

MEMORANDUM

OFFICE OF THE ATTORNEY GENERAL

TO: Tanya Morehouse, Chief Auditor  
FROM: Bill Griffin, Chief Assistant Attorney General  
SUBJECT: St. Albans TIF District – use of bond proceeds to pay debt service  
DATE: February 7, 2019

Introduction

This is to follow up on our conversations about the State Auditor of Accounts audit of the St. Albans Tax Incremental Financing (TIF) District. You requested guidance from the Attorney General's Office on several questions. The immediate question is whether the TIF statutes allow TIF district bond proceeds to be used to pay the debt service on those bonds. My opinion is that the statutes do not allow bond proceeds to be used for that purpose.

The TIF Statutes

The statutes that govern Tax Increment Financing are codified in Title 24, Chapter 53, Subchapter 5. These statutes authorize municipalities to create special districts known as "tax increment financing" districts. 24 V.S.A. § 1892(a). The purpose of these districts is "to provide revenues for improvements that serve the district and [for] related costs ...." 24 V.S.A. § 1893. The goal is to "stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base or enhance the general economic vitality of the municipality, the region, or the State." *Id.*

The premise of Tax Increment Financing is that economic development will generate a "tax increment" from new and improved properties in TIF districts. 24 V.S.A. § 1896(a). The statutes authorize municipalities to retain a portion of these additional taxes "for financing improvements and related costs...." 24 V.S.A. § 1896(d). The taxes retained by municipalities include a percentage of the education property tax increment – taxes that would otherwise be owed to the Education Fund. See 24 V.S.A. § 1894(b).

Subchapter 5 grants municipalities specific authority to borrow for TIF projects. A municipality "may incur indebtedness against revenues of the tax increment financing district...." 24 V.S.A. § 1894 (a)(1). A municipality may issue "general obligation bonds, revenue bonds, or revenue bonds also backed by the municipality's full faith and credit ... to finance the undertaking of any improvements wholly or partly within [the TIF] district." 24 V.S.A. § 1898(b).

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Subchapter 5 defines “improvements” to mean “the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts ....” 24 V.S.A. § 1891(4). The listed examples of improvements that qualify for TIF financing are “utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation.” *Id.* Also, as discussed in my August 9, 2018 memorandum, Subchapter 5 and Rules promulgated under that Subchapter provide that TIF debt may be used to finance “related costs” as defined by 24 V.S.A. § 1891(6).

Thus, Subchapter 5 provides a complete description of the TIF program. It explains the purpose of the program, the financing arrangements that are allowed and the rules that govern the use of tax revenues and bond proceeds. “The powers conferred by [Subchapter 5] are supplemental and alternative to other powers conferred by law, and this subchapter is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth herein.” 24 V.S.A. § 1898(a).

#### Discussion

My understanding is that St. Albans submitted a TIF district application to the Vermont Economic Progress Council (VEPC) in 2012. The application documents stated that the City would issue bonds to finance improvements and that all debt proceeds would be used for that purpose. This plan was consistent with 24 V.S.A. § 1898(b) (municipality may issue bonds to finance the undertaking of improvements), and the VEPC approved the application.

The issue now is whether TIF bond proceeds may be used to pay expenses other than “improvements” and “related costs” as those terms are defined in Subchapter 5. The City, through its legal counsel, acknowledges that the Subchapter 5 definition means that bond proceeds must be spent on infrastructure, public facilities, land and other “hard, tangible assets” of the sort listed in 24 V.S.A. § 1891(4). The City nevertheless argues that this definition is not controlling – that it should not be “read in a vacuum” – and that TIF bond proceeds may be used for “all manner of soft costs” including the funding of reserves to pay debt service on the bonds.

In support of its argument for an expansive reading of “improvements” the City cites to a definition in Title 24, Chapter 53, Subchapter 1. Subchapter 1 deals with municipal debt generally and defines improvements to mean something “apart from its ordinary signification.” 24 V.S.A. § 1751(3)(A). This definition is broader than the tangible assets definition that applies to TIF debt. For example, the Subchapter 1 list of “improvements” that may be financed using bond proceeds includes “the funding of reserves.”

The City argues that TIF bond proceeds may be used for all of the purposes listed in the general debt statute as well as for the narrower purposes listed in the TIF statute. The City assumes that that was the legislative intent. Therefore, according to the City, TIF bond proceeds can be used to fund reserves and to pay the debt service on TIF bonds.

My view is that the Legislature intended to treat TIF bonds as a special category of debt subject to special rules. This is evident from the text of the “improvements” definition in Subchapter 5, which is quite specific and obviously narrower than the definition in Subchapter 1. If the Legislature intended to allow TIF bond proceeds to be used for a broad category of “improvements,” including debt service, it could have used the broad language that it used in Subchapter 1. Or, it could have cross-referenced the Subchapter 1 definition of “improvements” and made it applicable to TIF debt. The Legislature did neither. Rather, it enacted a different and narrow definition of improvements when it enacted Subchapter 5 (the TIF subchapter).

Also, the Legislature took unusual care to establish a special rule of construction for Subchapter 5. As noted above, Subchapter 5 “is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth herein.” 24 V.S.A. § 1898(a). The plain meaning of the TIF statutes should not be compromised based on definitions that appear in other subchapters in the debt statutes.

To be clear, this opinion is limited to the use of bond proceeds, and does not apply to the use of tax revenues. The Legislature expressly authorized municipalities to “hold apart” the incremental tax revenues realized in TIF districts and to use a portion of those revenues to pay “related costs.” 24 V.S.A. § 1896(a) and (d). “Related costs” are defined as “expenses incurred and paid by the municipality, exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and implementation of the tax increment financing district, including reimbursement of sums previously advanced by the municipality for these purposes.” 24 V.S.A. § 1891(6). The municipal tax increment – but not the education tax increment – may also be used to cover certain direct municipal expenses.

Please let me know if you have related questions.

Thank you.