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HOUSE of REPRESENTATIVES

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RECEIVED

OCT 15 2013

JOE DESHOTEL

Texas State Representative  
22<sup>nd</sup> Legislative District

FILE # ML-47413-13  
I.D. # 47413

OPINION COMMITTEE

October 8, 2013

The Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

**RQ-1156-GA**

Re: Request for Attorney General Opinion Regarding the Meaning of the Term  
"Entertainment" in §505.152, Local Government Code

Dear Attorney General Abbott:

The City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") was created in 1996 pursuant to the terms of Development Corporation Act of 1979 (the "Act") now codified in Chapters 501 and 504, Local Government Code as a Section 4A economic development corporation. As a Section 4A corporation, PAEDC cannot expend funds for projects within the gambit of Chapter 505, Local Government Code except under specific statutory authority.

Section 504.152, Local Government Code (the "Code") provides an election procedure for use of Section 4A economic development sales tax monies for purposes authorized under Chapter 505 including with specificity those outlined in §505.152 of the Code. The voters of Port Arthur approved in May, 2013 a ballot proposition attached hereto as **Exhibit "A"** ("Proposition 12") which provides that certain designated Section 4A sales tax monies of PAEDC shall be directed for use in "entertainment" projects. Since, current law, court cases, and Attorney Generals' opinions do not specifically define projects encompassed under the "entertainment" category set forth in §505.152, PAEDC seeks clarification as to whether certain projects fall under the purview of entertainment as set forth under §505.152 of the Code.

Section 505.152 of the Code authorizes economic development corporations to spend sales tax monies on projects related to recreational or community facilities. Specifically, §505.152 of the Code provides:

**COMMITTEES**

**Business & Industry**  
Chairman  
**Culture, Recreation and Tourism**  
Member

For purposes of this chapter, “project” includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children’s sports, athletic, *entertainment*, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section.

Tex. Local Gov. Code §505.152 (emphasis added). The statute does not provide a definition for the term “entertainment.” As a result, the foregoing statute gives rise to possible ambiguity as a reasonable person could find numerous meanings for the word “entertainment.” See *Teleprofits of Texas, Inc. v. Sharp*, 875 S.W.2d 748, 750 (Tex. App.—Austin 1994, no writ) (stating ambiguity exists if reasonable persons can find different meanings in the statute). When a statute is determined to be ambiguous, a court’s primary objective in construing the statute is to ascertain the legislature’s intent and to give effect to that intent. *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 438 (Tex. 1997). When ascertaining the legislative intent behind an ambiguous statute, the title or heading of a statute may be considered as a guide. See *High Plains Natural Gas Co. v. Railroad Comm’n of Texas*, 467 S.W.2d 532, 539 (Tex. Civ. App.—Austin 1971, writ ref’d n.r.e.).

Acts 2007, 80<sup>th</sup> Legislature, Chapter 885, §3.01 effective April 1, 2009 describe §505.152 of the Code as “Projects Related to Recreational or Community Facilities”. Although the title of a statute does not limit or expand the meaning of the statute, it does provide insight as to projects the legislature authorized economic development corporations to fund. See Tex. Gov. Code §311.024. Based on the heading of §505.152 of the Code, a reasonable person could interpret the statute as only authorizing projects that were recreational or community facilities. In light of the foregoing ambiguity, an opinion from your office is requested to clarify categories of “entertainment” projects authorized under §505.152 of the Code.

Proposition 12 was a ballot proposition presented under the Charter of the City of Port Arthur, Texas (the “City”) relevant sections of which are attached as **Exhibit “B”**. The ballot proposition was conformed by the City to its ballot requirements and presented to the voters based upon the City’s verification that the prerequisites for a ballot proposition placement on a city ballot had been met. As hereinafter noted, Proposition 12 was approved by the voters, and no contest of the ballot proposition was timely filed. The ballot proposition is effective for the ensuing fiscal year of the City beginning October 1, 2013.

Additionally, correspondence to your offices from Truth and Education, Inc. dated June 18, 2013, is attached hereto as **Exhibit “C”** for your consideration.

PAEDC seeks clarification as to the following issues:

*I. Whether a Request to Fund Building Renovations and Equipment Upgrades for a Local Radio Station Qualifies as an Entertainment Project Under §505.152 of the Code?*

The Breeze radio station is a locally owned Low Power FM Broadcast Radio Station operated by the Truth and Education Inc., a Texas not-for profit corporation (the “Breeze”). Low Power FM stations are available to noncommercial educational entities. The Truth and Education Corporation’s mission through The Breeze radio station is to “enhance a positive image of African Americans in all Texas communities through truthful messages and education...” Additionally, the Breeze provides news information together with community events and calendars. See **Exhibit “D”** (The Breeze Radio Station Information from its Internet site).

After Proposition 12 was approved by the voters, the PAEDC received a Letter of Intent from The Breeze requesting funding for, but not limited to, building renovations and equipment upgrades. The Breeze describes its proposed project as an “entertainment” project, and believes it should receive funding from the PAEDC after the passage of Proposition 12, which authorized the PAEDC to fund “entertainment” projects pursuant to §505.152 of the Code. A copy of the specific request outlined in this paragraph is attached as **Exhibit “E”**.

As set forth above, §505.152 of the Code does not provide a clear definition of the word “entertainment” as used in the statute. Further, it is unclear whether §505.152 of the Code limits “entertainment” projects to the projects specifically listed in the statute, *i.e.* stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks, open space improvements, museums, or exhibition facilities, and additionally only “recreational or community facilities” (per the heading of §505.152 of the Code).

Section 505.152 of the Code does not provide any direct reference that such recreational or community facilities have to be owned and/or operated by public entities, and, assumedly, projects enumerated in §505.152 of the Code and funded by an economic development corporation may be either public or private, both as to ownership or operation. To address the question of the appropriateness of an expenditure for a recreational or community facility, though, is the issue as to whether land, buildings, equipment, facilities or improvements under the provisions of the §505.152 of the Code must be limited to projects that are open and/or accessible for public use. Access to the programmatic activities of a Low Power FM Broadcast Radio Station are available through an FM radio tuner.

The PAEDC Board of Directors seeks guidance on whether the proposed “entertainment project” described above falls under the “entertainment” category of projects as set forth in §505.152 of the Code.

*II. Whether a Request to Fund Improvements for a City Owned Pavilion Qualifies as an Entertainment Project Under §505.152 of the Code?*

The City owns an open pavilion located in its central business District which is available for rental in accordance with the Guidelines attached hereto as **Exhibit “F”** (the “Pavilion”). The Pavilion has been and continues to be used for public community events

including Southeast Texas Mardi Gras and the Zachary Breaux Jazz Festival. A schedule of events for recent years is attached hereto as **Exhibit "G"**. Port Arthur residents rent the Pavilion to host family gatherings, school and graduation functions, school and college class reunions, and other privately held events. Continued use and improvement of the Pavilion may lead to additional economic activities in the City's central business district. The Pavilion may be enhanced for additional uses by structural modifications and/or improvements including structural components to weatherize the facility for uses not compatible with an open pavilion together with lighting, sound (baffling) and other structural components and additionally my include landscaping and streetscaping adjacent to the Pavilion. Under Proposition 12 as presented and in accordance with §505.152 of the Code, may the City facility receive funding on the Proposition 12.

The PAEDC seeks clarification on whether they may help fund improvements to the Pavilion under §505.152 of the Code. Thank you in advance for your consideration of these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe D. Deshotel", with a long horizontal flourish extending to the right.

Joe D. Deshotel  
State Representative  
22<sup>nd</sup> Legislative District