



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

February 10, 2022

ATTORNEY GENERAL OPINION NO. 2022- 1

Amanda L. Stanley, City Attorney
City of Topeka, Kansas
Legal Department
215 SE 7th, Room 353
Topeka, KS 66603

Re: Cities and Municipalities—Buildings, Structures and Grounds; Development and Redevelopment of Areas In and Around Cities—Purpose of Act; Issuance of Special Obligation Bonds and Full Faith and Credit Tax Increment Bonds; Taxing Subdivision and Real Property Taxes Defined; Assessment and Distribution of Taxes

Synopsis: Real property taxes paid on real property located within the boundaries of a redevelopment district are to be allocated pursuant to the formula set out in K.S.A. 2021 Supp. 12-1775(b) beginning with the first payment of taxes which are levied following the date of the establishment of the redevelopment district. The city is not required to adopt a redevelopment project plan before real property taxes received by the county treasurer are paid to the special fund of the city. Cited herein: K.S.A. 2021 Supp. 12-1770; 12-1770a; 12-1771; 12-1772; 12-1774; 12-1775; K.S.A. 12-1778.

* * *

Dear Ms. Stanley:

As counsel for the City of Topeka, Kansas,¹ you request our opinion regarding the proper allocation of property taxes paid for property within a redevelopment district established pursuant to the Tax Increment Finance Act (TIF).² Specifically, you ask whether K.S.A.

¹ The request was submitted by your predecessor. The opinion is being issued due to continued interest in the issue.

² K.S.A. 12-1770 *et seq.*

2021 Supp. 12-1775(b)(2) requires a county, except for Wyandotte County with respect to its race track development district, to allocate to the city treasurer those real property taxes produced in excess of the base year assessed valuation for deposit in a special fund of the city, beginning with the first payment of taxes levied following the date of establishment of the redevelopment district, regardless of whether the city has yet adopted a project plan pursuant to K.S.A. 2021 Supp. 12-1772.

TIF is designed “to assist in the development and redevelopment of eligible areas within and without a city thereby promoting the general welfare of the citizens of this state. . . .”³ Redevelopment under TIF is pursued through a two-stage process: establishment of a redevelopment district and adoption of a redevelopment project plan.⁴

The procedure for establishing a redevelopment district requires the city to adopt a resolution stating that the city is considering establishment of a redevelopment district and to provide notice that a public hearing will be held to consider establishment of the district.⁵ The notice includes descriptions of the redevelopment district's proposed boundaries and the district plan.⁶ The notice is given in two forms: by mailing copies of the resolution to the board of county commissioners, local board of education and each owner and occupant of land within the proposed redevelopment district; and by publication of the resolution in the official city newspaper.⁷ Following the public hearing, the city may adopt an ordinance establishing the redevelopment district.⁸ “No privately owned property subject to ad valorem taxes shall be acquired and redeveloped . . . if the board of county commissioners or the board of education levying taxes on such property determines by resolution . . . that the proposed redevelopment district . . . will have an adverse effect on such county or school district.”⁹ If such a resolution is received by the city, the city is required to adopt an ordinance terminating the redevelopment district.¹⁰

If the county or school district does not deliver a resolution of adverse effect, the city may proceed to the second stage and adopt a redevelopment project plan. A redevelopment project plan is “the plan adopted by a municipality for the development of a redevelopment project . . . in [an established]¹¹ redevelopment district”¹² that may be implemented in separate stages.¹³ The redevelopment project plan includes “a description and map of the redevelopment project area to be redeveloped”¹⁴ and “a detailed description of the

³ K.S.A. 2021 Supp. 12-1770.

⁴ Attorney General Opinion 2011-1.

⁵ K.S.A. 2021 Supp. 12-1771(a).

⁶ *Id.* The redevelopment district plan is “the *preliminary plan* that identifies all of the proposed project areas and *identifies in a general manner* all of the buildings, facilities and improvements in each that are proposed to be constructed or improved. . . .” K.S.A. 2021 Supp. 12-1770a(q) (emphasis added).

⁷ *Id.* See K.S.A. 2021 Supp. 12-1772(c)(2).

⁸ K.S.A. 2021 Supp. 12-1771(b).

⁹ K.S.A. 2021 Supp. 12-1771(d).

¹⁰ *Id.*

¹¹ K.S.A. 2021 Supp. 12-1770a(r)

¹² K.S.A. 2021 Supp. 12-1770a(s).

¹³ K.S.A. 2021 Supp. 12-1772(a).

¹⁴ K.S.A. 2021 Supp. 12-1772(a)(3).

buildings and facilities proposed to be constructed or improved in such area.”¹⁵ It is prepared in consultation with the city's planning commission, must be consistent with the comprehensive plan for development of the city and include a summary of the feasibility study.¹⁶ The project plan must be delivered to the board of county commissioners and the local board of education.¹⁷ The city may then adopt a resolution stating its intent to consider adoption of the project plan.¹⁸ Notice of the public hearing at which adoption is to be considered is provided by mailing a copy of the resolution to the board of county commissioners, the local board of education and each owner and occupant of land within the proposed redevelopment project area and by publication of the resolution in the official city newspaper.¹⁹ “Following the public hearing, the governing body may adopt the project plan by ordinance upon a 2/3 vote. . . .”²⁰

Financing of a redevelopment project may be achieved through issuance of special obligation bonds and full faith and credit tax increment bonds.²¹ Among the sources of revenue that may be pledged to pay the bonds is the “tax increments allocated to, and paid into a special fund of the city under the provisions of K.S.A. 12-1775, and amendments thereto.”²² The “tax increment” is the “amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation.”²³ The idea is that real property values within a redevelopment district will increase, resulting in increased real property tax revenues, and that the increased tax revenues will be deposited into a special fund of the city and used to pay the bonds.²⁴

The issue for this opinion regards the timing of allocation of the tax increment received for the real property located in a redevelopment district. The allocation of real property taxes received for real property located in a redevelopment district is addressed in K.S.A. 2021 Supp. 12-1775.

(b) Except for redevelopment projects [including an auto race track facility], *beginning with the first payment of taxes which are levied following the date of the establishment of the redevelopment district* real property taxes received by the county treasurer resulting from taxes which are levied subject to the provisions of this act by and for the benefit of a taxing subdivision, as defined in K.S.A. 12-1770a, and amendments thereto, on

¹⁵ K.S.A. 2021 Supp. 12-1772(a)(5).

¹⁶ K.S.A. 2021 Supp. 12-1772(a) and (b). The feasibility study shows whether the project's benefits and revenue sources are sufficient to pay the redevelopment costs. K.S.A. 2021 Supp. 12-1770a(k).

¹⁷ K.S.A. 2021 Supp. 12-1772(b).

¹⁸ K.S.A. 2021 Supp. 12-1772(b).

¹⁹ K.S.A. 2021 Supp. 12-1772(c)(2).

²⁰ K.S.A. 2021 Supp. 12-1772(e).

²¹ K.S.A. 2021 Supp. 12-1770; 12-1774(a)(1) and (b)(1); K.S.A. 12-1778.

²² K.S.A. 2021 Supp. 12-1774(a)(1)(A) and (b)(1); K.S.A. 12-1778.

²³ K.S.A. 2021 Supp. 12-1770a(u). “Base year assessed valuation” [is] the assessed valuation of all real property within the boundaries of a redevelopment district on the date the redevelopment district was established.” K.S.A. 2021 Supp. 12-1770a(b).

²⁴ See *State ex rel. Schneider v. City of Topeka*, 227 Kan. 115, 117 (1980).

property located within such redevelopment district constituting a separate taxing unit under the provisions of this section, shall be divided as follows:

(1) From the taxes levied each year subject to the provisions of this act by or for each of the taxing subdivisions upon property located within a redevelopment district constituting a separate taxing unit under the provisions of this act, the county treasurer first shall allocate and pay to each such taxing subdivision all of the real property taxes collected which are produced from the base year assessed valuation.

(2) Any real property taxes produced from that portion of the current assessed valuation of real property within the redevelopment district constituting a separate taxing unit under the provisions of this section in excess of the base year assessed valuation shall be allocated and paid by the county treasurer to the treasurer of the city and deposited in a special fund of the city to pay the redevelopment project costs including the payment of principal of and interest on any special obligation bonds or full faith and credit tax increment bonds issued by such city to finance, in whole or in part, such redevelopment project.²⁵

The rules of statutory interpretation apply in determining when the county treasurer is required to allocate the tax increment.

The most fundamental rule of statutory interpretation is that the intent of the Legislature governs if that intent can be ascertained. In ascertaining this intent, we begin with the plain language of the statute, giving common words their ordinary meaning. When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words. We will only review legislative history or use canons of construction if the statute's language or text is ambiguous.²⁶

“When interpreting the provisions of a statute, [the court] generally presume[s] that the Legislature acts with full knowledge of the statutory subject matter, including prior and existing law and judicial decisions interpreting the same.”²⁷ It, therefore, is presumed the Legislature is aware that establishment of the redevelopment district is not the final step of the process. The Legislature has ensured that taxing subdivisions and owners and occupants of land within a proposed redevelopment district receive notice and are afforded an opportunity to provide input prior to the city taking final action. Further, the county or school district may unilaterally stop the establishment of the redevelopment

²⁵ K.S.A. 2021 Supp. 12-1775(b) (emphasis added).

²⁶ *Matter of M.M.*, 3122 Kan. 872, 874 (2021) (internal citations omitted).

²⁷ *Id.*, at 875.

district by providing a resolution of adverse effect within 30 days following the conclusion of the public hearing.

The plain language provides that real property taxes paid on real property located within the boundaries of a redevelopment district are to be allocated pursuant to the formula set out in K.S.A. 2021 Supp. 12-1775(b) "beginning with the first payment of taxes which are levied following the date of the establishment of the redevelopment district." The city is not required to adopt a redevelopment project plan before real property taxes received by the county treasurer are paid to the special fund of the city.

Sincerely,

Derek Schmidt
Kansas Attorney General

Richard D. Smith
Assistant Attorney General

DS:SS:RDS:sb