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Opinion Committee

Texas House of Representatives
COMMITTEE ON GENERAL INVESTIGATING

Pete P. Gallego
Chairman

D.R. "Tom" Uher
Vice Chairman

July 23, 1999

The Honorable John Cornyn
Attorney General
Post Office Box 12548
Austin, Texas 78711

Dear General Cornyn:

As chair of the House Committee on General Investigating, I request your opinion on a question that has arisen on a matter involving the United States General Services Administration and the City of Eagle Pass, Texas. The matter is not currently in litigation and is one of public interest.

BACKGROUND

The City of Eagle Pass, Texas is a home-rule city. It is governed by a five-member city council. Its administrative affairs are handled by a city manager hired by and responsible to the city council. The city manager's duties and authority are defined by the city charter and by formal action of the city council.

In the late 1980's, the City set out to construct its second international bridge between Texas and Mexico. It began the initial planning and applied for the required federal permits. In 1996, the United States Department of State granted the City a "Presidential Permit" (*See Exhibit a*) to construct, operate, and maintain a new international vehicular and pedestrian bridge between Eagle Pass, Texas, and Piedras Negras, Coahuila, Mexico.

During the early stages of the project, city planners and engineers recognized the need to design and construct permanent facilities to accommodate the United States Customs Service and other federal inspection agencies. Article 10 of the "Presidential Permit" requires that the City provide "temporary" inspection facilities adequate and acceptable to the federal inspection agencies "at no cost" to the Federal government. These facilities were included in the City's master plan for the bridge project. The City's master plan was approved by the United States General Services Administration (GSA) and the federal inspection agencies in May, 1997.

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Subsequent to these developments, the City and the federal government, acting through the GSA, have come to a disagreement regarding the permanent facilities for federal agencies housed at the new international bridge. The GSA maintains that the City of Eagle Pass has agreed to provide "permanent" inspection facilities "at no cost" or "at a cost of one dollar per year" to the federal government.

The GSA takes this position based on discussions with the City's then-mayor and then-city manager during the planning stages of the project. The GSA points to correspondence dated after the issuance of the Presidential Permit wherein it outlines the responsibilities of the City to include the provision of these facilities. (*See Exhibit B*). GSA also points to a letter from the city manager acknowledging an agreement to lease the facilities for one dollar per year. (*See Exhibit C*).

The City of Eagle Pass believes that it has fulfilled its obligations to the U.S. Customs Service and other federal inspection agencies by providing temporary facilities "at no cost" to the Federal government. However, it believes that it has no obligation to provide facilities "at no cost" or "at a cost of one dollar per year" to the federal government on a permanent basis.

The City maintains that it did not commit to provide these free facilities to the federal government. It is the City's position that all agreements must be ratified by the city council. No individual member of the council (and no individual employee of the City) can obligate the City unless authorized to do so by the city council or unless such obligation is ratified by the city council.

Further, the City argues that neither the mayor nor the city manager was directly or indirectly authorized to make this or any other commitment with respect to the leasing of permanent facilities to the federal government. Since the city council never ratified any alleged agreement between the City and federal government, it is the City's view that there is in reality no agreement at all. The City maintains that it is free to lease these facilities to the Federal government at a reasonable rate.

QUESTIONS PRESENTED

1. Can a city mayor or city manager operating outside the scope of prescribed authority bind the city to a lease agreement?
2. If a mayor or city employee acting without the requisite authority made an agreement to provide free facilities to a government agency at an international bridge built by the city, is such an agreement valid and enforceable even if the agreement was neither authorized, entered into nor ratified by the City's governing body?

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Since this question must be resolved before the City of Eagle Pass can fully open the new international bridge between Eagle Pass and Piedras Negras, Coahuila, Mexico, I request that this opinion be expedited as much as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Pete P. Gallego". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Pete P. Gallego

Attachments

PPG:cem