



THE TEXAS HOUSE OF REPRESENTATIVES

CHAIRMAN Local Government Ways and Means

Transportation

FRED HILL

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Legislative Budget Board

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OPINION COMMITTEE

I.D. # 045111

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78701

RQ-0564-GA

RE: Attorney General Opinion Request

Dear Attorney General Abbott:

As Chair of the House Committee on Local Government Ways and Means, I am writing to request your opinion on whether a County Appraisal District (CAD) can use in-house counsel to advise its Appraisal Review Board (ARB). More specifically, would communications regarding legal questions between the ARB and in-house counsel violate Section 6.411 of the Tax Code, which states:

§ 6.411. EX PARTE COMMUNICATIONS; PENALTY. (a) A member of an appraisal review board commits an offense if the member communicates with the chief appraiser or another employee of the appraisal district for which the appraisal review board is established in violation of Section 41.66(f).

(b) A chief appraiser or another employee of an appraisal district commits an offense if the chief appraiser or other employee communicates with a member of the appraisal review board established for the appraisal district in a circumstance in which the appraisal review board member is prohibited by Section 41.66(f) from communicating with the chief appraiser or other employee.

(c) This section does not apply to communications that do not discuss the specific evidence, argument, facts, merits, or property involved in a hearing currently pending before the appraisal review board or to communications between the board and its legal counsel.

(d) An offense under this section is a Class C misdemeanor.

Section 41.66, mentioned above, states:

(f) A member of the appraisal review board may not communicate with another person concerning:

(1) the evidence, argument, facts, merits, or any other matters related to an owner's protest, except during the hearing on the protest; or

(2) a property that is the subject of the protest, except during a hearing on another protest or other proceeding before the board at which the property is compared to other property or used in a sample of properties.

Background

Two years ago, the Travis CAD began using in-house counsel to handle legal matters before the CAD in an attempt to reduce costs. Prior to that, they had contracted with an outside law firm. This firm had been able to advise the CAD on all legal issues. These issues included discussions with the ARB on legal matters arising during the appeals process. There was no conflict with the above statute because the attorney was an outside contractor, not an employee of the CAD.

Legal Questions

Since the CAD has hired in-house counsel, that person is considered an employee of the CAD. This could prevent the ARB from discussing important legal aspects of an appeal with counsel, including "the evidence, argument, facts, merits or any other matters related to an owner's protest." This would force the ARB to discuss these matters with counsel only at public hearings.

The in-house counsel may be exempt, however, from these restrictions. subsection (c) of the above statute exempts "communications between the board and its legal counsel" from these restrictions. As such, this creates a seemingly contradictory situation: the ARB can, and must, discuss certain legal matters with their legal counsel, but cannot discuss these sensitive matters with him because he is an employee of the CAD.

Conclusion

Since the applicable statute exempts a CAD's legal counsel from restrictions on ex parte communications between its ARB and the CAD's employees, communications between an ARB and a CAD's in-house counsel should not be considered a violation of Section 6.411 of the Tax Code.

Thank you for your consideration, and I look forward to hearing your opinion on this matter.

Sincerely,



Fred Hill
Chairman, House Committee on Local Government Ways and Means