-0981), and the provisions of Senate Bill 1747, which now specifically prohibits the pledging of the tax increment to finance bonds for the project costs, as set forth in Texas Transportation Code (T.T.C.) Section 222.1071 (j); then why does Senate Bill 1747 later appear to allow for such tax increment financing of such bonds if a County forms a road utility district, as set forth in T.T.C. Section 222.1071 (n), which states that a “road utility district may issue bonds to pay for all or part of the transportation infrastructure project and that it may pledge and assign all or part of a specified amount of money in the tax increment account to secure those bonds if the money, (1) constitutes a tax increment and (2) pledges all or part of a specified amount of the tax increment to the road utility district.? In light of the conflict of these areas of law what is the enabling authority to use such tax increment financing methodology contrary to the equal and uniform taxation provision of the Texas Constitution?

#### **FACTUAL BACKGROUND**

Webb County is considering the formation of a County Energy Transportation Reinvestment Zone (CETRZ). According to Attorney General Opinion GA-0981(Tex.A.G.) 2012, the Texas Attorney General concluded that the incremental tax funding method would be subject to constitutional challenges as violating the equal and uniform taxation requirement in article VIII. Section 1(a) of the Texas Constitution. See Exhibit 4.

On September 1, 2013 Senate Bill 1747 was passed and enacted into law. The law appears to cure the prior constitutional violation regarding pledging of the incremental taxes to secure bond indebtedness in order to fund the infrastructure projects, by prohibiting such incremental tax funding methodology. See T.T.C. 222.1071 (j). However, further down on Senate Bill 1747 it appears that if you form a county road utility district that somehow you are now allowed to use that incremental tax funding methodology to fund the road utility incremental tax account. T.T.C. 222.1071(n).

It appears that legislative intent was to ban such incremental tax funding methodology as has been set forth in earlier in Tex. Atty. Gen. Op. GA-0981 cited herein as well as the first part of Senate Bill 1747. See Exhibit 2. It appears also that incremental tax financing to secure bonds to be constitutionally prohibited for a CETRZ and yet allowed later in the same bill by forming a road utility district instead of a CETRZ.

Texas Department of Transportation disseminated a PowerPoint presentation outlining how counties can leverage local funds for transportation projects titled County Energy Transportation Reinvestment Zones. See Exhibit 1.

However, in light of the amendment to the Texas Transportation Code §222 and §256 by Senate Bill 1747 does the funding of the project by any of the methods stated above resolve the possibility of constitutional challenges for violating the equal and uniform taxation requirement of article VIII of the Texas Constitution. See Exhibit 3.

#### LEGAL AUTHORITY

**Attorney General Opinion.** see Exhibit 4.

In Texas Attorney General Opinion GA-0981 (2012) the opinion stated the following;

The article VIII, section 1(a) requirement of equal and uniform taxation applies to counties. *See Parker Cnty. v. Spindletop Oil & Gas Co.*, 628 S.W.2d 765, 767 (Tex. 1982). We are not aware of any basis for determining that a county is authorized by the Texas Constitution to issue bonds secured by a pledge of an ad valorem tax increment. Consequently, we conclude that a county's issuance of tax increment financing bonds secured by a pledge of the county's ad valorem tax increment would be subject to constitutional challenge as violating the equal and uniform taxation requirements in article VIII, section 1(a) of the Texas Constitution.

**Texas Senate Bill 1747.** see Exhibit 3.

Texas Senate Bill 1747 Chapter 256 Transportation code Section 2. Subchapter E

(f)(3)... **establish an ad valorem tax increment account** for the zone or provide for the establishment of a joint ad valorem tax increment account, if applicable, and (4)...

Section 2 Subchapter E, Chapter 222, Transportation Code (i)(1)-(5) that a **county may use money in the tax increment account** to provide: (A) matching funds ... and (B) funding for one or more transportation infrastructure projects located in the zone.

Section 2 Subchapter E, Chapter 222, Transportation Code (n) In the alternative, to assist the county in developing a transportation infrastructure project, if authorized by the commission under chapter 441, around utility district may be formed under that chapter that has the same boundaries as a county energy transportation reinvestment zone created under this section. The road utility district **may issue bonds to pay all** or part of the cost of transportation infrastructure project and may pledge and assign all or a specified amount of money in the tax increment account to secure those bonds if the county: (1) collects a tax increment; and (2) pledges all or a specified amount of the tax increment to the road utility district.

Section 3 Subchapter 222.110, Transportation Code, (a)(2) Transportation reinvestment zone includes a county energy transportation reinvestment zone.

**House Committee Report Version.** see Exhibit 2.

The bill would amend the Transportation Code to allow counties to designate County Energy Transportation Reinvestment Zones in order to promote transportation infrastructure projects in areas affected by oil and gas exploration and production activities. The bill would allow counties to use revenue from taxes designated to a CERTZ to finance certain transportation projects.

**Reference Authority**

1. Tex. Atty. Gen. Op. GA-0981 (Tex.A.G. 2012).
2. Tex. Atty. Gen. Op. MW-337 (Tex.A.G. 1981).
3. Tex. Atty. Gen. Op. GA-0953 (Tex.A.G. 2012).
4. Texas Constitution Art. VIII §1-g(b) 1981 voter approved amendment
5. Texas Constitution Art. VIII, §1(a) equal uniform taxation applies to counties
6. *Collingsworth Cnty. V. Allred*, 40 S.W.2d 13,15 (Tex. 1931)
7. *In re B.L.D.*, 223 S.W.3d 340, 349 (Tex. 2003)
8. *Texas Senate Bill 1747 eff.* September 1, 2013

**REQUEST FOR OPINION**

In sum, Webb County needs clarification on the constitutionality of Texas Senate Bill 1747, the amendment to the Texas Transportation Code in relation to the restrictions created by the Texas Constitution Article VIII (1) in order to lawfully fund the CETRZ project.

Thank you, in advance for your attention to this matter. If you have any questions, or if you require additional information, please do not hesitate to call. 956-523-4044.

Respectfully submitted,



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