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Comptroller

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OPINION COMMITTEE

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October 27, 2000

The Honorable John Cornyn
Attorney General of Texas
William P. Clements Building
300 W. 15th Street, 12th Floor
Austin, Texas 78701

RQ-0303-JC

Attention: Opinion Committee

Dear General Cornyn:

This letter is a formal request for an opinion pursuant to Gov. Code §402.042. Chapter 403, Subchapter M, Government Code, requires the Comptroller to conduct a study to estimate each school district's total taxable value. A school district's total taxable value is estimated by subtracting certain deductions from the market value of property in the district. The question is whether property value subject to a tax increment financing agreement and entered into under Local Government Code, Chapter 374, Subchapter D, may be deducted from a school district's market value.

Local Government Code, Chapter 374, Subchapter D (Chapter 374) authorizes tax increment financing for urban renewal projects. Section 374.031 (a), Local Gov't Code, states that a municipality may not use the tax increment method of financing urban renewal projects unless a majority of voters in the municipality approve that method of financing in an election held by the municipality. Subsections (b) and (c) deal with the ballot language and election dates. Subsection (d), however, states that "[t]his referendum is not required if *the constitutional amendment on tax increment financing* is approved by the voters." (emphasis added).

Section 374.031 is reflected in Section 5b of House Bill 2028, the bill that authorized municipalities to fund urban renewal projects by tax increment financing. Section 5b states that "[t]his referendum shall not be necessary if the constitutional amendment on tax increment financing is approved by the voters." Act of August 29, 1977, 65th Legislature, Regular Session, Ch. 850, page 2126, at p. 2132.

On May 20, 1977, Senate Joint Resolution 44 was approved by the Legislature and filed without signature with the Secretary of State on May 26, 1977. The resolution proposed an amendment to Article VIII, Section 1-g, Texas Constitution. The amendment would have permitted the Legislature to authorize cities and towns to issue tax increment bonds that would be used to

redevelop blighted areas. These bonds were to be repaid from "tax increments," as that term was defined by the Legislature. The proposed amendment would have barred cities and towns from repaying these bonds with tax revenues, utilities revenues, or service revenues, and stated that the issuance of tax increment financing bonds did not create a charge against the general credit or taxing powers of any city or town or the state. 65th Leg., R. S. 1977, S.J.R. No. 44, page 3365.

Texas voters defeated S.J.R. 44 on November 7, 1978. 66th Leg., R.S. 1979, Vol. 2, Table 2, p. 3266. Presumably, the tax increment financing method could not be used without the approval of voters in the municipality because "the constitutional amendment on tax increment financing" was defeated.

A few years after the defeat of SJR 44, however, the Texas Constitution was amended to permit tax increment financing. In 1981, Article VIII, Section 1-g, was approved by voters. 68th R.S. 1983, Vol. 3, Table 2, p. 6739. That amendment permits the Legislature to authorize cities, towns, and other taxing units to grant abatements and use the tax increment financing method to finance the development of unproductive, underdeveloped, or blighted areas. Its implementing legislation is found in Chapters 311 and 312, Tax Code.

Section 311.013 (f), Tax Code, provides that a taxing unit that levies taxes on land located in a tax increment financing project is not required to pay into the tax increment fund any of the taxes produced from that property. If a municipality uses the Local Gov't Code, Chapter 374, Subchapter D to finance a project, however, each taxing unit that levies taxes on land in a project area is required, under Local Gov't Code Sections 374.031 and 374.033, to pay into the tax increment fund *all* of the taxes produced from property located in the project area. Consequently, a school district that levies taxes on property located in a tax increment project area created under the Local Gov't Code provisions would be required to pay into the tax increment fund all taxes received from the captured appraised value of property in the project area.

Section 403.302, Gov't Code, governs the conduct of the annual school district property value study conducted by this agency. Section 403.302 (d) (3) provides for a deduction from a school district's market value of the captured appraised value of certain property located with the boundaries of a reinvestment zone created pursuant to Chapter 311, as those boundaries existed on September 1, 1999. The tax increment financing method provided by Chapter 374, Subchapter D, Local Gov't Code, would not be deductible under subdivision (3) because only reinvestment zones created and financed by a tax increment financing fund under Chapter 311, Tax Code, are subject to this deduction.

Section 403.302 (8) requires a deduction from a school district's market value of:

[A] portion of the market value of property *not otherwise fully taxable by the district at market value because of action required by statute or the constitution of this state* that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property, if this subsection does not otherwise require that portion to be deducted.

Assuming a tax increment financing fund may be created either with or without an election under Chapter 374, our first question is whether Gov't Code, Section 403.302 (d) (8) requires the deduction of the captured appraised value of property the school district is required to contribute to the tax increment fund. Subdivision (8) appears to bar the deduction of this value. Although a school district would be required to pay all of the taxes collected on the property into the tax increment fund, the property is fully taxable by the school district at market value. However, an argument has been made that because the school district is not permitted by law to retain the taxes paid on the captured appraised value of this property, the property is not in fact fully taxable by the district.

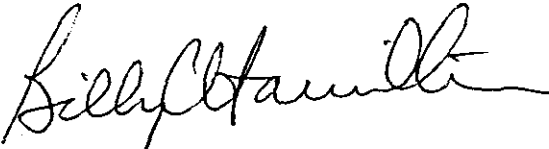
A deduction under subdivision (8) is permissible only if the school district is required by state law or the Texas Constitution to take an action. If a tax increment fund is created under Chapter 374 without the approval of a majority of voters and that law is not in effect, the school district would not be required to make payments into the tax increment fund. If the district is not required to pay into the fund, the payments may not be deducted under subdivision (8). *Therefore, if the answer to our first question is yes, our second question is whether the provision permitting a municipality to use Chapter 374 to finance projects using the tax increment method without the approval of a majority of the voters in the municipality was revived by the adoption of Section VIII, 1-g, Texas Constitution in 1981 and the subsequent recodification of the 1977 legislation in 1987.*

If your answer to the first question is yes, our final question is whether subdivision (8) requires the Comptroller to deduct from a school district's market value the captured appraised value of property that the district is required to contribute to a tax increment financing fund approved by the voters of the municipality and created under Chapter 374. While the school district's participation in the project would be required following a majority vote, the approval by the voters could also mean that the tax increment financing method was optional, and therefore that the school's participation was not required by statute.

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We request an expedited opinion so those wishing to develop Chapter 374 TIF projects in the 2001 tax year will know how the TIF will be treated in the property value study. If additional information is needed, please contact Richard Munisteri, General Counsel, at 475-0412. Thank you for your attention to this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Billy C. Hamilton".

Billy C. Hamilton
Deputy Comptroller