



THE TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON URBAN AFFAIRS

RQ-710

SJS

FRED HILL
CHAIRMAN

FILE # ML-27/26-94

Ms. Madeleine B. Johnson
Chair, Opinion Committee
Office of the Attorney General
PO Box 12548
Austin, Texas 78711-2548

I.D.# 27/26

RECEIVED

June 1, 1994

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Dear Ms. Johnson,

Opinion Committee

Re: 23624

In my capacity as chair of the House Committee on Urban Affairs, the Mayor of the City of Balcones Heights has asked me to request an opinion from your committee regarding the power and jurisdiction of public housing authorities. The specific question is whether or not these entities have the authority to go outside of their area of operation to administer federal housing assistance programs.

Balcones Heights is a small general law city in Bexar County. The city was incorporated in the 1940s, and San Antonio grew to surround Balcones Heights many years ago. Bexar County Housing Authority and the San Antonio Housing Authority are operating within the boundaries of the City of Balcones Heights under the guise of administering federal funds to federal housing assistance programs, including the "Section 8" housing program implemented by the Housing and Community Development Act of 1987, 42 U.S.C. §1437f(r). The San Antonio and Bexar County Housing Authorities have used Section 8 to justify their administration of programs outside of the jurisdictional limitations placed on them by state law. This has significantly effected the sovereignty of the City of Balcones Heights in that substantial portions of several apartment projects within the city limits are now administered by the City of San Antonio Housing Authority and the Bexar County Housing Authority. These entities are in no way answerable to the City of Balcones Heights.

According the Balcones Heights' officials, these federal housing programs call for the administering authorities to contract directly with landlords for rent payment. The rent money comes from the Department of Housing and Urban Development (HUD). The housing authorities administrative duties for the projects include but are not limited to: inspecting the premises for compliance with minimum standards set by the authorities and HUD; policing the tenants to prevent occupancy by persons of more than one family; and evicting tenants for certain activities including the commission of various crimes. The public housing authorities hold fact-finding hearings regarding evictions and periodically inspect the premises to enforce minimum housing standards.

Balcones Heights has no interlocal cooperative agreement or other arrangement with any housing authority at this time. An Attorney General's opinion on this issue would help clarify the power of other municipal housing authorities or county housing authorities to conduct federal programs and administer federal housing project assistance outside their areas of operation without a cooperative agreement or similar arrangement. The following support information might help expedite the opinion.

A county or municipal housing authority's power and jurisdiction are set by Section 392 of the Texas Local Government Code. Section 392.002(6) defines a housing project as follows:

... a work or other undertaking to: "B) provide decent, safe, and sanitary urban or rural housing for persons of low income...including site preparation, gardening, administrative, community health, recreational, educational, or welfare purposes.

Section 392.011 creates housing authorities as "public bodies corporate and politic of the state." Attorney General opinions JM-573 and DM-71 both concluded that municipal housing authorities are divisions of municipalities and, as such, are subject to the laws applicable to municipalities in general. See also Miers v. Housing Authority of Dallas, 266 S.W.2d 487 (Tex. Civ. App. - Dallas 1954, writ n.r.e.).

Section 392.014 and §392.015 of the Texas Local Government Code define areas of operation of a municipal or county housing authority as being those areas lying within the municipality or county, but not within the territorial boundaries of a different municipality. Section 392.017 prohibits county housing authorities from undertaking a housing project in a municipality unless in connection with an agreement with the municipality in which the project is to be located.

In DM-71, Attorney General Morales stated that housing authorities administering federal projects were subject to state statutes prohibiting regulation of firearms by municipalities. Additional housing authority regulation of guns in federal projects they administer was prohibited.

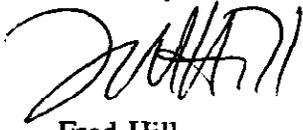
In JM- 687, Attorney General Mattox found that housing authorities administering federal programs were nevertheless subject to state competitive bidding statutes for municipalities. This was the holding in spite of the fact that the authority wanted to participate in the federal HUD Procurement Program, which had its own federal bidding procedure apart from the state competitive bidding statutes in the Local Government Code. [See also JM-132 (1980)].

It would seem, then, that housing authorities are subject to the Local Government Code provisions creating and enabling them. The state enabling statutes, and the powers and limitations provided therein, are not preempted by the fact that an authority happens to be receiving federal funds or administering a federal program. In fact, due to the attorney generals' opinions cited above regarding competitive bidding, the Texas Legislature had to pass a specific, narrow exception allowing a housing authority to participate in the federal purchasing programs. [See Texas Local Government Code §392.0565(a)]. Specific state law was required before authorities could operate under the federal program. State law, therefore, defines the power and ability of housing authorities to participate in federal programs. They cannot participate if they lack the state law authorization.

Finally, it has also been ruled repeatedly that state agencies or subdivisions of state government, such as municipal or county housing authorities, must have legislative authorization to receive gifts and grants, since conditions attached to them may be inconsistent with the powers and duties given to that agency by state law. [See Attorney Generals' Opinions H-1180 (1978), O-4681 (1942), and JM-942 (1988)].

Since other city and county housing authorities are currently operating in Balcones Heights without an agreement or arrangement, I respectfully request that your committee render an opinion on this issue as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Hill", written in a cursive style.

Fred Hill