

The Senate of The State of Texas



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OPINION COMMITTEE

Senator Eddie Lucio, Jr.

FILE # ML-44259-05
I.D. # 44259

June 27, 2005

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Capitol Station
Austin, TX 78711-2548

RQ-0359-GA

RE: Request for Attorney General's Opinion on Behalf of the Brownsville Housing Authority.

Dear General Abbott,

I am writing at the request of and on behalf of the Brownsville Housing Authority Board of Commissioners, which is requesting an Attorney General's Opinion to clarify the exact interpretation of the conflict of interest law found in Chapter 382, Local Government Code, Sections 392.042 and 392.043.

The interpretation of this law has come into question since individuals officially and indirectly linked to the Brownsville Housing Finance Corporation (BHFC) and the Brownsville Housing Authority (BHA) are interested in purchasing lots in a BHFC subdivision.

In 2003, the BHA formed a non-profit Public Facilities Corporation (PFC) pursuant to the Public Facility Corporation Act, Tex. Rev. Stat. Ann. Art. 717s. The PFC's corporate name is the Brownsville Housing Finance Corporation, established for the purpose of developing affordable housing for Brownsville residents. The BHFC has its own federal identification number.

According to its articles of incorporation and bylaws, a member of the BHFC board of directors must be a BHA commissioner. Although officer positions of the BHFC board are different than the BHA, the composition of boards are the same. The sole employee of the BHFC is paid with monies from the BHFC; however, the BHA provides the office space and other benefits via a Memorandum of Understanding between both entities.



On March 1, 2002, the BHA purchased a 20-acre tract of land utilizing funds earned for administering a federal housing program. There are a total of five appointed Commissioners on the BHA, four of which were around at the time the decision was made to purchase the land.

Once earned, the funds had to be used for housing purposes consistent with state and local laws. Although the funds are not federal, the U.S. Department of Housing and Urban Development (HUD) approved use of the funds for the purpose of acquiring 20 acres. The purchase of the land was then voted on by the entire BHA and the decision was made to transfer the land to the BHFC.

The BHFC developed and subdivided the land, which may be modified in the future. The BHFC lots are currently for sale to the general public at their market value and will be sold to the general public by the BHFC. The sale price of the lots was approved by a BHFC member vote based on prices estimated by an independent appraisal of the entire property. Although prospective buyers must be able to pay for their lots and must abide by established construction restrictions and covenants, they need not adhere to any income restrictions.

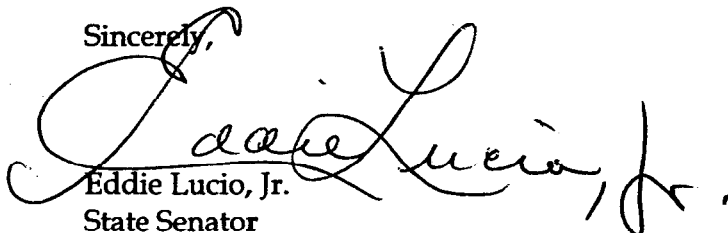
Based on the aforementioned, the Chairman of the BHA Board of Commissioners, and at least one BHA employee, would like to know if they are allowed by law to purchase BHFC lots. This situation beckons two larger questions:

- #1. Can a Housing Authority Commissioner, a BHFC Director, or an employee of the BHA or BHFC purchase lots without violating conflict of interest regulations established through Sections 392.042 and 392.043 of the Local Government Code, Chapter 392 or any other local, state, or federal law?
- #2. Is a relative (by blood or marriage) of a Housing Authority Commissioner, BHFC Director, or employee of the BHA or BHFC, precluded by law from purchasing land from the BHFC?

I am informed that the BHFC has begun to sell lots and so it is important that this issue is resolved in an expedited manner. Please do not hesitate to contact me or my staff should you have any questions or need additional information. I have included the correspondence I received from the attorney representative of the BHA Board, which further explains the situation.

Thank you in advance for your prompt attention to this matter.

Sincerely,



Eddie Lucio, Jr.
State Senator

SEL/kv