



Don't take granting grants for granted

By John D. Stefaniuk, Partner, Thompson Dorfman Sweatman LLP

Here is how it sometimes goes. The developers of a shiny new industry come to town with promises of employment, opportunity, population growth and a larger tax base for the municipality. There is just one small catch: in order to make a go of it, all the project proponent needs is a little break on the municipal taxes for the development. If they can't get that, well, there is another municipality down the road that wants the development to be built there instead. Now, the first municipality has to consider whether and how it might offer financial assistance to this new venture, lest the perceived opportunity disappear.

At law a municipality has no power to make grants except as specifically granted by legislation. Such was held to be the case the interesting New Brunswick case of *Sobeys Leased Properties v. Town of Newcastle*. Oddly enough, Sobeys was none too thrilled when it found out that the Town Council had, by resolution, approved a long-term grant to its competitor, Atlantic Wholesalers, who planned to construct a rival store. Sobeys took the Town to court and had the resolution (and, of course, the grant) set aside. The grant, which was tied to the assessed value of the new store, was held to be outside of the Town's general powers to promote industrial development.

In a 2003 New Brunswick case, forestry giant Weyerhaeuser Company went to court and successfully had an agreement set aside under which the City of Mirimichi had agreed to provide a rival saw mill operator loan assistance and guarantees that would permit the construction of a large mill in the City.

Under the old *Municipal Act* it was easy to 'just say no' in Manitoba. The municipality had very limited powers to make grants, and businesses were not among the class of entities who could benefit from such grants. The City of Winnipeg enjoyed broader powers under its Act. Since legislative amendments in 1996 (and more so since 2004), however, the latitude given to municipalities outside of Winnipeg to make

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“A municipality may also now introduce a financial assistance program that can be used to provide tax credits or grants.”

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grants has increased.

Section 258(4) of *The Municipal Act* now enables municipalities to make grants for the purposes of “economic development,” which is defined in the *Act* to mean “the establishment, expansion or continuation of a business or industry.” Although this appears on its face to be a broad power, the section goes on to provide that no grant may be made for the purpose of directly or indirectly reducing or reimbursing the developer for municipal or school taxes.

The *Act* does allow for grants to a municipal development corporation made up of



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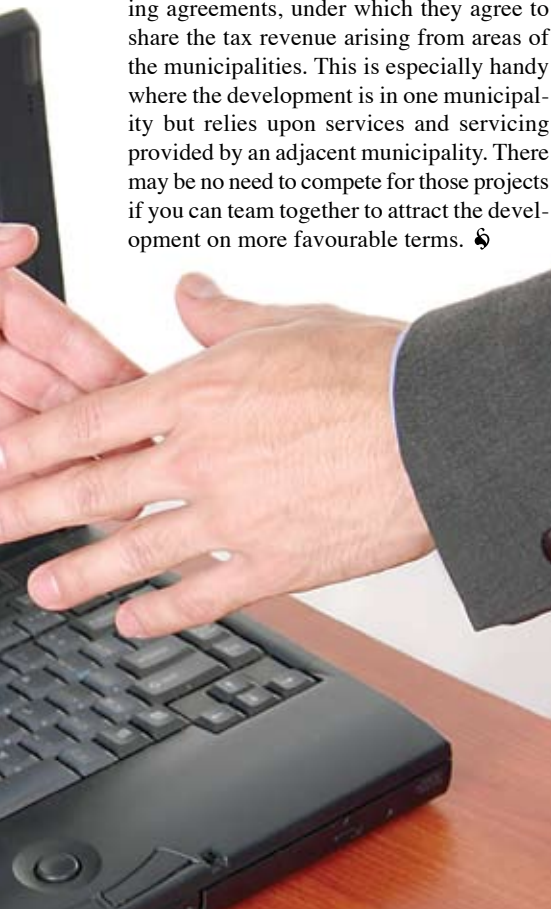
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one or more municipalities as its membership. Again, those monies cannot then be used by the development corporation to reduce or rebate anyone's municipal or school taxes. Further, any agreement by which a municipality provides grant funding to a municipal development corporation may not extend past the term of the current council.

A municipality may also now introduce a financial assistance program that can be used to provide tax credits or grants, but this must be done through a by-law that sets the criteria for eligibility. Presumably this program would be open to any eligible parties, so it should be carefully structured so as not to cause an unexpected burden on the municipal coffers.

There is also an entirely new concept (well, new to Manitoba) of tax increment financing under the *Act*. That allows a municipality to establish a program in which the incremental increase in municipal taxes raised from an area may be set aside and ploughed back into the area in the form of incentives to investment and improvements to infrastructure, among other things.

Finally, municipalities can (and some already do) team up and enter into tax sharing agreements, under which they agree to share the tax revenue arising from areas of the municipalities. This is especially handy where the development is in one municipality but relies upon services and servicing provided by an adjacent municipality. There may be no need to compete for those projects if you can team together to attract the development on more favourable terms. ☛





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