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OPINION COMMITTEE

JOE R. SMITH

Tyler County
Criminal District Attorney

FILE # ML-47552-14
I.D. # 47552

January 7, 2014

RQ-1196-GA

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

Dear Sir:

The following facts, law and questions are submitted for your consideration and with the request that an opinion be rendered.

Authority for the Request

The Mayor of a city in Tyler County has approached the Tyler County Criminal District Attorney with a question regarding a city business transaction. Sections 402.042 and 402.043 of the Texas Government Code specify who is authorized to request an attorney general opinion. A district attorney is among those authorized to request an attorney general opinion.

Facts

An area of Tyler County was purchased by a land developer and developed as a retirement/weekend retreat/camping community under the name of Ivanhoe prior to 1980. The Ivanhoe Property Owners Improvement Association (IPOIA) was formed as a homeowners association for the community. The community had a guardhouse at the entrance that was manned 24-hours a day every day as provided for by IPOIA. The guardhouse was, and still is, in the center of the street entering the community from U.S. Highway 69. This was, and still is, the only entrance into the community. This building has not been used as a guardhouse since sometime in the mid to late 1980s. IPOIA constructed a sign above the guardhouse for their use.

The community was incorporated into the City of Ivanhoe in November of 2009. This included the guardhouse and associated real property which was deeded to the city along with the streets.

IOPIA has now made an offer to the City of Ivanhoe to purchase the guardhouse, sign and associated real property.

More concerning this history and facts are contained in the attached letter from the City of Ivanhoe.

Questions

- 1) Is it a violation of the Texas Constitution or any statute for a city to sell a building that is constructed on a city street and right-of-way?
- 2) Is it a violation of the Texas Constitution or any statute for a city to sell a building in aid of or to any individual, association, or corporation? Specifically, what is the effect of Texas Constitution Article III, Section 52(a) on this proposed transaction?
- 3) Would Texas Constitution Article XI, Section 3 prohibit the city from selling the building to a private corporation or association?
- 4) If the proposed transaction is otherwise allowable, is an open bidding process or public notice required prior to the transaction being agreed to by the city?

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe R. Smith". The signature is fluid and cursive, with a large initial "J" and "S".

Joe R. Smith
Tyler County Criminal District Attorney