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July 31, 2007

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RECEIVED

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OPINION COMMITTEE

FILE # ML-45297-07
I.D. # 45297

The Honorable Greg Abbott,
Attorney General of the State of Texas
C/O Nancy Fuller, Chair, Opinion Committee
Box 12548
Austin, Texas 78711 2548

RQ-0612-GA

RE: Request for Ruling and Opinion

Dear Ms. Fuller:

The Sterling County Commissioners Court requested this office to obtain an Attorney General's opinion concerning an interpretation of Texas Tax Code Section 312.402(d) involving real property owned by a county commissioner and a tax abatement in a reinvestment zone for a wind energy turbine company.

I am enclosing my brief on this issue which contains a copy of the Sterling County Commissioners Court resolution. If you desire additional factual information, please contact me. Thank you for your service.

Yours truly,



Bill Stroman

BS:ss

Encl.

CC: Hon. Ralph Sides, Sterling County Judge
Susan Wyatt, Sterling County Clerk

No. _____

Request for Attorney General's Opinion

From

Bill Stroman

Sterling County Attorney in behalf of

Sterling County, Texas Commissioners Court

Brief of the Question and Issue

Statement of Facts

Sterling County, Texas County Commissioners' Court has created reinvestment zones to grant tax abatements to wind turbine companies constructing wind turbines to generate electric power. Wind turbine firms construct wind turbine generators on leasehold estates and pay a royalty to the fee simple owner based on electrical power generated. A wind generating firm has applied to the Sterling County Commissioners Court for a reinvestment zone to obtain tax abatement agreement upon land owned by a county commissioner.

Issues Presented

Whether or not the Sterling County Texas Commissioners' Court is barred from granting a tax abatement agreement under V.T.C.A. Tax Code Section 312.402 (d) to a wind generating firm for construction of wind turbines located on land owned by a County Commissioner.

If the Sterling Commissioners Court is not barred from granting the tax abatement, is the land owner county commissioner required to abstain from voting on the proposition?

Applicable Statute

Texas Tax Code Chapter 312. Property Redevelopment and Tax Abatement Act

Subchapter D County Developments Districts [Redesignated]

Section 312.402. County Tax Abatement Agreement

(a) The commissioners court may execute a tax abatement agreement with the owner of taxable real property located in a reinvestment zone designated under this subchapter. The court may execute a tax abatement agreement with the owner of a leasehold interest in tax exempt real property or leasehold interests or improvements on tax-exempt real property that is located in a reinvestment zone designated under this Subchapter to exempt a portion of the value of tangible personal property or leasehold interests or improvements on tax-exempt real property located on the real property. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211 applicable to a municipality. Section 312.2041 applies to an agreement made by a county under this section in the same manner as it applies to an agreement made by a municipality under Section 312.204 or 312.211.

(b) [OMITTED]

(c) [OMITTED]

(d) Except as otherwise provided by this subsection, property that is located in

a reinvestment zone designated by a county under this Subchapter that is owned or leased by a person who is a member of the commissioners court may not be subject to a tax abatement agreement made under this section. Property that is subject to a tax abatement agreement under this section in effect when the person becomes a member of the commissioners court does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the commissioners court.

(e) [OMITTED]

(f) [OMITTED]

Analysis

A commissioners court may create reinvestment zone outside the boundaries of a city under local guidelines and criteria adopted by the commissioners court. The statutory guideline is that the proposed improvements are a benefit to property within the zone by enhancing employment and major investment and contribute to the economic development of the county. Within the reinvestment zone the commissioners court may enter into a tax abatement agreement with any landowner or leaseholder to exempt any or all increased property value from taxation for not more than ten years in return for the obligation to make specific improvement or repairs.

In the instant case, the real property within the proposed reinvestment zone is owned by a county commissioner, and the property for which tax abatement is sought is owned by the wind turbine company. The proposed improvements consisting of wind

turbines, electrical cables, roads, and electrical distribution substations belong to the wind turbine firm and are located on the commissioner's land. The county commissioner stands to gain an economic benefit from the wind turbine company from the payment of royalties for electrical power generated, and damages to his surface estate during the construction period. The county commissioner does not own nor lease to the turbine company any of the improvements for which the tax abatement is sought. The county commissioner is the lessor of real property within the reinvestment zone leasing surface rights to the wind turbine company. The prohibition of Section (d) describes "property that is owned or leased by a person who is a member of the commissioners court". The taxable real properties to which the tax abatement will attach are the fixtures and improvements on real property owned by a the member of commissioners court. These items are neither owned nor leased by the member of the commissioners court. The only connection to the tax abatement property is the location on the commissioner's land. The tax abatement property and improvements are also located on other citizen's land within the same proposed reinvestment zone. The disqualification of (d) prohibits the county commissioner from obtaining a tax abatement for an improvement that he owns or leases on his real property. The wind turbine firm should be eligible to obtain a tax abatement for its taxable real property located on the real property owned by a member of the commissioners court.

Conclusion

The Sterling County Commissioners Court is not barred from granting a tax abatement within a reinvestment zone to a wind turbine firm for its taxable real property located on the lands owned by a member of the commissioners court because the commissioner does not own or lease the property that is the subject of the tax abatement.

At the vote on this issue, the members of the Sterling County, Texas commissioners court owning land in a reinvestment zone where wind turbines are located, should abstain from voting on the proposition under the provision of Texas Local Government Code Section 81.002 as the commissioner has a pecuniary interest in receiving royalty payments from the wind turbine company.

Respectfully submitted,

BS

JUL 31 2007

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COUNTY OF STERLING

STATE OF TEXAS

RESOLUTION

WHEREAS, Under Section 312.402(d) of the Texas Property Tax Code, County Commissioners Courts are not allowed to grant a tax abatement on property owned or leased by a member of the Court; and

WHEREAS, Tax abatements have been granted to Wind Farm Projects in Sterling County and could be granted in the future; and

WHEREAS, Future Wind Farm Projects may request tax abatements on Wind Farm Equipment placed on land leased from a current member of the Commissioner's Court; and

WHEREAS, The property being abated in a wind farm project includes the turbines and associated equipment and facilities that are owned by the wind project developer; and

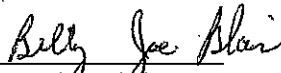
WHEREAS, It is unclear to all members of the Sterling County Commissioners Court whether Current Texas Tax Code prohibits granting of tax abatements on wind farm projects on land leased to a wind farm project by a current member of the Commissioners' Court;

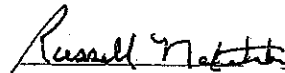
NOW THEREFORE BE IT RESOLVED that the Sterling County Commissioner's Court requests that the Sterling County Attorney make all appropriate efforts to seek clarifying information concerning the following two questions, including if necessary the opinion of the Attorney General of the State of Texas, so that any future actions taken by the Court concerning tax abatements will be appropriate and in the best interests of the Citizens of Sterling County:

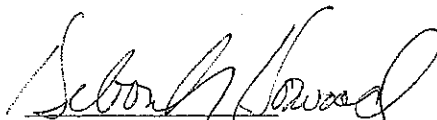
- Is a Commissioners Court allowed to grant a tax abatement to a wind farm project developer if a member of the Court leases land to the developer for turbines, substations, easements or other related facilities?
- If the Court is allowed to grant a tax abatement to a wind farm project developer with member of the Court leasing to the developer, is the Commissioners Court member in question required to abstain from participating in the Court's deliberation and abstain from voting on the tax abatement?


APPROVED the 23rd, day of July, 2007.


County Judge


County Commissioner
Precinct No. 1


County Commissioner
Precinct No. 2


County Commissioner
Precinct No. 3


County Commissioner
Precinct No. 4