COLLIN COUNTY ECONOMIC DEVELOPMENT
CHAPTER 381 AGREEMENTS

Generally. Chapter 381 of the Texas Local Government Code is the most efficient means of providing county incentives for local economic development. Chapter 381 authorizes a municipality to make a grant or gift of public monies, for various activities, including the following:

1. to promote state or local economic development;
2. to stimulate, encourage, and develop business and commercial activity in the county; and
3. to promote and advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors, and businesses.

Section 381.004 (c) provides the commissioners court may:

1. contract with another entity for the administration of the program;
2. authorize the program to be administered on the basis of county commission precincts;
3. use county employees or funds for the program; and
4. accept contributions, gifts, or other resources to develop and administer the program.

Section 381.004 (g) provides the county may also develop and administer a tax abatement program under Chapter 381, as regulated by Tax Code 312.204, 312.205, and 312.211. The commissioners court may develop and administer a program authorized by Chapter 381 for making loans and grants of public money and providing personnel and services of the county.

The requirements are simple: the county establishes, by court order, a program providing for one or more development incentives, and executes, pursuant to the program, an agreement with the selected business entity.

Establishing a Program. There are two methods of establishing a program. First, the county may adopt a program, or policy, of providing loans or grants. It may be adopted by court order. One example of such a program is a policy which provides for the county to provide a grant of money for the addition of qualified jobs and additions to the county tax base. An alternative method of establishing a Chapter 381 program is to adopt a separate resolution or ordinance for each program or grant the county authorizes. The conditions of the "program", as it were, are set forth in the resolution or an agreement attached to the resolution.

Terms of a Chapter 381 Agreement. The terms and conditions a county may include in a Chapter 381 agreement are essentially limited only by the creativity of the parties to the Agreement, the means of accomplishment of the public purpose (which the Constitution has already deemed the promotion of economic development), and any applicable provision of the state law. The county may also use a Chapter 381 Agreement to create a TIF or an abatement.

Key issues that should be addressed in a Chapter 381 agreement include:

1. a sunset provision to limit the county's obligations if the development activity does not occur within a reasonable time;
2. precise definition of the project, or program to be achieved through the agreement;
3. performance standards by which the accomplishment of the public purpose is achieved. As in tax abatement criteria, these may include:

    a. creation of a minimum number of jobs

    b. construction of a minimum assessed value of improvements creation of a minimum value of annual payroll.

4. conditions precedent to payment by the county;
5. a recapture provision in the event the business entity fails to meet the terms of the agreement.

SUMMARY

Other than observation of procedural requirements, there are a few limitations on a county's authority to promote economic development through a reinvestment zone, a tax abatement, or a Chapter 381 Agreement. Since the enactment of the Development Corporation Act in 1979, the Texas Legislature, with the exception of the enactment of House Bill 2912, has repealed almost every statutory impediment to a county's authority to promote economic development. Many bills have been introduced to ease the obstacles a county faces when expending funds to promote economic development. The Legislature has utilized a similar approach to overrule, or at least clarify, any opinion of the Texas Attorney General which interprets restrictions on local government to grant incentives.

Notwithstanding legislative action, three limitations remain constant: no matter which statutory incentive a municipality chooses to utilize to attract or expand business development, an expenditure of funds must:

1. serve a public purpose;
2. may not be a gratuitous payment to a private entity; and
3. must comply with any applicable statutory requirements.

To avoid this, a county should ensure that there is consideration for any incentive. A county may easily overcome these limitations by conditioning any grant payments upon the creation of employment, construction of improvements, continued operation in a county for a stated period, achieved minimum taxable values, or sales tax revenue.