



BILL RATLIFF
STATE SENATOR

Committees:
FINANCE, Chairman
EDUCATION
Subcommittee on Higher Education
NATURAL RESOURCES
LEGISLATIVE BUDGET BOARD

P.O. BOX 12068
CAPITOL BUILDING
AUSTIN, TEXAS 78711
512/463-0101
FAX: 512/475-3751
TDD: 1-800-735-2989

DISTRICT OFFICE
P.O. BOX 1218
MOUNT PLEASANT, TEXAS 75456-1218
903/572-1887
FAX 903/577-1412

August 11, 2000

RECEIVED

RECEIVED

FILE # ML 41572-00 AUG 16 2000

AUG 16 2000

I.D. # 41572 OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

The Honorable John Cornyn
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548

OPINION COMM. ...

1590 SG

Re: The applicability of certain state law to local government corporations formed pursuant to the Texas Transportation Code.

RQ-0269-gc

Dear General Cornyn:

The purpose of this letter is to request your opinion on the applicability of certain state laws to local government corporations as a result of amendments made last session that affected the powers of these corporations.

In 1999, the Legislature passed H.B. 2684, a bill dealing primarily with tax increment financing and reinvestment zones. Act of May 29, 1999, 76th Leg., R.S., ch. 983, § 12, 1999 Tex. Gen. Laws 3763. Part of this bill, however, amended subchapter D, Chapter 431 of the Transportation Code by providing that local government corporations may be created "...to accomplish any governmental purpose of those local governments." TEX. TRANSP. CODE ANN. § 431.101(a) (Vernon Supp. 2000) (as added by Act of May 29, 1999, 76th Leg., R.S., ch. 983, § 12, 1999 Tex. Gen. Laws 3763, 3768). In addition, certain provisions of the Texas Housing Finance Corporations Act were referenced in the amendments to the Transportation Code in an apparent attempt to grant the corporations more latitude in procurement matters than other governmental entities are afforded under state law. *Id.* § 431.101(e) (Vernon Supp. 2000). *See also*, TEX. LOC. GOV'T CODE ANN. §§ 252.021-.049 (Vernon 1999 & Supp. 2000) (purchasing authority of municipalities), §§ 262.021-.035 (Vernon 1999 & Supp. 2000) (purchasing authority of counties), TEX. GOV'T CODE §§ 2155.001-.448 (Vernon 2000) (state purchasing rules and procedures).

In a previous Attorney General Opinion, you determined that the amendments from last session exempt all the contracts of the local government corporation from the competitive bidding requirements of the local government that created it. Op. Tex. Att'y Gen. No. JC-206 (2000). However, the opinion raises a number of other questions about the breadth of the grant of authority to local government corporations and about the other provisions of law the corporations are exempt from. For example, do the requirements of the Texas Open Meetings Act and the Texas Public Records Act apply to these entities? *See* TEX. GOV'T CODE ANN. §§ 551.001-.146, 552.001-.353 (Vernon 2000). In addition, since the amended language provides that the corporations are exempt



The Honorable John Corn
Attorney General of Texas
August 11, 2000
Page 2

from restrictions related to “the acquisition, construction, or rehabilitation” of “property and improvements owned by the local government corporation”, but are silent as to design of the improvements, does the Professional Services Procurement Act apply when the corporation needs the services of an architect or engineer? See TEX. GOV'T CODE ANN. §§ 2254.001-005 (Vernon 2000), TEX. LOC. GOV'T CODE ANN. § 394.904 (Vernon 1999), TEX. TRANSP. CODE ANN. § 431.101 (e) (Vernon Supp. 2000). Do the requirements in state law for prompt payment apply? See, TEX. GOV'T CODE ANN. §§ 2251.001-.043 (Vernon 2000). In fact, since the amended language of the Transportation Code that references section 394.904 of the Local Government Code relates specifically to the acquisition, construction or rehabilitation of a “*private residential development or a home*”, how can this provision alone be used as a justification for a broad exemption from contracting provisions applicable to other, non-residential contracts? Finally, are local governmental entities authorized to fund the operations of a local government corporation for any and all purposes?

If interpreted broadly, these amendments create an enormous loophole in statutes enacted to “...stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefits of the taxpayers and property owners.” *Texas Highway Comm'n v. Texas Ass'n of Steel Importers, Inc.*, 372 S.W.2d 525 (Tex. 1963) (citing *Sterrett V. Bell*, 240 S.W 2d 516, 520 (Tex. Civ. App.-Dallas 1951, no writ)). It does not appear that this is what the legislature intended when the statutory amendments were made last session.

I appreciate your review of these questions.

Yours very truly,



William R. Ratliff
State Senator

WRR:fb