



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1998

The Honorable Pete P. Gallego
Chair, Committee on General Investigating
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 98-052

Re: Whether a Dallas City Council member
whose spouse is employed by American Airlines
may participate in matters involving the use of
Love Field (RQ-1033)

Dear Representative Gallego:

You request an opinion on the application of the conflict of interest statute for local government officers, Local Gov't Code ch. 171, to matters before the Dallas City Council concerning the use of Dallas' Love Field. The husband of a Dallas City Council member is employed by American Airlines and received more than 10 percent of his gross income last year from that company. Pursuant to chapter 171 of the Local Government Code, he has a substantial interest in American Airlines.¹ Since the city council member is considered to have a substantial interest in a business entity if her husband does,² she also has a substantial interest in American Airlines. Thus, if a vote or decision on any matter involving American Airlines "will have a special economic effect on . . . [that] entity that is distinguishable from the effect on the public," the city council member must file an affidavit stating the nature of her interest before a vote or decision on any matter involving the entity and refrain from further participation.³ A local public official commits an offense⁴ if he or she knowingly fails to file the affidavit or to refrain from further participation.⁵

¹Local Gov't Code § 171.002(a)(2) (person has substantial interest in a business entity if funds he received from that company exceed 10 percent of his gross income for previous year).

²Under section 171.002(c) of the Local Government Code, a local public official is deemed to have a substantial interest in a business entity if a person related to him or her in the first degree by consanguinity or affinity has a substantial interest in that entity. A husband and wife are related to each other in the first degree by affinity. Gov't Code § 573.025(a).

³Local Gov't Code § 171.004(a). The affidavit is to be filed with the official record keeper of the governmental entity. *Id.* § 171.004(b).

⁴The offense is a Class A misdemeanor. *Id.* § 171.003(b).

⁵*See Walk v. State*, 841 S.W.2d 430 (Tex. App.--Corpus Christi 1992, pet. ref'd) (upholding conviction for
(continued...))

Your letter describes the conditions that raise a possible conflict of interest. The City of Dallas owns and operates Love Field Airport, while American Airlines flies solely from Dallas-Fort Worth International Airport, which is approximately ten miles from Love Field. Until recently, federal law limited passenger aircraft service to and from Love Field to places in Texas and the four contiguous states, with an exemption for commuter airlines using aircraft with a passenger capacity of fifty-six or fewer.⁶ You indicate that recent changes in federal law may allow large aircraft reconfigured to hold fifty-six seats or fewer to fly out of Love Field under the exemption for commuter airlines and may also expand the Love Field service area to include three states in addition to the states that are contiguous with Texas.⁷

The City of Fort Worth has sued the City of Dallas,⁸ seeking a declaratory judgment declaring that Dallas is prohibited under the 1968 Regional Airport Concurrent Bond Ordinance executed by the two cities from permitting such changes in service to and from Love Field. American Airlines has intervened in this lawsuit on the side of Fort Worth against Dallas.⁹ You write that “American Airlines has vigorously stated in public and judicial proceedings that it will suffer economically if reconfigured jets are allowed to operate from Love Field.” In its plea in intervention, American Airlines describes its investment in facilities at the Dallas-Fort Worth Airport and its ownership of revenue bonds issued by the Cities of Dallas and Fort Worth to finance improvements at the Dallas-Fort Worth Airport.¹⁰

On the other hand, a letter submitted in connection with this request states that the City of Dallas has taken the position that allowing additional traffic at Love Field will not affect Dallas-Fort

⁵(...continued)

knowing failure to file affidavit and abstain from purchasing decision).

⁶This provision, known as the “Wright” amendment, was adopted as section 29 of the International Air Transportation Competition Act of 1979, Pub. L. 96-192, 94 Stat. 35, 48-49 (1980). *See State of Kansas v. United States*, 16 F.3d 436, 437 at n. 1 (D.C. App. 1994) (text of Wright amendment).

⁷The Wright Amendment was recently amended by the “Shelby Amendment,” which permits Love Field passenger operation by airlines with a capacity of more than fifty-six passengers to three more states and permits large aircraft reconfigured to hold no more than fifty-six passengers to qualify for the commuter airline exemption. The “Shelby Amendment” was attached to an appropriations bill. 111 Stat. 1425, 1447. *See also* Airline Deregulation Act, 49 U.S.C. § 41713(b)(1).

⁸*City of Fort Worth v. City of Dallas*, No. 48-171109-97 (48th Dist. Ct., Tarrant County, Tex. Oct. 10, 1997).

⁹You submitted the Plea in Intervention of American Airlines, but it appears that American has in fact become an intervenor. *See City of Fort Worth v. City of Dallas*, No. 4:97-CV-939-A, 1998 WL 50457 (N.D. Tex. Jan. 20, 1998) (memorandum opinion and order remanding action to 48th Judicial District Court of Tarrant County, Texas describes American Airlines as intervenor).

¹⁰Plea in Intervention of American Airlines, Inc., and Petition for Declaratory Judgment at 4-5 in *City of Fort Worth v. City of Dallas*, No. 48-171109-97 (48th Dist. Ct., Tarrant County, Tex. Nov. 7, 1997).

Worth Airport.¹¹ The letter points out that the City of Dallas, in response to requests for admissions in *City of Fort Worth v. City of Dallas*,¹² has denied that “the commencement of long-haul interstate passenger air transportation services at Love Field to destinations other than the four states contiguous to Texas would result in the decentralization of such services in the Dallas-Fort Worth area.”¹³

In connection with this situation, you ask the following questions about the application of chapter 171, Local Government Code, to the city council member in question:

May the Dallas City Council member act in her official capacity and participate in and vote on any Love Field matter which focuses on commuter jet service or expanded service?

If American Airlines is not directly involved in a “matter” before the Dallas City Council, but the issue relates to American Airlines’ concerns, must the council member recuse herself from considering the matter? For example, if proposed regulations are submitted to the Dallas City Council which would restrict all operations at Love Field (not only commuter jet and expanded service) and American Airlines does not take a position concerning these regulations, must the council member recuse herself?

May the council member participate in the consideration of other Love Field matters which do not focus mainly on commuter jet service or expanded service at Love Field?

As we have already noted, a local public official commits an offense if he or she knowingly fails to file an affidavit stating the nature of his or her interest before a vote or decision on any matter involving the entity and to refrain from further participation under the following circumstances: The official must have a substantial interest in a business entity and the vote or decision must “have a special economic effect on the business entity that is distinguishable from the effect on the public.” The question of whether the vote or decision has a “special economic effect on the business entity”

¹¹Letter from Russ Jewert, Co-Chair Love Field Citizens Action Committee, to Sarah Shirley, Chair, Attorney General Opinion Comm. (Apr. 20, 1998) (on file with Attorney General Opin. Comm.).

¹²No. 48-171109-97 (48th Dist. Ct., Tarrant County, Tex. Nov. 7, 1997).

¹³Dallas’s Response to Plaintiff’s First Requests for Admissions, Response to Request for Admission No. 53., in *City of Fort Worth v. City of Dallas*, No. 48-171109-97 (48th Dist. Ct., Tarrant County, Tex. Nov. 7, 1997). Dallas’s Response is attached to the Letter from Russ Jewert, *supra* note 11, and quoted in part in the text of the letter.

is a fact question,¹⁴ which cannot be answered in an attorney general opinion.¹⁵ Attorney general opinions resolve questions of law, not disputed questions of fact. The city council member will commit an offense if she knowingly fails to file the affidavit and recuse herself when chapter 171 of the Local Government Code requires her to do so. Thus, she must decide in the first instance whether an action of the Dallas City Council will have a “special economic effect” on American Airlines that is “distinguishable from the effect on the public.” While we caution the city council member to consider this decision carefully, we cannot determine in the opinion process whether or not particular conduct constitutes a criminal offense under chapter 171 of the Local Government Code.

¹⁴Attorney General Opinion JM-178 (1984) at 2.

¹⁵Attorney General Opinion DM-98 (1992) at 3.

S U M M A R Y

A Dallas City Council member whose spouse has a substantial interest in American Airlines under chapter 171 of the Local Government Code is also deemed to have a "substantial interest" in American Airlines. It is a fact question whether particular actions by the Dallas City Council with respect to Love Field would have a special economic effect on American Airlines distinguishable from the effect on the public, such that chapter 171 would require the city council member to recuse herself from participating therein. It is for the city council member to decide in the first instance whether an action of the Dallas City Council will have a "special economic effect" on American Airlines that is "distinguishable from the effect on the public."

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee