



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 24, 1989

Honorable Jack C. Vowell
Chairman
Sunset Commission
Texas House of Representative
P. O. Box 2910
Austin, Texas 78769

LO-89-31

Dear Representative Vowell:

You have asked about several aspects of the Property Redevelopment and Tax Abatement Act (now codified as section 312.001, et seq., of the Tax Code). You advise that the El Paso Independent School District has been asked by the city of El Paso to participate under the act in the designation of several "reinvestment zones," one of which would involve an agreement with the ground-lessee of a 10.622 acre parcel within an El Paso "industrial park."¹ In that connection, you ask:

1. Pursuant to Section 312.001, et seq., of the Local Taxation Code, entitled the Property Redevelopment and Tax Abatement Act, may one individual's property become a reinvestment zone without including contiguous or surrounding property that has identical or similar characteristics?

2. Does the permitted purpose under which a reinvestment zone may be designated still include the purpose listed in subparagraph 7 of repealed Article 1066f, § 3(a), which purpose was to contribute to the expansion of primary employment or to attract major investment in the zone that would be a

1. A recitation of asserted facts in an opinion of the Attorney General is not an affirmation of the existence of the facts recited, but is, rather, only an explanation of the basis upon which the legal conclusions of the opinion are predicated. The opinion process of the Attorney General is not designed to resolve fact issues.

benefit to the property and that would contribute to the economic development of the city or town?

3. Is there any penalty to an independent school district if it does not enter into a tax abatement agreement in reference to property which the city or county has designated as a reinvestment zone?

The term, "reinvestment zone" refers to a specific area that meets statutory "definitional requirements" and that is designated as such by a municipality entitling the property located therein to ad valorem tax relief or exemption for the purpose of encouraging development of the property. City of El Paso v. El Paso Community College Dist., 729 S.W.2d 296 (Tex. 1986). It became part of the legal lexicon of the state in November 1981, when the Texas Constitution was amended to add section 1-g to article VIII.² That provision reads:

(a) The legislature by general law may authorize cities, towns, and other taxing units to grant exemptions or other relief from ad valorem taxes on property located in a reinvestment zone for the purpose of encouraging development or redevelopment and improvement of property.

(b) 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.

Tex. Const. art. VIII, § 1-g.

2. Prior to the adoption of section 1-g, the grant of tax exemptions or other relief from ad valorem taxation for encouraging the development, redevelopment, or improvement of property in particular areas of a city or town was considered unconstitutional. See Attorney General Opinion MW-337 (1981).

In anticipation of the constitutional amendment, the legislature, in 1981, enacted both the Texas Tax Increment Financing Act of 1981, see Acts 1981, 67th Leg., 1st C.S., ch. 4, at 45, and the Property Redevelopment and Tax Abatement Act, see Acts 1981, 67th Leg., 1st C.S., ch. 5, at 53. The Tax Increment Financing Act of 1981 (which was originally codified as article 1066e, V.T.C.S., but which was transferred to the Government Code in 1987 as part of a non-substantive recodification) is now found at section 311.001, et seq., of the Tax Code. See Acts 1987, 70th Leg., ch. 191, at 1413. The Texas Supreme Court, in the City of El Paso case, supra, held the 1981 tax increment financing statute to be constitutional against claims that it unconstitutionally allowed a city to use school district tax revenues for non-school purposes without the consent of the school trustees.

Property in an "investment zone" created pursuant to the Tax Increment Financing Act of 1981 does not actually escape taxation on its full value. The tax is imposed on the entire value, but a portion of the tax proceeds is devoted to a purpose other than the general support of the taxing authority, i.e., a portion is devoted to the retirement of debt incurred to "significantly enhance the value of all taxable real property in the zone" and, in the process, to generally benefit the municipality. Tax Code § 311.004 (a)(7)(A).³ The designation of a "reinvestment zone" pursuant to the Property Redevelopment and Tax Abatement Act has a different effect, however. Property within such a zone does escape a measure of taxation under the terms of the statute when a statutory "agreement" is entered. See Tax Code § 312.204.

The Property Redevelopment and Tax Abatement Act, was originally codified as article 1066f, V.T.C.S. The same legislature that repealed article 1066f and recodified it in

3. Article VIII, section 1-g, of the constitution authorizes relief from "ad valorem taxes," and subsection (b) thereof authorizes the use of increases in ad valorem tax revenues" to repay development bonds. Previously, "taxes" were collected only for the ordinary purposes of municipal government, and charges laid to specially benefit particular property within the municipality were not considered to be taxes but, rather, to be "special assessments." See Taylor v. Boyd, 63 S.W. 533 (Tex. 1885); see also City of Wichita Falls v. Williams, 26 S.W.2d 910 (Tex. 1930).

the Tax Code also amended article 1066f three times without reference to its repeal. See Acts 1987, 70th Leg., ch. 423, at 1979; ch. 765, at 2720; ch. 1114, at 3819.

The repeal of a statute by a code does not invalidate an amendment to the statute enacted by the same legislature that enacted that code. Gov't Code § 311.031(c). The statute, as amended, takes precedence over the code revision to the extent of conflict between the provisions. Gov't Code § 311.031(d). Franklin v. State, 742 S.W.2d 66 (Tex. App. - Houston [14th Dist.] 1987, disc. rev. ref'd). Cf. Knight v. International Harvester Credit Corp., 627 S.W.2d 382 (Tex. 1982) (non-revisionary code enactment). In addressing your questions, therefore, we will refer to article 1066f, as amended, rather than to chapter 312 of the Tax Code.

Fortunately, the three amendments to article 1066f, insofar as they relate to the questions you pose, can be construed so as not to conflict with each other, and each of them can be given effect. Consequently, complicated applications of rules pertaining to statutory construction can be avoided; it is unnecessary to decide which of the amendments would prevail otherwise. See generally 53 Tex. Jur. 2d, Statutes §§ 100-112.

Your initial concern is with the area that must be included within a reinvestment zone under the Property Redevelopment and Tax Abatement Act if such a zone is to be designated. There is no provision in the statute that requires a zone to include "contiguous or surrounding property that has identical or similar characteristics" to property placed in the zone. The criteria for designating a reinvestment zone is stated in section 3 of article 1066f, as amended. The inclusion of particular properties within a zone is not a criterion for creation of the zone.

There may be fact questions, of course, as to whether the property of a single owner meets the section 3 eligibility standards for designating it as a stand-alone reinvestment zone, but we cannot say that as a matter of law no property of a single owner could do so. It is clear that the statute does not require all similarly situated properties to enjoy tax-abatement benefits available to contiguous property, because section 4(c) of article 1066f expressly excludes from such benefits property owned by certain government officials, even if the property is located within a designated zone. See also V.T.C.S. art. 1066f § 7A(c). Moreover, property located within an improvement project financed by tax increment bonds cannot be included. Id. § 2(a). On the other hand, governing bodies must adhere to self-established guidelines and criteria, and a public

hearing must be held on the question before any area is designated as such a zone. See Acts 1987, 70th Leg., ch. 423, at 1979; ch. 765, at 2720; ch. 1114, at 3819.

With respect to your second concern, an area may be designated a reinvestment zone if it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the city or town." See V.T.C.S., art. 1066f § 3(a)(7). Subsection 3(a)(7) was added to article 1066f by Acts 1987, 70th Leg., ch. 1114, § 3, at 3821.⁴ As explained earlier, the repeal of article 1066f by the act of the 70th Legislature that codified the Property Redevelopment and Tax Abatement Act to the Tax Code did not affect amendments to article 1066f, V.T.C.S. See Gov't Code §§ 311.031(c), (d).

Your final question asks about penalizing of the school district if it does not join the city in designating the city-chosen area as a reinvestment zone. As the law now reads, the school district would suffer no penalty by refusing to so designate the area.

Prior to the amendment of section 3(d) of article 1066f effected by Acts 1987, 70th Leg., ch. 1114, the provision read:

(d) If an area is designated a reinvestment zone, every taxing unit that is contained inside the boundaries of the reinvestment zone may execute a written agreement with the owner of any property on which the property taxes are abated due to an agreement under Subsection (a) of this section. Such an agreement must contain terms identical to those contained in the agreement with the city or town regarding the share of the property that is to be exempt from taxation under the agreement, the duration of the exemption, and the provisions included in the

4. See section 7A(a) of the act regarding the establishment of enterprise zones by counties in areas not subject to taxation by incorporated cities or towns. Such zones may be established only upon a finding that the designation will contribute to the retention or expansion of primary employment or would attract major investment.

agreement pursuant to Subsections (b) and (c) of this section. If a taxing unit fails to execute such an agreement, the taxing unit is limited to taxing any property that is the subject of an agreement under Subsection (a) of this section at the same value at which the property was taxed in the year preceding the execution of the agreement with the city or town, for a period of time equal to twice the duration of the agreement with the city or town. This subsection does not apply to property located in the extraterritorial jurisdiction of the city or town. (Emphasis added.)

The 1987 amendment changed the underscored language. "Every taxing unit" was changed to refer to "the governing body of each county or school district eligible to enter into tax abatement agreements," and the remainder of the emphasized language was deleted. In its place, the 1987 amendment specified that when property taxes are abated by city agreement, the agreement makes the property exempt in like fashion from taxation by all taxing units other than a county or school district. See Tax Code § 1.04(12) (definition of "taxing unit").

Thus, cities, towns, counties and school districts -- with respect to any reinvestment zone designated pursuant to the Property Redevelopment and Tax Abatement Act by another such entity -- are free to join, or to decline to join, other such entities in newly designating a particular area as a reinvestment zone.⁵ If they do join another such

5. Acts 1987, 70th Leg., ch. 1114 § 5 provides:

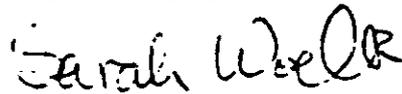
(a) The change in law made by this Act applies only to the effect on other taxing units of a tax abatement agreement made by a city or town under Section 2, Property Redevelopment and Tax Abatement Act (Article 1066f, Vernon's Texas Civil Statutes), or by a county under Section 7A of that Act on or after the effective date of this Act [Sept. 1, 1987]. The effect on other taxing units of a tax abatement agreement made by a city under Section 2 of that Act or by a county under Section 7A of that Act before the

(Footnote Continued)

entity, however, the major terms of the agreements must be identical, except in the case of property located in the extraterritorial jurisdiction of a city. See V.T.C.S., art. 1066f, § 2(d).

We advise that the Property Redevelopment and Tax Abatement Act, as amended in 1987, does not now visit a penalty upon school districts that decline to join a city in newly designating a particular area as a reinvestment zone eligible for tax exemptions.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

APPROVED: OPINION COMMITTEE

SW/RG/mc

Ref.: RQ-1593
ID# 4971

(Footnote Continued)

effective date of this Act, together with any amendments or extensions of such tax abatement agreement (even if such amendments or extensions are made after the effective date of this Act) is governed by the law in effect when the original tax abatement agreement is made, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act does not affect the validity of the designation of a reinvestment zone or of a tax abatement agreement made under the Property Redevelopment and Tax Abatement Act before the effective date of this Act. Acts 1987, 70th Leg., ch. 1114, § 5 at 3822.