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OPINION COMMITTEE  
HOUSE OF REPRESENTATIVES



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July 29, 2013

FILE # ML-47340-13  
I.D. # 47340

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-1142-GA**

**Re: Request for Attorney General Opinion**

Dear Attorney General Abbott:

I respectfully request an Attorney General Opinion as to whether the Lake Jackson Development Corporation may expend 4B revenues to fund an economic development office without drafting new ballot language and submitting the issue of the economic development office to the voters. Set forth below is an outline of the factual background, and my understanding of the legal analysis.

In May 1995, the voters of Lake Jackson approved the collection of a sales and use under section 4B of Article 5190.6 of the Vernon's Civil Statutes (the Development Corporation Act of 1979). The ballot language was as follows:

The levy and collection of a [one-half] cent sales and use tax within the city for the purposes authorized by section 4B of Article 5190.6, Vernon's Civil Statutes, as amended (the "Act"), *but limited to* provisions for payment of the costs of land, buildings, equipment, facilities, improvements and maintenance and operation costs for public park purposes, recreational facilities to be used for sports and entertainment, and for infrastructure improvements for development of new or expanded business enterprises.

Lake Jackson, Tex., Ordinance 95-1330 (March 20, 1995) (emphasis added).

In April 1995, the City issued a newsletter explaining the sales and use tax and the intended projects to be funded with the tax revenues. *Parks, Recreation & Economic Development Half-Cent Sales Tax Election*, THE LAKE JACKSON JOURNAL, (City of Lake Jackson) April 1995, at 4-10. In this newsletter, the City explained that the half-cent sales tax would specifically be used for the building of a new recreation center, community center, outdoor pool, as well as



infrastructure improvements for the development of new and expanded businesses. *Id.* at 4. The newsletter also explained that the sales and use tax could be used for “parks and recreation projects and infrastructure that will promote economic development”. *Id.* at 10. In addition, the newsletter explained that the half-cent sales tax could not be used to finance private businesses. *Id.* The newsletter is attached to this letter.

Once approved by the voters, the City established the Lake Jackson Development Corporation to finance the projects with the sales and use tax. Since 1995, the Lake Jackson Development Corporation has built and maintained community development projects, such as a recreation center and community center, as well as improving roads for the purpose of development of new and expanded business enterprises. The City is now interested in expanding the use of the sales and use tax to fund an economic development office, including an economic development director, assistant to the director, and all of the normal office furnishings and supplies. This economic development office will be completely funded through the 4B sales tax.

The Development Corporation Act was enacted based on seven findings, one of which was that there was a need for 4A and 4B revenues to help Texas communities compete for business enterprises. TEX. LOCAL GOV'T CODE §501.004(a) (Vernon Supp. 2012). An informal survey of other cities with a 4B sales and use tax shows that most cities use the tax for economic development purposes. Lake Jackson, though, has developed community resources with the funds, rather than on economic development.

Your office has consistently explained that ballot language is a “contract with the voters”. Op. Texas Att’y Gen. No. JC-0400, at 4 (2001) (citing *San Saba County v. McCraw*, 108 S.W.2d 200 (Tex. 1937)). Further, the opinions from your office state that “representations of the governing body outside of its formal election orders or resolutions may also give rise to a contract with the voters regarding the use of funds”. *Id.* at 5.

Given that the ballot language limited use of 4B funds to specific community development projects and “infrastructure improvements for development of new or expanded business enterprises,” and given that the voters were informed, prior to the election, that the sales and use tax could be used for park and recreation projects and infrastructure that will promote economic development, may the Lake Jackson Development Corporation now expend 4B revenue to fund an economic development office without drafting new ballot language and submitting the issue of the economic development office to the voters? See TEX. LOCAL GOV'T CODE at §505.2575 (stating that if municipality limits use of sales and use tax to specific project, other projects may be performed if authorized by voters at election held for that purpose). This issue is troubling due not only to limiting ballot language, but also because, according to the Economic Development Handbook, a corporation’s projects are governed by the law that was in effect on the date the projects were approved by the voters. ATTORNEY GENERAL OF TEXAS, *The Economic Development Sales Tax*, ECONOMIC DEVELOPMENT, at 8 n.32, (2013). The statutory ability to spend 10 percent of the corporation’s revenues on promotional purposes did not exist when the Lake Jackson citizens approved the 4B sales and use tax in 1995. TEX. LOCAL GOV'T CODE at §505.103 (limiting expenditures of corporate revenues for promotional purposes to 10%); Tex. H.B. 2278, 80<sup>th</sup> Leg., R.S. (2007) (enacting TEX. LOCAL GOV'T CODE §505.103 and making section effective April 2009).

I respectfully request an opinion on the following question:

May the Lake Jackson Development Corporation, given the existing ballot language, expend 4B revenues to fund an economic development office, including two employees and office furnishings, without drafting new ballot language and submitting the issue of the economic development office to the voters?

I sincerely appreciate your consideration of this request. If I can provide any additional information or clarification, please do not hesitate to contact me.

Thank you for your assistance in this matter,

Sincerely,

A handwritten signature in cursive script that reads "Dennis Bonnen".

Dennis Bonnen  
Chair, Special Purpose Districts Committee