

**Subject:**

Urban Counties News, August 14, 2014: AG Opinion Warns of Potential Challenges to County Use of Tax Increment Financing

Begin forwarded message:

**From:** "Greg Hudson"  
**To:** "Bill Bilyeu"  
**Subject: RE: Urban Counties News, August 14, 2014: AG Opinion Warns of Potential Challenges to County Use of Tax Increment Financing**

Bill see attached.

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-----Original Message-----

From: Bill Bilyeu  
Sent: Thursday, August 14, 2014 8:50 PM  
To: Greg Hudson  
Subject: Fwd: Urban Counties News, August 14, 2014: AG Opinion Warns of Potential Challenges to County Use of Tax Increment Financing

Is John saying that we cannot fund or participate in existing tirz's or tif's? We currently participate in about 5-6 Tax Code authorized tax increment zones that were created by cities. All debt in these TIRZ's was guaranteed by future TIRZ revenues.

Secondly, we are considering creating a county transportation reinvestment zone per section 222.107 of the Transportation Code. We are aware that we cannot issue debt supported by our county TIRZ, but were planning to either reimburse the county for general fund expenditures or accumulate enough of a balance over time to directly fund improvement transportation improvements inside the TIRZ. Another option was to reimburse the Collin County Tollroad Authority for its expenditures.

Bill

Begin forwarded message:

From: John Dahill  
Date: August 14, 2014 at 6:26:50 PM CDT  
To: John Dahill  
Subject: Urban Counties News, August 14, 2014: AG Opinion Warns of Potential Challenges to County Use of Tax Increment Financing

August 14, 2014

To All Urban Counties:

Today the Attorney General issued an opinion that clarifies that use of tax increment financing by a county for any purpose - including for energy related transportation projects - would likely not survive a constitutional challenge. The AG further held that counties may not place general revenue funds into tax increment accounts. As explained below, the opinion should not hinder TxDOT's distribution of \$225 million in grant funds previously awarded to counties for damaged roads. Counties that have excluded incremental tax revenue in calculating their effective tax rates will need to revisit those calculations.

Any county that has issued, or is in the process of issuing, bonds secured by county energy transportation reinvestment zone (CETRZ) incremental tax revenue should consult with their bond counsel.

Today's opinion follows prior AG opinions in holding that counties may not use tax increment financing, either under the CETRZ statutes passed in 2013 or prior statutes. Specifically, the Texas Constitution does not permit counties to deviate from the "equal and uniform" taxation requirement. According to the AG, the dedication to a specific purpose of any portion of the tax revenue derived from some, but not all, properties in the county necessarily means those properties are not contributing an equal and uniform amount or ratio of taxes for the general support (ie, the general fund) of the county.

There is a constitutional provision permitting cities and towns to engage in tax increment financing. A proposed constitutional amendment to include counties in that provision was rejected by voters in 2011.

The AG's opinion does not directly impact the \$225 million TxDOT grant program to address road damage caused by increased oil and gas production. While the legislation creating the grant program required a county to form a CETRZ in order to apply for grant funds, there is no requirement that incremental tax revenue from within the CETRZ be used to provide the county's match for any grant-funded project. Counties may use GR funds or may issue GR bonds to make required matching payments. Therefore, because use of a CETRZ could be challenged as unconstitutional, counties should either dissolve previously formed CETRZ, or should simply not use a previously formed CETRZ as a funding mechanism.

Although TxDOT has awarded all \$225 million in grant funds, there is a possibility that unused funds may be available in the future. It is not anticipated unused funds will be identified before the 2015 legislative session, and today's opinion creates an obvious need to revise the grant statutes to address the possibility of another round of grant applications.

Section 26.03, Tax Code, permits a taxing unit to exclude incremental tax revenue dedicated to a reinvestment zone from taxes imposed when calculating the unit's effective tax rate. Any county that has used that provision in calculations of its effective tax rate for 2015 should revisit those calculations.

Please don't hesitate to contact me should you have any questions regarding this or any other matter.

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