

SENATE INTERGOVERNMENTAL RELATIONS COMMITTEE

75TH LEGISLATURE

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February 3, 1998

FILE # ML-40073-98 RECEIVED

I.D. # 40073

FEB 12 1998

The Honorable Dan Morales
Attorney General
The State of Texas
P.O. Box 12548
Austin, TX 78711

RQ-1084

Opinion Committee

Dear General Morales:

As Chairman of the Senate Intergovernmental Relations Committee, I respectfully request your official opinion on a matter concerning the City of Brownsville.

The City of Brownsville has a question concerning whether the mayor of Brownsville or the Brownsville city manager, or both, have the authority under state law to remove commissioners of the Housing Authority of Brownsville. For your information, I have enclosed a copy of the city's inquiry. I would sincerely appreciate an expeditious review of this inquiry since the city needs this information as soon as possible.

Again, I appreciate your help on this important matter, and look forward to receiving your response.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr.".

Eddie Lucio, Jr.
State Senator

Enclosure
ELJ/mmm



JOHN E. CHOSY

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February 2, 1998

Senator Eddie Lucio, Jr.
33 North Park Plaza
Brownsville, Texas 78521

Dear Sen. Lucio:

I am the attorney for the Housing Authority of the City of Brownsville, Texas. Its Board of Commissioners has instructed me to seek your assistance in obtaining a formal written opinion from the Texas Attorney General on whether the mayor of the City of Brownsville or the Brownsville city manager or both have the authority under state law to remove commissioners of the Housing Authority.

The Housing Authority of the City of Brownsville, Texas (hereinafter "BHA") is a municipal housing authority created under Section 392.011 of the Texas Local Government Code. BHA was authorized to transact business and exercise its powers by resolution adopted by the Brownsville City Commission on March 24, 1938 pursuant to Section 392.011(c) of the Texas Local Government Code.

Brownsville, Texas is a home rule city with a city manager form of government. Its governing body is the City Commission consisting of a mayor and four commissioners. I have enclosed copies of Article V, Section 11 of the Brownsville City Charter setting forth the duties of the mayor and Article V., Sections 20 and 21 of the Charter setting forth the duties of the city manager. Also enclosed is the pertinent portion of Ordinance 93-2170, confirming an amendment to Section 20.

Section 392.041(a) of the Texas Local Government Code provides:

"The mayor may remove a commissioner of a municipal housing authority for inefficiency, neglect of duty, or misconduct in office."

Section 392.002(7) of the Texas Local Government Code defines "mayor" as:

"'Mayor' means the mayor of a municipality or the officer given the duties customarily imposed on the mayor or executive head of a municipality"

Article V, Section 20 of the Brownsville City Charter reads, in pertinent part:

"The [city] commission shall appoint an officer whose title shall be city manager, and he shall be the chief executive officer and head of the administrative branch of the city government."

Article V, Section 21 of the Brownsville City Charter specifies the duties of the City manager in some detail, charging the city manager with conserving the peace, supervising municipal administrative affairs, preparing budgets for the city commission, and so forth.

Under the sections of the Brownsville City Charter cited in this letter, it appears to me that the "executive head" of the City of Brownsville is the city manager, suggesting that both the mayor and the city manager have the power to remove a housing commissioner.

I call to your attention Section 392.031 of the Texas Local Government Code which vests the power to appoint housing commissioners in "the presiding officer of the governing body of a municipality...." Among the duties of the mayor of the City of Brownsville specified in Article V, Section 11 of the Brownsville City Charter is "the presiding officer of the [city] commission." Clearly, the power to appoint lies with the mayor but Section 392.041 seems to undercut this power by vesting removal power in both the mayor and the city manager with each able to exercise the removal power independently of the other.

This presents the anomalous situation where the city manager can effectively overrule the mayor's exercise of a power expressly given to the mayor by state law. One can envision a scenario where the mayor appoints a particular commissioner, the city manager removes that commissioner, the mayor re-appoints that commissioner, the city manager re-removes the commissioner, and so on.

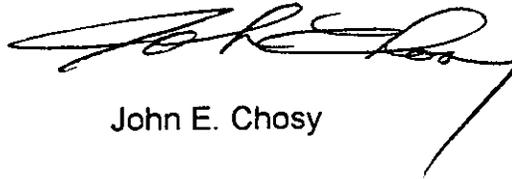
Senator Eddie Lucio
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Because of the need to settle this issue once and for all, the Board of Commissioners of the Housing Authority of the City of Brownsville, Texas respectfully requests your assistance in getting a formal written opinion from the Texas Attorney General on who has authority under state law and the Brownsville City Charter to remove a housing commissioner.

I have enclosed copies of all of the statutes cited in this letter. Please let me know if you or the Attorney General's office need any additional information.

Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Chosy", with a long, sweeping underline that extends to the right.

John E. Chosy

JEC/lac
enc.