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Honorable Richard C. Dorley
Chairman, Industrial Development Board
of the City of Tallassee
1 Twin Creeks Drive
Tallassee, Alabama 36078

Tax Incentive Reform Act of 1992 – Tax Abatements – Industrial Development Boards – Municipalities – Elmore County

The fact that a municipality levies no ad valorem tax does not deprive that municipality and its industrial development board of their power, pursuant to sections 40-9B-4 and 40-9B-5 of the Code of Alabama, to grant abatements of county-levied noneducational ad valorem taxes.

Dear Chairman Dorley:

This opinion of the Attorney General is issued in response to your request on behalf of the Industrial Development Board of the City of Tallassee.

QUESTION

Does the mere fact that a municipality levies no ad valorem tax deprive that municipality and its industrial development board of their power, pursuant to sections 40-9B-4 and 40-9B-5 of the Code of Alabama, to grant abatements of county-levied noneducational ad valorem taxes?

FACTS AND ANALYSIS

The Industrial Development Board of the City of Tallassee ("IDB") is a public corporation organized under sections 11-54-80 through 11-54-135 of the Code of Alabama, and whose members are appointed by the governing body of the City of Tallassee. ALA. CODE §§ 11-54-80 to 11-54-135 (2008 & Supp. 2015). The IDB constitutes a "public industrial authority" as used within the

Tax Incentive Reform Act of 1992, which is codified in sections 40-9B-1 through 40-9B-13 of the Code. *See* ALA. CODE § 40-9B-3(a)(21) (Supp. 2015).

The Tax Incentive Reform Act of 1992 ("Act") gave concurrent power to three different entities (municipalities, counties, and public industrial authorities) to grant tax abatements allowed under the Act. ALA. CODE §§ 40-9B-1 to 40-9B-13 (2011 & Supp. 2015). This Office has previously stated the following:

> The intent of the act is to encourage industrial development within the State and to provide some incentives through the abatement of some taxes. A private user may apply for and be granted, if the property constitutes industrial development property, an abatement of noneducational ad valorem taxes, construction-related transaction taxes, and mortgage and recording taxes.

Opinion to Honorable Keith Mahaffey, Mayor, Town of Vance, dated April 18, 2005, A.G. No. 2005-112 at 2.

The Act, as originally enacted, set forth the respective geographic areas within which the three different entities could grant abatements: (1) for a municipality, within its corporate limits or police jurisdiction; (2) for a county, within the unincorporated area of that county unless consented to by the relevant municipality; and (3) for a public industrial authority, within its statutorily defined jurisdiction. *See* 1992 Ala. Acts No. 92-599, 1239, 1243 (Section 5).

Your request states that over time after the passage of this Act, certain IDBs around the state adopted a practice of granting abatements of all taxes except those levied by their creating municipality. In 2002, in an apparent effort to prohibit this practice, the 1992 Act was amended by Act 2002-265 to provide that municipalities and IDBs are prohibited from abating county-levied taxes unless they also abate "the corresponding municipal taxes." 2002 Ala. Acts No. 2002-265, 548 (amending section 40-9B-5).

In 2005, the Town of Vance requested an opinion from the Attorney General as to whether section 40-9B-5, as amended in 2002, allowed the municipality and/or its industrial development board to abate the county-levied noneducational ad valorem taxes if the town did not actually levy municipal ad valorem taxes. Opinion to Honorable Keith Mahaffey, Mayor, Town of Vance, dated April 18, 2005, A.G. No. 2005-112. That opinion, relying on the plain language of the statute, simply concluded that neither a municipality nor its industrial development board could abate county ad valorem taxes if there were no corresponding municipal taxes imposed by the municipality that would also

be abated. *Id.* at 6. That opinion did not appear to consider the activities that were taking place before the 2002 amendment wherein a municipality or an IDB would abate county-levied taxes but would not abate any corresponding municipal taxes.

Upon further review of the 2002 amendments to section 40-9B-5 of the Code and the practice of abating only the county-levied taxes and not the municipal-levied taxes, it is the opinion of this Office that a municipality and its IDB may abate county-levied taxes even though the municipality has not levied any corresponding municipal taxes. If a municipality has levied any corresponding municipal taxes, those taxes must be abated if the municipality or its IDB chooses to abate the county-levied taxes.

The opinion to Honorable Keith Mahaffey, Mayor, Town of Vance, dated April 18, 2005, A.G. No. 2005-112, is hereby overruled.

CONCLUSION

The fact that a municipality levies no ad valorem tax does not deprive that municipality and its Industrial Development Board of their power, pursuant to sections 40-9B-4 and 40-9B-5 of the Code of Alabama, to grant abatements of county-levied noneducational ad valorem taxes.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE
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By:

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