



Office of the Attorney General
State of Texas

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November 17, 1995

Honorable Al Edwards
Chair
Committee on Rules and Resolutions
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 95-072

Re: Whether a municipality may use sales taxes levied pursuant to section 4B of article 5190.6, V.T.C.S., to construct sanitary sewer lines in an existing residential subdivision (RQ-824)

Dear Representative Edwards:

You ask whether a municipality may use sales taxes levied pursuant to section 4B of article 5190.6, V.T.C.S., to construct sanitary sewer lines in an existing residential subdivision. The answer to your question depends upon the meaning of the term "project" for purposes of section 4B.

Subsection (a) of section 4B defines the term "project" as follows:

(a) In this section:

....

(2) "Project" means land, buildings, equipment, facilities, and improvements included in the definition of that term under Section 2 of this Act, including stadiums, recycling facilities, and land, buildings, equipment, facilities, and improvements found by the board of directors to:

(A) be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, learning centers, parks and park facilities, open space improvements, municipal buildings, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, *and related roads, streets, and water and sewer facilities*, and other related improvements that enhance any of those items; or

(B) promote or develop new or expanded business enterprises, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, as well as any improvements or facilities that are related to any of those projects and *any other project that the board determines in its discretion promotes or develops new or expanded business enterprises.*

V.T.C.S. art. 5190.6, § 4B(a) (emphasis added).

We consider whether the construction of sanitary sewer lines in an existing residential subdivision falls within the definition of "project" under either subpart of the foregoing definition.¹ Section 4B(a)(2)(A) refers to sewer facilities related to sports and entertainment centers, and appears to be limited to sewer facilities related to such centers. The section 4B(a)(2)(A) definition of "project" does not appear to embrace construction of sanitary sewer lines in an existing residential subdivision.

Section 4B(a)(2)(B), on the other hand, is broadly written. Although it lists certain kinds of projects, it also generally refers to "any other project that the board *in its discretion* determines promotes or develops new or expanded business enterprises." (Emphasis added.) Clearly, section 4B authorizes a board of directors of any development

¹Section 2(10) of article 5190.6 defines the term "project" to mean

the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of development and expansion of manufacturing and industrial facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, and facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the [Texas Department of Commerce].

The section 2(10) definition of "project" refers to "sewage or solid waste disposal facilities . . . and facilities which are related to any of the foregoing." A "project" under this definition must be "in furtherance of the public purposes" of article 5190.6. Given our conclusion, we do not decide here whether the section 4B(a)(2) definition of "project" is intended to supplement or restrict the section 2(10) definition of the term. See V.T.C.S. art. 5190.6, § 4B(a) ("Project" means land, buildings, equipment, facilities, and improvements included in the definition of that term under Section 2 of this Act, including . . ."), (g) (providing that tax proceeds levied pursuant to section 4B may be used to "pay the costs of projects of the types added to the definition of that term by Subsection (a) of this section").

corporation organized under article 5190.6² to determine whether the construction of sanitary sewer lines in an existing residential subdivision would promote or develop new or expanded business enterprises. Although it seems unlikely that the construction of sewer facilities in a residential subdivision would promote or develop new or expanded business enterprises, we cannot exclude the possibility as a matter of law. Furthermore, a board's determination would be reviewed under an abuse of discretion standard. Whether the board abused its discretion would require the resolution of factual issues and therefore would be beyond the purview of the opinion process.

S U M M A R Y

V.T.C.S. article 5190.6, section 4B authorizes the board of directors of a development corporation organized under V.T.C.S. article 5190.6 to determine whether the construction of sanitary sewer lines in an existing residential subdivision would promote or develop new or expanded business enterprises. Although it seems unlikely that the construction of sewer facilities in a residential subdivision would promote or develop new or expanded business enterprises, this office cannot exclude the possibility as a matter of law. The board's determination would be reviewed under an abuse of discretion standard.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

²See V.T.C.S. art. 5190.6, § 2(1) (defining "board of directors").