

TO: Assessing Officers
Equalization Directors
FROM: State Tax Commission

No. January 21, 1986
AG Opinion
Tax Increment Financing Authority

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

TAX INCREMENT FINANCE AUTHORITY: Establishment in area of municipality containing significant number of parcels of property declining in value

WORDS AND PHRASES: "Decline"

A municipality is without authority to establish a tax increment finance authority in an area of the municipality where property values are not declining.

A municipality may establish a tax increment finance authority in an area of the municipality containing a significant number of parcels of property experiencing a decline in value.

Opinion No. 6335

JAN 16 1986

Honorable Wilbur V. Brotherton
State Representative
The Capitol
Lansing, Michigan 48909

You have requested my opinion regarding a provision of the Tax Increment Finance Authority Act (TIFA), MCL 125.1801 et seq; MSA 3.540(201) et seq. As background to your question, you state as follows:

"[T]he TIFA Act provides a mechanism by which a municipality can establish an authority within its geographical boundaries, commonly known as a Tax Increment Finance Authority. The authority is vested with the power to create and implement a development plan for the improvement of the property within the authority. Contemporaneously, the authority may create a financing plan for the purpose of funding the development plan. Among other types of financing plans, the Act permits the authority to divert ad valorem tax collections from local units of government to pay for the implementation of a development plan. The collections which may be diverted are based upon the incremental increases in the value of the property; i.e., increases which theoretically result from the implementation of the development plan.

In question is Section 3 [MCL 125.1803(1): MSA 3.540(203)(1)] of the Act wherein the basis for creating a TIFA is set forth. It provides as follows:

'If the governing body of a municipality determines that it is in the best interests of the public to halt a decline in property values, increase property tax valuation, eliminate the causes of the decline in property values, and to promote growth in an area in the municipality, the governing body of that municipality may declare by resolution its intention to create and provide for the operation of an authority.'

"If ad valorem taxes based on increases in the value of property that would otherwise be declining -- and are thus attributable to the planned development --

are diverted from local units of government, those local units are certainly not deprived of tax collections that they would have received but for the TIFA. However, if taxes on property which is increasing in value are diverted away from those same local units of government, there is the potential for a significant erosion of the tax base upon which local units of government rely in dealing with inflation in their own expenses of operation."

Your first question is:

"Whether the language of Section 3 [MCL 125.1803(1); MSA 3.540(203)(1)] permits a municipality to create a TIFA [Tax Increment Finance Authority] in a geographical area where property values are not declining."

MCL 8.3; MSA 2.212, provides:

"In the construction of the statutes of this state, the rules stated in sections 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature."

MCL 8.3(a); MSA 2.212(1), provides, in pertinent

"All words and phrases shall be construed and understood according to the common and approved usage of the language;..."

In MCL 125.1803(1); MSA 3.540(203)(1), the Legislature has authorized the governing body of a municipality to declare its intention to create a tax increment finance authority if it determines that it is in the public interest (1) to halt the decline in property values, (2) to increase property tax valuation, (3) to eliminate the causes of the decline in property values, and (4) to promote growth, in an area of the municipality. A plain reading of the statute makes it clear that the governing body is to make each of these four conditions precedent determinations prior to proceeding with the formation of a tax increment finance authority.

While the term "and" appearing in a statute may be read in the disjunctive as "or" where necessary to accomplish the obvious purpose of a statute, *Elliott Grocer Co v Field's Pure Food Market, Inc*, 286 Mich 112; 281 NW 557 (1938), it is not appropriate to do so in the present situation. Moreover, if the term "and" in MCL 125.1803(1); MSA 3.540(203)(1), were to be read as "or," a tax increment finance authority could be established in a municipality for the sole purpose of "increasing property tax valuation." Because this single purpose is wholly outside the title to the Tax Increment Finance Authority Act, it is unlikely that the Legislature intended such result. In addition, under such interpretation, the entire municipality could be placed within an "authority," thereby frustrating the state's system for local assessment and taxation provided under the state's property tax laws. See, e.g., *Smith v Auditor General*, 20 Mich 398, 406 (1870). Furthermore, MCL 125.1803(1); MSA 3.540(203)(1) does not manifest a clear intent that an authority may be formed if less than all four of these public interest criteria are met in the determination of the governing body. Thus, the term "and" may not be read as "or" with respect to these portions of the statute.

It is my opinion in answer to your first question that pursuant to MCL 125.1803(1); MSA 3.540(203)(1), a municipality is without authority to create a tax

increment finance authority in a geographical area where property values are not declining.

Your second question is:

"Assuming that declining property values are requisite to the creation of a TIFA, is it sufficient for purposes of Section 3 (MCL 125.1803; MSA 3.540(203)] if only one or two parcels of property within the TIFA boundaries are declining in value while the balance of the property in the TIFA area, consisting of several hundred other parcels of property, is either static in value or increasing? Conversely, must decline be measured for purposes of Section 3 in an aggregate sense; i.e., considering all of the parcels within the proposed authority in the aggregate?"

In *Exum v Laub*, 87 F2d 73, 74 (CA 5, 1937), the term "decline" was defined as meaning "a falling off or downward tendency." Since the Legislature has required a determination that a "decline in property values," in the plural, be halted, it follows that the decline in value of a single parcel of property would be insufficient as a basis for establishment of a tax increment finance authority. Moreover, the Legislature has conferred broad powers upon a tax increment finance authority board, inter alia, to prepare analyses of economic changes relating to urban deterioration in the development area, to develop long-range plans to halt the decline of property values and to promote the growth of the development area, and to demolish existing structures and construct, rehabilitate, and restore buildings within the development area. The authority is empowered to acquire and construct public facilities and to fix fees, rents, and charges for the use of buildings and property under its control with revenue therefrom to be used to pay for revenue bonds issued by the authority. MCL 125.1807; MSA 3.540(207). To finance its activities, the authority board is authorized to borrow money and issue revenue bonds and to expend tax revenues received. MCL 125.1812; MSA 3.540(212).

The activities of the authority shall also be financed by tax increments received pursuant to a tax increment financing plan from taxes levied upon the captured assessed value of all the property with the development district. The captured assessed value is the difference between the initial assessed valuation of the property in the development district at the time of establishment of the tax increment financing plan and the amount in any one year by *which* the current assessed valuation of the development area exceeds the initial assessed valuation resulting from implementation of the tax increment financing plan. It is noted that the plan must state reasons that will result in the development of captured assessed value which could not be expected and must also contain an estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the development area is located. MCL 125.1813(1)(a)-(i); MSA 3.543(213)(1)(a)-(

In view of these broad powers to deal with urban deterioration and to

promote the growth of an area of a municipality, the legislative intent is manifest that a significant number of parcels of property in the area of the municipality must be found to be falling off in value in order to warrant the establishment of an authority possessed of wide powers to accomplish the beneficial purposes intended. One or two parcels of property suffering declining property values would not suffice to set in motion the establishment of a tax increment finance authority in a municipality.

It is noted that the decision of a municipality to establish a tax increment finance authority after notice and public hearing is subject to judicial review within 60 days as set forth in MCL 125.1803(5); MSA 3.540(203)(5). By expressly providing for a 60-day period during which such a determination may be challenged in a court of competent jurisdiction, the Legislature intended that decision of the municipality be reasonable and informed based upon a factual record before the governing body.

In answer to your second question, it is my opinion that a municipality may establish a tax increment finance authority upon a factual finding of a decline in value of a significant number of parcels in an area of the municipality. It is my further opinion that a municipality is not authorized to establish a tax increment finance authority based upon the decline in value of one or two parcels of property in an area of the municipality.

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