



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2021

The Honorable Bob Wortham
Jefferson County Criminal District Attorney
1085 Pearl Street, 3rd Floor
Beaumont, Texas 77701

Opinion No. KP-0355

Re: Whether a conflict of interest exists under chapter 171 of the Local Government Code when a city council member votes to waive interest on delinquent property taxes accrued by an unrelated person under particular circumstances (RQ-0374-KP)

Dear Mr. Wortham:

You raise a potential conflict of interest concerning a city council member and a vote to waive interest on delinquent property taxes accrued by an unrelated person under particular circumstances.¹ You tell us the Jefferson County central appraisal district determines the appraised taxable value for property owners in the county and forwards this information to the Jefferson County tax assessor-collector to prepare and send tax statements to property owners on behalf of various taxing entities. *See* Request Letter at 1; *see also* TEX. TAX CODE § 6.23(a) (authorizing the county assessor-collector to assess and collect property taxes on behalf of other taxing units). You state that, “[o]ccasionally, the Central Appraisal District will provide an incorrect mailing address to the Tax Assessor[,] which may result in the property owner not receiving [the] tax statement before the payment deadline.” *Id.* at 1-2. Subsection 33.011(a)(1) of the Tax Code provides that “[t]he governing body of a taxing unit . . . shall waive penalties and may provide for the waiver of interest on a delinquent tax if an act or omission of . . . the appraisal district in which the taxing unit participates caused or resulted in” the taxpayer not paying the tax on time, provided the tax is paid within a particular time period. TEX. TAX CODE § 33.011(a)(1).

You explain that “[i]n this instance, two property owners sought to have penalties and interest waived because they did not timely receive their tax statements,” presumably because of the mailing address error you describe, and that they timely paid the underlying taxes. Request Letter at 2; *see also* TEX. TAX CODE § 33.011(d) (requiring that a written request be submitted by a certain date before the governing body of a taxing unit may waive penalties or interest under subsection 33.011(a)). One of the taxing units, Jefferson County, approved the waiver of interest

¹*See* Letter from Honorable Bob Wortham, Jefferson Cty. Crim. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Aug. 18, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0374KP.pdf> (“Request Letter”).

after which, you tell us, “the Jefferson County Tax Assessor sent a letter to the City of Beaumont providing information about the two subject accounts and requesting that the City Council . . . approve the waiver.” Request Letter at 2. The basis for the issue you raise is that the tax assessor-collector, who sent the letter, is married to a member of the city council, who was a recipient of the letter requesting approval of the waiver. *See id.* at 1, 2. Thus, you ask whether “a conflict exists” that would require recusal by a city council member on a vote to waive interest “for a property owner who has chosen to avail [himself or herself of subsection] 33.011 . . . merely because [the council member] happens to be married to the Tax Assessor Collector.” *Id.* at 2.

Chapter 171 of the Local Government Code regulates conflicts of interest involving local public officials. *See* TEX. LOC. GOV’T CODE §§ 171.001–.010. Relevant here, subsection 171.004(a) requires a local public official with a “substantial interest in a business entity” to “file, before a vote or decision on any matter involving the business entity . . . , an affidavit stating the nature and extent of the interest” and to “abstain from further participation in the matter if . . . the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public.” *Id.* § 171.004(a). A “local public official” subject to chapter 171 includes “a member of the governing body . . . of . . . [a] municipality.” *Id.* § 171.001(1). Thus, the requirements of subsection 171.004(a) apply to a city council member in the current situation if a vote or decision involving a business entity in which the council member has a substantial interest comes before the council. *See* Tex. Att’y Gen. Op. No. GA-0031 (2003) at 1 (noting the inclusion of city council members in the scope of chapter 171’s applicability).

As an initial matter, we observe that a taxing unit’s waiver of interest paid on delinquent property taxes pursuant to subsection 33.011(a)(1) of the Tax Code does not require the approval or ratification of that action by another taxing entity. *See* TEX. TAX CODE § 33.011(a)(1). You tell us the commissioners court approved the waiver of interest on delinquent property taxes paid to the county, and we assume the city council would be voting on the waiver of interest on delinquent property taxes paid to the municipality. *See* Request Letter at 2. While such a vote would thus concern the municipality and not the county, your letter suggests that guidance would nonetheless be useful in the event that a county matter came before the city council under the present relational circumstances. *Id.*

Subsection 171.002(a)(2) of the Local Government Code provides that a person has a substantial interest in a business entity if “funds received by the person from the business entity exceed 10 percent of the person’s gross income for the previous year.” TEX. LOC. GOV’T CODE § 171.002(a)(2); *see also id.* § 171.002(c) (providing that if a person related to the local public official in the first degree by consanguinity or affinity has a substantial interest, the local official “is considered to have a substantial interest” under subsection 171.002 as well). You tell us that the tax assessor-collector receives more than 10 percent of her gross income from Jefferson County. Request Letter at 2. However, the substantial interest test applies only when the subject of the interest constitutes a “business entity.” The term “business entity” means “a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.” TEX. LOC. GOV’T CODE § 171.001(2). This office previously concluded that a county is not a “business entity” under subsection 171.001(2). Tex. Att’y Gen. Op. No. JC-0061 (1999) at 3 (explaining that the term “any other entity recognized by law” in that section should be construed to refer to private entities organized

to carry out purposes similar to the listed entities); *see also* Tex. Att’y Gen. Op. Nos. GA-0360 (2005) at 6 (concluding that emergency services districts, like counties, cities, school districts, and other local governmental entities, are not “business entities” under subsection 171.001(2)), GA-0031 at 2 (recognizing a distinction between a private entity and a “political entity or subdivision that carries out local governmental purposes”). Because the county is not a “business entity” as defined by subsection 171.001(2), we need not determine whether the council member, by virtue of his marriage to the tax assessor-collector, has a substantial interest in Jefferson County. Accordingly, the conflict-of-interest requirements of section 171.004(a) do not apply to a council member voting on a matter concerning the county even though the council member is married to the county tax assessor-collector.

S U M M A R Y

The conflict-of-interest requirements of section 171.004(a) of the Local Government Code do not apply to a city council member voting on a county matter even though the council member is married to the county tax assessor-collector.

Very truly yours,

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

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