



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 6, 1993

Honorable A. J. (Jack) Hartel
Liberty County Attorney
P.O. Box 9127
Liberty, Texas 77575-9127

Letter Opinion No. 93-35

Re: Whether a navigation district may enter into a tax abatement agreement when a board member of the navigation district owns an interest in the property receiving the tax abatement (RQ-324)

Dear Mr. Hartel:

In Attorney General Opinion DM-90 (1992), you asked two questions regarding the authority of the Chambers-Liberty Counties Navigation District ("the district") to enter into a tax abatement agreement. You first asked whether the district had the authority to enter into a tax abatement agreement pertaining to land that is the subject of a county tax abatement agreement executed on November 27, 1990. Secondly, you asked whether the district had the authority to enter into a similar agreement with a landowner if a board member of the district owns an interest in the property receiving the tax abatement.

In response to your first question, we construed chapter 312 of the Tax Code. Chapter 312 authorizes a county or municipality to grant tax exemptions to owners of land designated as a reinvestment zone pursuant to section 312.201 of the code or as an enterprise zone under the Texas Enterprise Zone Act, articles 5190.7, V.T.C.S. *See also* § 312.2011. However, when the property at issue is located within another taxing unit, the governing body of that taxing unit is authorized to enter into an abatement agreement pertaining to the same land only for a period not to exceed ninety days from the date of execution of the county or municipal agreement. Tax Code § 312.402(b). We did not reach your second question because we concluded that the authority of the district to enter into the agreement at issue in that opinion had already expired.

You now ask a question regarding a potential conflict of interest in a situation where a district is still empowered to vote on an abatement agreement. More specifically, you ask whether the district may enter into an abatement agreement when a board member of the district owns an interest in the property receiving the abatement.

Chapter 171 contains the general conflicts of interest rules applicable to local public officials. It preempts the common law of conflicts of interest as applied to this class of individuals. Local Gov't Code § 171.007.¹ The chapter defines a local public official as

¹Texas common law prohibited a public officer from having any personal financial interest in a contract entered into by the governmental body of which he was a member. *See Meyers v. Walker*, 276

a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

Id. § 171.001. Thus, a board member of the navigation district is a "local public official" for purposes of chapter 171. *Id.*; Attorney General Opinion JM-1060 (1989).

The chapter makes it an offense for a local public official to participate in a vote or decision on a matter involving a business entity or real property in which the official has a substantial interest. The prohibition applies if it is reasonably foreseeable that an action on the matter at issue would confer a "special economic effect on the business entity that is distinguishable from the effect on the public" or if it is reasonably foreseeable that the proposed action will have a "special economic effect on the value of the property distinguishable from its effect on the public." Local Gov't Code § 171.004(a)(1) - (2). Whether a "special economic effect" on the value of the property is "reasonably foreseeable" as a result of a particular action is generally a fact question that can not be resolved in the opinion process.

Chapter 171 defines "substantial interest" with regard to real property as an equitable or legal interest valued at \$2,500 or more. *Id.* § 171.002(b); *see* Attorney General Opinion DM-130 (1992) (holding that in certain circumstances chapter 171 prohibits a city council member from voting on a zoning matter affecting territory in which the member's residence is located). You have not provided us with sufficient information to determine whether a substantial interest in real property exists on behalf of the board member at issue.

However, in the event that such an interest exists, chapter 171 requires that the board member must

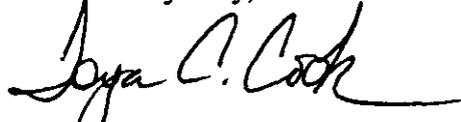
file [with the official record keeper of the governmental entity], before a vote or decision on any matter involving the business entity or real property, an affidavit stating the nature and extent of the interest, and shall abstain from further participation in the matter.

Id. § 171.004(a). This office has determined that participation includes deliberation with the other members of the governing body. Attorney General Opinions JM-1187 at 4; JM-379 (1985).

S U M M A R Y

The Chamber-Liberty Counties Navigation District is subject to chapter 171 of the Local Government Code, which governs conflicts of interest for local government officials. A district board member who possesses a "substantial interest" in real property that would be affected by a proposed tax abatement must follow the recusal procedures set forth in § 171.004(a) of the Local Government Code. Whether a member of the district board who owns an interest in property receiving a proposed tax abatement from the district possesses a "substantial interest" depends upon the facts surrounding the transaction at issue.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toya C. Cook". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Toya C. Cook
Assistant Attorney General
Opinion Committee