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OPINION COMMITTEE

The State of Texas
House of Representatives



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February 8, 2012

RQ-1040-GA

The Honorable Greg Abbott
Texas Attorney General
Attn: Opinions Committee
PO Box 12548
Austin, Texas 78711

RE: Authority of a county to issue bonds or notes under article VIII, section 1-g(b) of the Texas Constitution.

Dear General Abbott:

In 1981, the 67th Legislature, 1st called session, passed Senate Joint Resolution 8 proposing a constitutional amendment authorizing cities, towns, and other taxing units to encourage the improvement or redevelopment of certain areas through property tax relief and through the issuance of bonds and notes.¹ The resolution was adopted by voters on November 3, 1981, creating article VIII, section 1-g of the Texas Constitution which reads as follows:

(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 the 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.

The language of this amendment has remained unchanged since its original adoption.

¹ S.J.R. No. 8, 67th Legislature, 1st Called Session, 1981.

In 2005, the 79th Legislature amended the Tax Increment Financing Act to allow counties to participate in tax increment financing.² As your office has noted, article VIII, section 1-g(b) of the Texas Constitution, which allows the legislature to authorize incorporated cities or towns to implement tax increment financing, was not amended to extend that authorization to counties.³ The conclusion was reached that “county-initiated tax increment financing may potentially be subject to constitutional challenge until such time as the constitution is amended.”⁴

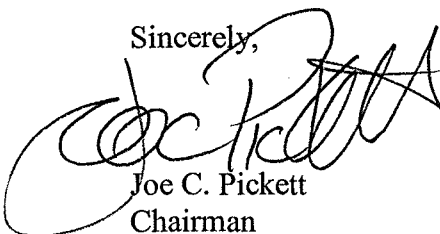
The 82nd Legislature passed House Joint Resolution 63, proposing a constitutional amendment to provide explicit authorization for the legislature to permit a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area and to pledge for repayment of the bonds or notes increases in ad valorem taxes imposed by the county on property in the area.⁵ In November 2011, voters rejected the proposed amendment.

As the proposed amendment was not adopted, the issue remains unclear. The only guidance appears to be a footnote in a guidebook issued by your office indicating that issuance of tax increment bonds by a county “may” be unconstitutional. Therefore, I respectfully request your opinion on the following questions:

1. May a county issue bonds in the same manner as a city or town under article VIII, section 1-g(b) of the Texas Constitution?
2. Does the reference to “other political subdivisions” in article VIII, section 1-g(b) include counties, and if so does that provide sufficient authority for a tax increment collected by a county to be pledged to secure bonds?
3. If the reference to “other political subdivisions” in article VIII, section 1-g(b) does not include a county, which taxing entities does it include?

If you have any questions regarding this request or need further information, please contact me at 512-463-0596.

Sincerely,



Joe C. Pickett
Chairman

² See Tex. H.B. 2120, 79th Leg., R.S. (2005).

³ See 2008 Economic Development Laws for Texas Cities, Office of the Attorney General at 117 fn551.

⁴ *Id.*

⁵ H.J.R. No. 63, 82nd Legislature, R.S., 2011.