



SENATOR PAUL BETTENCOURT
DISTRICT 7

The Honorable Ken Paxton
Texas Attorney General
ATTN: Committee Opinion
PO Box: 12458
Austin, TX 78711

October 10, 2022

Re: Request for legal opinion of the application of Sec. 303.042(f), Texas Government Code

Dear General Paxton:

This letter serves as a formal request for your opinion regarding the authority of a public facility corporation (PFC) sponsored by a municipal management district created by statute to purchase and acquire property outside of the district's jurisdictional boundaries and whether a corporation's acquisition of property outside of its sponsoring district's boundaries furthers a public interest.

Background

Chapter 303, Texas Local Government Code, authorizes sponsor governmental bodies to create a public facility corporation (PFC). A PFC acts on behalf of its sponsor, aiding and assisting the accomplishment of the sponsor's purposes. In the ordinary course, a PFC may issue bonds to acquire or construct public facilities. Section 303.021, Texas Local Government Code. The PFC program clearly contemplates its assistance of the sponsor within the sponsor's jurisdiction.

The PFC program also requires benefit. Section 303.023, Texas Local Government Code, provides that a requirement to incorporate a PFC is a determination by the governing body of a sponsor "that it is the public interest and to the benefit of the sponsor's residents and the citizens of this state." (Emphasis added.) The PFC must provide a benefit to the sponsor's residents. If not, the PFC may not be incorporated.

Section 303.024(a)(10), Texas Local Government Code, provides that "The articles of incorporation of the corporation must include... a statement that the sponsor has specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation." Thus, combined with the requirement of benefit, there is a legal nexus between the PFC and the sponsor's purposes. A PFC must further the purposes of the sponsor. Conversely, a PFC is not authorized to engage in activities beyond the scope of the sponsor's purposes, which would be ultravirus activities.

In 2015, the Texas Legislature created Section 303.042(f) of the Texas Local Government Code, which grants that during the period of time that a public facility corporation (PFC) owns a particular public facility, a leasehold or other possessory interest in the real property of the public facility granted by the

CAPITOL OFFICE:
P.O. Box 12068
AUSTIN, TEXAS 78711-2068
(512) 463-0107
FAX: (512) 463-8810

COMMITTEES:
SENATE COMMITTEE ON LOCAL GOVERNMENT - CHAIR
FINANCE
EDUCATION
CRIMINAL JUSTICE
SPECIAL COMMITTEE ON REDISTRICTING

DISTRICT OFFICE:
11451 KATY FREEWAY, SUITE 209
HOUSTON, TEXAS 77079
(713) 464-0282
FAX: (713) 461-0108

corporation shall be treated in the same manner as a leasehold or other possessory interest in real property granted by an authority under Section 379B.011(b) of the Texas Local Government Code.

Section 303.042(f), Texas Local Government Code, exempts PFC-issued leasehold interests from the tax treatment of leasehold interests under Section 25.07(a), Texas Tax Code, but only after the PFC holds a public hearing, at a regular meeting of the PFC's governing body. (This requirement of a public hearing acknowledges an interest of the general public in the geographic area of the PFC's activities, typically in the geographic area of the sponsor.) When a PFC leases land (and improvements built on that land) to an entity controlled by a private, for-profit development entity, that leasehold interest is taxed in the name of the PFC and is 100% exempt from property taxes.

No situation more clearly demonstrates the need for PFC activities to be within the jurisdictional geography of its sponsor, than these activities which exempt property from ad valorem taxation. The benefits of pursuing a public policy must be weighed against the costs of forgoing property taxes. For this analysis to work properly, the benefits and costs must both be of the sponsor. If an activity costs other governmental bodies, but does not cost the sponsor, the analysis breaks down.

In other words, it flies in the face of good public policy to authorize a PFC to extend an ad valorem tax exemption to a property not within the sponsor's jurisdiction, but within the jurisdiction of other governmental bodies. One governmental entity, through its PFC, would unilaterally impose a cost of the citizens of another governmental entity. The other governmental entity, governed by the representatives of its citizens, would be unable to exercise its discretion. Given Texas' republican form of government (see Article I, Section 2, Texas Constitution) this may well violate the Texas Constitution.

Take for example a hypothetical in which the City of X incorporates a PFC and the PFC makes tax-exempt numerous properties in the City of Y. The tax exemption causes the City of Y to lose significant tax revenue, which it must make up in tax and fee increases on its own citizens. Meanwhile, the City of X receives lucrative income from fees paid by the recipients of the tax exemption. This would be unconscionable, would be an abuse of the PFC program, and is not legal when properly considering benefit and the limitations of the sponsor's purposes. Activities within City Y are not a purpose of City X. Activities within City Y do not benefit City X's citizens and land owners. Therefore, Chapter 303, Texas Local Government Code, does NOT authorize these activities.

In 2019, the Texas Legislature passed House Bill 4694, creating the SH130 Municipal Management District (MMD) No. 1 under Chapter 3971, Subtitle C, Title 4, Special District Local Laws Code (the "MMD Creation Act"). Sec. 3971.0103 states, among other things, that "the creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III and Section 59, Article XVI, Texas Constitution, and other purposes stated in the chapter" and "the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development safety, and the public welfare in the district."

In addition to any limitations under Chapter 303, Texas Local Government Code, the MMD's use of a PFC is limited by the MMD Creation Act and the general law for MMDs, Chapter 375, Texas Local Government Code. (the "MMD Act"). The MMD is authorized to exercise its powers in furtherance of its purposes. Its purposes are to provide benefit to the MMD's citizens and landowners. An activity that does not benefit the MMD and its citizens and landowners is not within the purposes of the MMD.

The SH130 MMD No. 1's board of directors appointed directors to the Texas Essential Housing PFC on August 31, 2021. Recent reporting indicates that the Texas Essential Housing PFC subsequently began approving development agreements for multifamily residential developments and continues to acquire existing multifamily residential properties outside of SH130 MMD No. 1's jurisdictional boundaries.

[<https://www.houstonchronicle.com/politics/texas/article/How-a-tiny-Austin-area-government-is-scoring-big-17491395.php>]

The effect of these types of acquisitions is the granting of significant property tax exemptions to private developers in taxing jurisdictions where both the local taxing units and taxpayers have no opportunity to provide input on the effects of the granting of these exemptions to local governments and their communities.

Request

1. Does a Public Facility Corporation created by a sponsor pursuant to Chapter 303 of the Texas Local Government Code have the authority to acquire real property for leasehold outside of the sponsor's jurisdictional boundaries?
2. If a Public Facility Corporation is authorized to acquire real property for leasehold outside of the sponsor's jurisdictional boundaries, must there be a demonstration and determination of benefit to the residents and property owners within the sponsor's jurisdictional boundaries?
3. Does ownership of a multifamily residential development outside of a municipal management district's boundaries by a public facility corporation created by the municipal management district qualify as being within the statutory purposes of the municipal management district, in the public interest of the municipal management district, and to the benefit of the district's residents and landowners?

Thank you for the time and assistance in this matter. I would be glad to provide any additional information you may require to address this important matter to Texas taxpayers.

Sincerely,



Paul Bettencourt
Chair, Senate Committee on Local Government

cc: Ryan Fischer, Director of Intergovernmental Relations, Office of the Attorney General