



July 13, 2000

Ms. M. Suzy Rice
Rolling Fork Owners Committee, Inc.
3900 Essex, Suite 1070
Houston, Texas 77027

OR2000-2625

Dear Ms. Rice:

You have requested the opinion of this office as to whether the Rolling Fork Owners Committee, Inc. (the "committee"), a private property owners' association which you represent, is subject to the requirements of the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID 137031.

You argue that the committee is not subject to the Act. An individual has provided comments to this office arguing that the committee is subject to the Act. We have considered your comments and those of the interested person. *See* Gov't Code §§ 552.304, 552.305(b) (person may submit comments why information should or should not be disclosed).

Property owners' associations which meet the specifications of Government Code section 552.0035 are subject to the Public Information Act. This section provides:

A property owners' association is subject to [the Act] in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;
- (2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

All three conditions of the statute must apply. You acknowledge that subsections (1) and (2) apply to the committee, but assert that subsection (3) does not. You represent that “the amount of the assessment has never been based, in whole or in part, on the value at which the state or local governmental body assesses the property for purposes of ad valorem taxation.”

The person opposing your position argues that the committee meets the requirements of subsection (3). This person relies in part on his observation that the committee uses Harris County Appraisal District tax records to verify qualification for an “over 65” exemption which lowers the commission’s maintenance fees for certain property owners. He contends that

[b]asically because the Over 65 exemption clearly affects the value at which the Harris County Appraisal District assess taxes for purposes of ad valorem taxation and Rolling Fork bases a part of its maintenance fees upon that determination, I assert that Rolling Fork meets the third category [of 552.0035] as well.

As this person explains, the determination by the committee is made on the basis that the property owner has demonstrated an age requirement to the satisfaction of the appraisal district. Thus, the age of a property owner may simultaneously affect the taxing authority’s assessment of that owner’s property and the commission’s decision to allow an exemption that lowers the maintenance fees for that property owner’s property. It is, therefore, the age of the owner, rather than the taxing authority’s valuation of the property, that is the basis for the commission’s decision in this regard. We find that this use of records by the committee does not implicate Government Code section 552.0035(3).

This person also contends that because the committee has not provided copies of *all* past deed restrictions, it has not established that committee assessments have *never* been based on valuations by taxing authorities. However, he does not provide any evidence of current or former committee assessments that are or were based on property valuations made for purposes of ad valorem taxation. The committee provided a copy of the original Declaration of Covenants, Conditions, and Restrictions, and the amended Declaration which is currently in effect. These documents are evidence that it is the current and past practice of the committee to assess fees on a per lot basis, irrespective of the assessed value of the lot. As previously noted, the committee represents that “the amount of the assessment has never been based, in whole or in part, on the value at which the state or local governmental body

assesses the property for purposes of ad valorem taxation.” From our review of the submitted documents, and in the absence of evidence to the contrary, we accept this assertion as true. We conclude that Rolling Fork Owners Committee, Inc. is not made subject to the requirements of the chapter 552 of the Government Code by section 552.0035 of that code.

The individual who provided comments in opposition to the commission’s position also argues that the committee is subject to the Public Information Act as a result of its contractual involvement with the “Precinct five Contract Deputy Program.” This individual apparently contends that the committee is a “governmental body” by virtue of this involvement.

Information that is collected assembled or maintained in connection with the transaction of a governmental body’s official business is subject to the disclosure requirements of the Public Information Act Gov’t Code §552.002 Section 552.003 of the Government Code defines “governmental body,” in part, as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

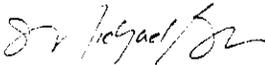
Gov’t Code § 552.003(a)(10). Courts, as well as this office, previously have considered the scope of the Public Information Act’s definition of “governmental body.” In *Kneeland v. National Collegiate Athletic Ass’n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses “governmental bodies” subject to the Act “‘simply because [the persons or businesses] provide specific goods or services under a contract with a government body.’” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the Attorney General’s office generally examines the facts of the relationship between the private entity:

[t]he opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’”

The interested person apparently bases his position on the relationship between the committee and Harris County Constable Precinct 4. The materials submitted by this individual indicate that the committee has contracted with Harris County Constable Precinct 4; that this law enforcement agency provides services under the terms of that contract; and that the contract is funded in part by the committee and in part by Harris County. There is no indication in the argument or materials provided by this individual that the committee receives any public funding, or that it performs any services which are traditionally performed by governmental bodies. Nor is the committee acting in any way as the agent of a governmental body. It merely contracts with a governmental body for certain services to be performed by that governmental body. We find that the committee is not made a “governmental body,” by reason of this contractual relationship.

We conclude that the committee is not subject to chapter 552 of the Government Code. If the commission, the individual who submitted comments to this office, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 137031

Encl Submitted documents

cc: Mr. Craig Guetersloh
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