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DeKalb County State's Attorney**

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November 13, 2018

Via E-Mail & U.S. Mail
Mayor Jerry Smith
Mayor's Office
200 South Fourth Street, Room 203
DeKalb, IL 60115

Mayor Smith,

This past week has brought about some heightened concerns as to the handling of funds by the City of DeKalb under multiple administrations. However, there has been one pervasive issue that the City and some of its taxing districts have been addressing for a couple months. During discussion on the formation of a Tax Increment Financing (TIF) District No. 3, the status of the other TIF Districts located within the City of DeKalb have become a concern for the affected taxing districts as well as the DeKalb County community at large. Potential improper utilization of TIF funds to pay for the City's unrelated administrative costs, in possible contravention of 65 ILCS 5/11-74.4-3(q)(1.5), has created a need for clarification and investigation. The actions of the City in controlling said TIF's without any apparent oversight by the Joint Review Board (JRB) has led to a situation that must be addressed. The possibility that \$10,000,000.00, or more, in TIF funds were allegedly diverted over approximately 10 years, to be otherwise utilized by the City, is an issue that does not lend itself to quick solutions. Instead, an approach must be taken to reassure the public's trust in local government. To put it succinctly - it must be addressed in public view.

We are of course aware that the aforementioned issues have been raised by taxing districts within the TIF's and have resulted in the City discussing and drafting an Intergovernmental Agreement between the affected taxing districts and the City. As we understand it, the agreement would entail the City declaring an approximately \$11,250,000.00 surplus from said TIF funds, and in exchange obtain waivers for any possible misuse of funds during the prior years of administrative cost allocation. Such waivers would apparently declare those

administrative costs to no longer be questionable by the taxing bodies involved. This in exchange for releasing the funds that are currently held in surplus. During the discussions on this outcome, it has been readily apparent that the City has utilized high pressure and extremely short drafting deadlines to place the taxing districts in a 'part or none' position, where the amount received would not contain any past funds that other districts allege they were to receive. Our office is not comfortable with this approach and the position it has placed everyone in.

Some taxing districts opine that the currently held surplus funds should be released to the taxing districts regardless of the City's desire to seek waivers and that these funds should not be held in abeyance until such waivers are provided. That is an understandable view. At the same time, this office understands that the several taxing districts would be well served to receive some of the funds withheld from them by alleged misuse of these TIF's funds. Yet, in this discussion of releasing current TIF surplus funds and obtaining waivers, there is no discussion as to the tax money that may have been previously misapplied to the City's administrative (or other) costs, and how those funds would be accounted for and returned to the taxing bodies to provide the necessary services to their citizens. Accordingly, while the proposed solution appears simple, it does not assist the tax payer in understanding the consequence to them individually and their own tax bill.

With that being said, the DeKalb County State's Attorney's Office understands that the JRB is comprised of the City of DeKalb, the County of DeKalb, the DeKalb Community Unit School District No. 428, the DeKalb Township, the DeKalb Township Road and Bridge District, the DeKalb Park District, the Kishwaukee Community College, the DeKalb Public Library, the DeKalb Forest Preserve District and the Kishwaukee Water Reclamation District. Each of these bodies deserve a voice in how this is handled. It is our recommendation, and our request, that the JRB meet and approve a forensic audit to be done on the multiple TIF districts found within the City of DeKalb. In an effort to assuage concerns as to prior auditors and interests, it is our belief that a new and unrelated auditor must be chosen to perform this task, with the oversight of the State's Attorney's Office and the JRB. The method to choose such auditor would be in the purview of the JRB, but to assist in reaching a clear and independent result – the State's Attorney's Office would volunteer to locate and engage an auditor for this purpose.

Furthermore, while these issues are being analyzed, the City controlling the movement of these TIF funds, and their future release to taxing districts or a newly created TIF 3, is not in the public's best interests. Therefore, the State's Attorney's Office is requesting that all current TIF 1 and TIF 2 funds should be placed into escrow, and not utilized for any purpose other than the expenses involved in performing the forensic audit and any expenses that the JRB determines are necessary by a 3/4 majority vote. Once the audit is completed, its results should be provided to the public and the named government entities. At that time, the discussion of how to utilize the funds, distribute surpluses and account for any possible prior mishandling can take place in earnest.

The State's Attorney's Office understands that this position, which it has taken since the issue arose, is one that may be untenable to some of the taxing districts as they desire to obtain the currently withheld funds for their needs. However, we make this recommendation with the belief that the allegations of misuse of TIF funds cannot be passed over without a proper accounting and a determination as to the veracity of those claims. This is owed to the City and to each of the taxing districts. More importantly, the public who entrusts each taxing district with portions of their hard-earned paychecks deserve to know what such money is being used for and that honesty prevails in their governments' actions.

I look forward to hearing from you, and all of the JRB, in the coming days to determine how the collective seeks to move forward and address this situation.

Very truly yours,



Rick Amato
DeKalb County State's Attorney
DeKalb County, Illinois

cc: City of DeKalb Council (David Jacobson, Bill Finucane, Michael Marquardt, Patrick Fagen, Kate Noreiko, Mike Verbic and Anthony Faivre); Bill Cummings - President, The DeKalb Public Library; Victoria Newport - School Board President, The DeKalb Community Unit School District No. 428; Jennifer Jeep Johnson - Township Supervisor, DeKalb Township; Craig Smith - Highway Commissioner, DeKalb Township Road District; Phil Young - President, The DeKalb Park District; Dr. Laurie Borowicz - President, Kishwaukee Community College; Mark Pietrowski, Jr. - Chairman, The County of DeKalb and President, The DeKalb Forest Preserve District; Dennis J. Collins - President, Kishwaukee Water Reclamation District