



DALLAS COUNTY

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DISTRICT ATTORNEY  
CIVIL SECTION

**RQ-1068**

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Opinion Committee

December 29, 1997

Honorable Dan Morales  
Attorney General of Texas  
Price Daniel, Sr. Building  
P. O. Box 12548  
Austin, TX 78711-2548

FILE # ML-40006-98  
I.D. # 40006

Re: **Local Government Code Section 381.004**

Dear General Morales:

The Dallas County Commissioners Court wishes to provide a company with an economic development grant as part of an economic development program pursuant to Section 381.004 of the Local Government Code. The Commissioners Court has determined that the grant will encourage the company to redevelop currently unused property within the county for use as the company's corporate headquarters, and thus will provide for state and local economic development and stimulate, encourage, and develop business location and commercial activity within the county. The proposed grant is to be paid in ten annual installments, with each installment calculated by a formula which multiplies a fixed percentage by the amount of additional tax revenues received by the county as a result of the property redevelopment.

The economic consequence of the grant to both the company and the county is the same as would occur if the county granted tax abatement to the company for the same duration as the grant and at the same percentage as is used in the grant formula. Entering into a tax abatement reaching this economic result is not possible, however, because the city within which the property is located has executed a tax abatement agreement with the company using a different percentage than that contained in the proposed grant. This property is not in an enterprise zone, and therefore under Tax Code Section 312.206, the county may adopt a tax abatement agreement only with terms identical to the city's abatement agreement concerning the portion of the property that is to be exempt from taxation.

Our question is whether or not Tax Code Chapter 312 precludes or pre-empts the adoption of an economic development program which includes the grant described above. It seems to us that the economic development grant proposed by the Dallas County Commissioners Court is not precluded or preempted by Tax Code Chapter 312. Although the same economic result may have been reached under Chapter 312 had the city taken different action, the Commissioners Court is not proposing to abate any taxes, and therefore Chapter 312 appears inapplicable to this situation. We would appreciate your opinion on the issue.

## BRIEF IN SUPPORT OF REQUEST FOR OPINION

### Issue

The Dallas County District Attorney has requested an opinion that the provisions of the Property Redevelopment and Tax Abatement Act, Texas Tax Code Chapter 312, do not preclude or preempt the Dallas County Commissioners Court from providing an economic development grant to a business under Section 381.004 of the Local Government Code, when the amount of the grant is to be determined by a specified percentage of the additional real property tax revenues received by Dallas County from the business as a result of the business' development of its property.

### Background

The Dallas County District Attorney has requested this opinion because the Dallas County Commissioners Court is considering providing an economic development grant as part of an economic development program under Local Government Code §381.004. The purpose of the grant is to encourage an economically desirable business to develop property within the county for use as the company's corporate headquarters. The proposed economic development grant would involve annual cash payments to the company for ten years, with the amount of each annual payment determined by a formula which takes a stated percentage of the additional real property tax revenue received by the county from the business as a result of the business' development of the real property. The Commissioners Court has determined that the grant under consideration would aid in the business' decision whether to develop property within the county, and consequently would promote state and local economic development, and stimulate, encourage and develop business and commercial activity in the county.

The same economic impact is achieved by both Dallas County and the company under the grant as would be achieved if Dallas County provided a ten year tax abatement on the real property pursuant to Chapter 312 of the Texas Tax Code at the same percentage as is stated in the grant formula. The city within which the property is located, however, has elected to provide tax abatement at a different percentage than the percentage that Dallas County wishes to use in the grant formula. Thus, Dallas County is prohibited by Tax Code Section 312.206(a) from entering into an abatement agreement at the same percentage as it wishes to use in the grant formula.

Dallas County has requested an opinion that it is not precluded or preempted from making the grant by Chapter 312 of the Tax Code.

### Analysis and Authorities

As far as possible, the laws of this state which are not positively repugnant will be construed so as to give effect to all relevant laws. Standard v. Sadler, 383 S.W. 2d 391, 395 (Tex. 1964). Texas statutes and codes are to be construed so as to make all relevant laws harmonious if possible. State v. Standard Oil Co., 130 Tex. 313, 107 S.W. 2d 550, 559 (1937).

The proposed economic development grant at issue would be made under authority of Section 381.004 of the Local Government Code, which provides in pertinent part:

- (b) To stimulate business and commercial activity in a county, the Commissioners Court of the county may develop and administer a program:
  - (1) for state or local economic development; . . . [or]
  - (3) to stimulate, encourage, and develop business location and commercial activity in the county; . . . .
- (c) The Commissioners Court may: . . .
  - (3) use county employees or funds for the program;

This statutory authorization does not expressly or impliedly limit the types of economic development programs the Commissioners Court may develop and administer. Moreover, Section 381.004 appears to be enabling legislation for Article 111, Section 52-a of the Constitution, which begins with the phrase, "Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money . . . ." See Attorney General Opinion DM-185 (1992), which in footnote 3 discusses Section 381.004 when reaching the conclusion that Local Government Code Section 380.001 is enabling legislation for Article 111, Section 52-a. Thus, Section 381.004 provides the Dallas County Commissioners Court with considerable discretion in the development and administration of economic development programs and the use of county funds for such programs.

In contrast, Texas Tax Code Chapter 312 provides very strict and specific rules on how taxes may be abated. For example, Chapter 312 requires a taxing unit to adopt guidelines and criteria for abatement in advance of granting abatement, and specifies provisions that must appear in an abatement agreement. See Tax Code Sections 312.002 and 312.205. Additionally, under Tax Code Section 312.206(a), where, as here, a municipality has entered into a tax abatement agreement under Section 312.204, the governing body of each other taxing unit eligible to enter into tax abatement agreements (including the County Commissioners Court) may also enter into a tax abatement agreement with the owner of the property, but only if: (1) the agreement is entered into within ninety days after the date the municipal tax abatement agreement is executed; and (2) certain terms in the agreement are identical to those in the municipal agreement, including the portion of the property to be exempt from taxation, and the duration of the abatement.

Both Section 381.004 of the Local Government Code and Chapter 312 of the Tax Code are designed to foster economic development. Each provides a different avenue to economic development, however. The avenue for tax abatement, an exemption of a portion of the value of property from taxation, is very narrow. The avenue for an economic development program is very broad. There is nothing inconsistent with the legislature providing alternative avenues for economic development, even if under certain circumstances each avenue could provide the same economic result. Certainly there is nothing contained in Tax Code Chapter 312 which suggests that it is the exclusive avenue to an economic result, or pre-empts any other avenues which may be available.

The questions of the pre-emption or prohibition of an economic development program by another Texas statute was addressed in Attorney General Opinion DM-185 with regard to Local Government Code Section 380.001. As noted in Footnote 3 of that opinion, Section 380.001 appears to have been

designed to authorize cities to participate in economic development in the same manner in which the Legislature authorized county participation with Local Government Code Section 381.004. In response to the pre-emption question, the opinion concludes "we are unaware of, and you have not specifically mentioned, any [constitutional or statutory] provisions that would forbid a municipality from establishing a program to promote state or local economic development and to stimulate business and commercial activity in the municipality." The identical result should apply to a county economic development program adopted by a county under Local Government Code Section 381.004.

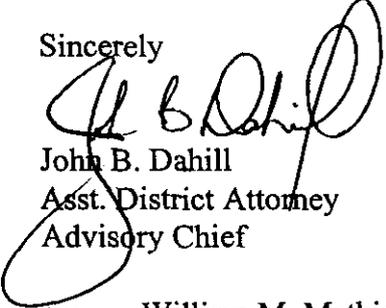
In the fact situation presented, these two statutes are easily harmonized. Chapter 312 of the Tax Code deals with abatements, and not grants. Section 381.004 of the Local Government Code authorizes the use of county funds as part of an economic development program. Dallas County's proposed economic development grant is a use of county funds as part of a program for economic development. It is, therefore, within the purview of Local Government Code Section 381.004. The proposed grant does not provide that any taxes are abated; in fact, complete collection of the grantee's taxes is a condition to the proposed grant. Therefore, Chapter 312 of the Tax Code is inapplicable to the county's proposed economic development program. Had Dallas County proposed an economic development program which purported to abate a business' taxes, a different issue would be raised. That issue is not raised in Dallas County's proposal.

### **Conclusion**

Dallas County's proposed economic development program and grant under Local Government Code Section 381.004 does not call for the abatement of taxes, and therefore is not preempted or precluded by Chapter 312 of the Tax Code.

Thank you for your kind attention to this matter. Please do not hesitate to contact me should you have any questions.

Sincerely



John B. Dahill  
Asst. District Attorney  
Advisory Chief

cc: William M. Methinitis  
Strasburger & Price, L.L.P.