



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1998

The Honorable Marcus D. Taylor
Wood County Criminal District Attorney
P.O. Box 689
Quitman, Texas 75783

Letter Opinion No. 98-112

Re: Whether, under Local Government Code section 171.003(a), the Wood County Commissioners Court may approve an invoice from an inn owned by a member of the Wood County Industrial Commission and his wife (RQ-1158)

Dear Mr. Taylor:

We understand you to ask whether, under Local Government Code section 171.003(a), the Wood County Commissioners Court may approve an invoice, which the executive director of the Wood County Industrial Commission ("Industrial Commission") submitted, from an inn owned by a member of the Industrial Commission and his wife. Based upon the facts you have provided, we do not believe that Local Government Code chapter 171 impedes the payment.

You indicate that your question stems from the Wood County Commissioners Court's June 12, 1998, refusal to approve two invoices, submitted by the Industrial Commission's executive director, on the grounds that approval would violate Local Government Code chapter 171. Both of the invoices are from Thee Hubbell House, owned by Dan and Laurel Hubbell. Mr. Hubbell is a member of the Industrial Commission.¹ You explain that the executive director of the Industrial Commission books rooms for guests of the Industrial Commission, spreading "such expenditures equally among establishments of similar quality within the county."² Moreover, although Mr. Hubbell votes on the Industrial Commission's budget, which is presented to the county commissioners court, the industrial commissioners do not vote on day-to-day expenditures such as this one; rather, the executive director may incur these expenditures without the approval of the industrial commissioners. But the invoices must be approved by the county commissioners court.

¹Local Government Code section 381.001 authorizes a county to create an industrial commission to undertake ways of promoting commercial development in the county. See Local Gov't Code § 381.001(a), (f). The commission must have at least seven members. *Id.* § 381.001(b). The county may pay the commission's necessary expenses. *Id.* § 381.001(e) (emphasis added). We find nothing in chapter 381 that prohibits the payment of the invoices about which you ask.

²You do not indicate how many "establishments of similar quality" exist in Wood County. We assume there are at least two.

Local Government Code chapter 171 regulates local public officials' conflicts of interest. The term "local public official" is defined to include a county commissioner, as well as any other "officer, whether elected, appointed, paid, or unpaid, of any . . . local governmental entity who exercises responsibilities beyond those that are advisory in nature."³ Sections 171.003(a) and 171.004(a) generally prohibit a local public official from knowingly participating in a vote or decision on a matter involving a business entity in which the official has a substantial interest if the action will economically affect the business entity in a special way that is distinguishable from the effect the action will have on the public.⁴ The local public official, in addition to abstaining from participation in the matter, must file an affidavit stating the nature and extent of his or her interest.⁵ A local public official has a substantial interest in a business entity if the official either

(1) owns at least ten percent or at least \$15,000 of the fair market value of the business entity; or

(2) received over ten percent of his or her gross income in the previous year from the business entity.⁶

With respect to the budgeting process, if an item of the budget is "specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest," the governing body must consider that line item separately, and the affected member generally may not participate in consideration of that item.⁷

In our opinion, Local Government Code chapter 171 does not prohibit payment of these invoices. It does not apply to any of the county commissioners because, as you have described the facts, none of the county commissioners has a substantial interest in Thee Hubbell House. It does not apply to the executive director of the Industrial Commission (assuming, again, that he or she is a local public official for purposes of chapter 171) because the executive director does not have a substantial interest in the inn. Finally, although Mr. Hubbell appears to have a substantial interest in Thee Hubbell House,⁸ chapter 171 does not apply here because Mr. Hubbell does not participate

³Local Gov't Code § 171.001(1).

⁴A violation of Local Government Code section 171.003(a) is a class A misdemeanor. *Id.* § 171.003(b); *see* Penal Code § 12.21 (describing maximum punishment for class A misdemeanor).

⁵*See* Local Gov't Code § 171.004(a). *But see id.* § 171.004(c) (permitting local public official who would otherwise abstain under subsection (a) to participate if majority of fellow members of governing body must also otherwise abstain under subsection (a)).

⁶*See id.* § 171.002(a).

⁷*See id.* § 171.005.

⁸Whether Mr. Hubbell, a county commissioner, or the executive director of the Industrial Commission in fact
(continued...)

in the decision to book guests into his inn or in the decision to pay the invoices. In addition, because it does not appear from the facts as you have described them that the Industrial Commission's budget includes a line item specifically dedicated to a contract with Mr. Hubbell's inn, we do not believe Local Government Code section 171.005 precludes Mr. Hubbell's vote or deliberation on the Industrial Commission's budget. Similarly, we do not believe Mr. Hubbell's participation in the budget process in any way precludes payment of these invoices under chapter 171.⁹

S U M M A R Y

Based on the facts provided to this office, it does not appear that Local Government Code chapter 171 bars the Wood County Commissioners Court from approving the payment of invoices, submitted to the commissioners court by the executive director of the Wood County Industrial Commission, to an inn owned by a member of the Wood County Industrial Commission and his wife.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Opinion Committee

⁸(...continued)

has a substantial interest for purposes of chapter 171 is a question of fact that cannot be resolved in the opinion process. *See, e.g.*, Attorney General Opinions DM-98 (1992) at 3; H-56 (1973) at 3; M-187 (1968) at 3; O-2911 (1940) at 2.

⁹*See* Local Gov't Code § 171.006 (stating that violation of chapter 171 does not render governing body's action voidable unless action that involved conflict of interest would not have passed without violator's vote).