Subject: Clarification of AG Opinion re: CETRZ and Tax Increment Financing

From: John Dahill
Date: August 15, 2014 at 10:21:41 AM CDT
To: John Dahill
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August 15, 2014

To All Urban Counties:

Last evening I notified you of the attached Attorney General Opinion which concludes a county's use of tax increment financing to fund transportation projects in a county energy transportation reinvestment zone (CETRZ) could be subject to challenge under the "equal and uniform" taxation requirement of the Texas Constitution.

I have since received several inquiries requiring the breadth of the AG's opinion, and therefore wanted to issue this clarification.

The root of the problem with tax increment financing is Article VIII, Section 1, of the Constitution. That provision states: "All taxes shall be equal and uniform." Back in 1981, the AG concluded that a statute authorizing a municipal tax increment scheme was invalid under the equal and uniform requirement because incremental revenue derived from within the specified reinvestment zone was not available for the general support of the municipality.

After the AG's 1981 opinion, the voters approved a constitutional amendment which authorizes cities and towns to engage in tax increment financing. Article VIII, Section 1-g(b) of the Constitution states:

> The legislature by general law may authorize an incorporated city or town to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the city or town and to pledge for repayment of those bonds or notes increases in ad valorem tax revenues imposed on property in the area by the city or town *and other political subdivisions*.

Unfortunately, the AG's opinion yesterday – and my reporting of it – did not call out this provision of the Constitution. As a result, some are now questioning a county's ability to participate in reinvestment zones created by municipalities.

Article VIII, Section 1-g(b) (above) clearly authorizes counties to participate in reinvestment zones created by municipalities. The enabling legislation for that constitutional provision is found in Chapter 311, Tax Code – the Tax Increment Financing Act. In 1986, the Texas Supreme Court declared the Tax Increment Financing Act, and its application to school districts as "other political subdivisions" under Article VIII, Section 1-g(b), was constitutional. *El Paso v. El Paso Community College District*, 729 S.W.2d 296 (Tex. 1986).

Therefore, county participation in reinvestment zones created by municipalities should not be subject to challenge under the "equal and uniform" provision of the Texas Constitution. Further, a county's use of Section 26.03, Tax Code, and the exclusion of incremental tax revenue dedicated to a reinvestment zone created by a municipality when calculating the county's effective tax rate, should likewise not be subject to challenge.

As always, please call me if you any questions about this or any other matter.

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