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April 25, 2025

RQ-0596-KP

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

Via Electronic Delivery**Re: Request for an expedited legal opinion regarding the disposition of corporate earnings under Chapter 394 of the Texas Local Government Code**

Dear General Paxton,

This letter serves as a formal request for your *expedited* opinion regarding the authority of a housing finance corporation (an "HFC") formed by a local government pursuant to Chapter 394 of the Texas Local Government Code to transfer corporate earnings to the sponsoring local government for uses that do not support the housing needs of individuals and families of low and moderate income.

Background

The Texas Housing Finance Corporations Act, codified as Texas Local Government Code Chapter 394 (the "Act"), provides regulations for housing finance corporations which can be created by any local government for the purposes defined therein. A local government is defined as any municipality or county for the purposes of the Act. The stated purpose of the Act is to provide a means to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable prices for residents of local governments.

Pursuant to the Act, net corporate earnings by an HFC can be used only to support the housing needs of low and moderate income individuals and families. §394.023 states in full:

DISPOSITION OF CORPORATE EARNINGS. (a) The housing finance corporation may not pay dividends. The net earnings of the corporation may not be distributed to or benefit the directors or officers of the corporation or any person except as reasonable compensation for services rendered to the corporation.

(b) If the board of directors determines that sufficient provision has been made for full payment of the expenses, bonds, and other obligations of the corporation, any net corporate earnings accruing after the determination shall be paid to the local government. The local government shall use amounts received under this subsection only to provide for the housing needs of individuals and families of low and moderate incomes, including single-family units and mixed income multifamily projects found by the local government to serve the interests of low and moderate income individuals and families if the single-family and multifamily projects have as a major purpose the provision of safe, sanitary, and decent housing for individuals and families of low income.

(c) This section does not prohibit the board of directors from transferring corporate property as provided by a contract made by the corporation.

It has come to the attention of the undersigned that certain HFCs have chosen to dispose of net corporate earnings to fund other activities not connected to affordable housing needs. In a recent article published by the Pleasanton Express¹, Johnny Huizar, City Manager for the City of Pleasanton commented on Pleasanton HFC revenues stating:

“The corporation provides an additional source of revenues to supplement the city’s other revenues, such as tax revenues and waterworks and sewer system revenues, and allow the city to maintain a healthy general fund balance without imposing additional taxes or raise rates on the citizens of Pleasanton or complete municipal projects of the city without imposing taxes on citizens.”

Additionally, a press release² from Maverick County celebrates that the Maverick County Housing Finance Corporation:

“Under Judge Ramsey English Cantú’s leadership, the MCHFC has contributed \$2.1 million to balance the budget.”

¹ “Massive tax breaks, major scrutiny: Pleasanton housing project under statewide spotlight” by Daniel Elizondo, *Pleasanton Express*, April 2, 2025: https://www.pleasantonexpress.com/news/massive-tax-breaks-major-scrutiny-pleasanton-housing-project-under-statewide-spotlight/article_cba98428-3d6d-4f79-846e-849be10e71fb.html

² “COMMISSIONER’S COURT APPROVES FY24-25 BUDGET WITH HISTORIC INITIATIVES” *Maverick County News & Announcements Share*, September 26, 2024: <https://co.maverick.tx.us/news-post/19#:~:text=%E2%9C%85%20Under%20Judge%20Ramsey%20English,%F0%9F%8E%89%20Employee%20Appreciation:>

It is worth noting that both Pleasanton HFC and Maverick County HFC engage in residential development outside of the jurisdiction of their sponsoring local governments, the practice of which is the subject of Opinion Request RQ-0587-KP.

Request

In light of the foregoing, we respectfully request that the Attorney General provide his opinion with respect to the following questions:

Does it violate Section 394.023 (b) of the Local Government Code for a Housing Finance Corporation to pay net corporate earnings to its sponsoring local government for use for purposes other than “to provide for the housing needs of individuals and families of low and moderate incomes”?

Does use of such transferred corporate earnings by a county to balance its budget or a city to subsidize water rates of its customers violate Section 394.023 (b) of the Local Government Code?

Is a local government bound by the requirements of Section 394.023 of the Local Government Code as it pertains to revenues received from a sponsored housing finance corporation?

Thank you for your time and assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Paul Bettencourt". The signature is written in a cursive, flowing style.

Paul Bettencourt
State Senator, District 7
Chair, Senate Committee on Local Government