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AUG 21 2014

OPINION COMMITTEE

HOUSE SELECT COMMITTEE ON
TRANSPORTATION FUNDING, EXPENDITURES & FINANCE
JOE C. PICKETT
CHAIR

August 21, 2014

FILE # ML-47626-14
I.D. # 47626

RQ-1215-GA

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: County Use of Tax Increment Financing and Related Issues

Dear General Abbott:

I am writing to seek clarification regarding county use of tax increment financing as a result of Opinion No. GA-1076 (Aug. 14, 2014). I have been contacted by representatives of counties and other interested parties who have indicated that Opinion No. GA-1076 has created confusion regarding the constitutionality of this method of financing, particularly in light of your prior opinions. I am concerned that this lack of clarity could impact the ability of Texas counties to reap the benefits of important financing tools that the Legislature has created, including the transportation reinvestment zone ("TRZ") model (described below) which is intended to assist counties in dedicating funds to needed transportation projects without raising taxes.

In response to a previous request from my office, you issued Opinion No. GA-0953 (June 18, 2012), in which you concluded that a county is not statutorily authorized to issue tax increment financing bonds under Chapter 311 of the Texas Tax Code. However, Opinion No. GA-0953 further recognizes the authority of a county to deposit money into a tax increment fund for a tax increment reinvestment zone ("TIRZ") which can be used to "satisfy claims of holders of tax increment bonds or notes issued for the zone, to pay projects costs for the zone, . . . or to repay other obligations incurred for the zone." See TEX. TAX CODE §311.014(b). In fact, you stated in Opinion No. GA-0953 that "the authority to levy taxes that support a tax increment fund is distinct from the authority to issue bonds" and clarified that only a municipality may issue tax increment financing bonds and pledge the tax increment fund as security. In other words, Opinion No. GA-0953 recognizes the authority of a county to deposit funds into a tax increment account provided that the county is not the entity that issues bonds secured by the proceeds of that tax increment account.

You again addressed a county's lack of authority to issue bonds secured by tax increment financing in Opinion No. GA-0981 (Dec. 12, 2012). In that opinion you found, in the context of county TRZs formed under Section 222.107 of the Texas Transportation Code, that a county's use of ad valorem tax increments *to secure bonds* could be subject to constitutional challenge as violating the equal and uniform taxation requirement in article VIII, section 1(a) of the Texas Constitution. Yet the ability of a county to collect or deposit funds into a tax increment account was not questioned in Opinion No. GA-0981; rather you found that the potential constitutional infirmity extended only to the authority of counties to secure bonds issued by funds in such an account.

The prior two opinions discussed above appear to uphold the authority of counties to engage in tax increment financing so long as they do not issue bonds secured by tax increment funds. However, that position seems to be potentially at odds with your recently issued Opinion No. GA-1076, which raises several questions related to county energy transportation reinvestment zones ("CETRZs"), another tax increment financing concept. CETRZs, in similar fashion to TRZs and TIRZs, rely on collection of an ad valorem tax increment and the use of that increment to fund statutorily-authorized projects. Unlike the prior opinions, Opinion No. GA-1076 holds that despite the fact that CETRZs lack statutory authority to issue bonds, CETRZs could nonetheless be subject to constitutional challenge on the grounds that the tax increment collected in a CETRZ results in those dedicated funds not being available for the general support of the county, and therefore violates the equal and uniform taxation requirement of the Texas Constitution.

As noted above, TIRZs, TRZs, and CETRZs all use similar tax increment financing methods. Currently, there are over 150 TIRZs existing in the state of Texas in which a county is a participating taxing unit.¹ It is my understanding that there are approximately 20 TRZs that have been formed by counties since the initial authorizing legislation was passed in 2007. And there are numerous CETRZs which have been formed since their initial authorization in 2013 (through SB 1747) because *their formation is a statutory requirement* for counties affected by energy sector activities to access grant funds from the Transportation Infrastructure Fund ("TIF") administered by the Texas Department of Transportation. The potential breadth of Opinion No. GA-1076 and its apparent inconsistency with the prior rulings has raised uncertainty as to the continued viability of what have been useful tools for counties to utilize in supporting transportation and other projects within their geographic boundaries. Therefore, I respectfully request your opinion on the following questions:

¹ See Tex. Comptroller of Pub. Accounts, Biennial Registries of Reinvestment Zones for Tax Abatements and Tax Increment Financing at 42-56 (Dec. 2012), *available at* http://www.texasahead.org/reports/TIF_Abatement/2012/registry.pdf.

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1. Is it constitutionally permissible for a county to form a TRZ pursuant to Section 222.107 of the Texas Transportation Code if the county does not issue debt secured by the tax increment revenues?

2. Is it constitutionally permissible for a county which has formed a TRZ to deposit funds into a tax increment account pursuant to Section 222.107 of the Texas Transportation Code and to commit all or a portion of those funds to the payment of project costs?

3. Is it constitutionally permissible for a county which has formed a TRZ to pledge, transfer or assign all or a part of the tax increment revenues to another entity as a contribution to, or partial payment of, costs of a project for which the zone was formed?

4. Is it constitutionally permissible for a county to form a TIRZ pursuant to Section 311.003 of the Texas Tax Code if the county does not issue debt secured by the tax increment revenues?

5. Is it constitutionally permissible for a county which has formed a TIRZ to pledge, transfer or assign all or part of the tax increment revenues to another entity as a contribution to, or partial payment of, costs of a project for which the zone was formed?

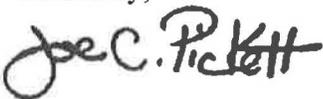
6. Is it constitutionally permissible for a county to form a CETRZ pursuant to Section 222.1071 of the Texas Transportation Code?

7. Is it constitutionally permissible for a county which has formed a CETRZ to use the tax increment proceeds as all or part of the matching funds necessary to receive a grant from the TIF established pursuant to SB 1747?

8. Is the analysis of whether a county TRZ, a county TIRZ, or a CETRZ is constitutional affected by the nature of the project for which tax increment funds are used? In other words, if a county makes a finding that the project supported by tax increment funds benefits the entire county and not just the property located within the boundaries of the zone, does that affect that equal and uniform taxation analysis?

Given the importance of tax increment financing for numerous counties across the State, I would appreciate any efforts by your office to expedite review of these questions. If you have any questions regarding this request or need further information, please contact me at 512-463-0596.

Sincerely,



Joe C. Pickett
Chair