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RQ-0102-JC

FILE # ML-40948-99

I.D. # 40948

The Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711

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AUG 20 1999

Opinion Committee

Dear General Cornyn:

I have been asked to request an Attorney General Opinion on the following:

1. Is it acceptable for an individual who has an ownership in a company that has received a municipal tax abatement to be elected after the initial issuance of the abatement to serve on the city council which reaffirms the abatement each year for the life of the original abatement.
2. If it is not acceptable for the individual to serve under the above noted circumstances, what would be the status of any votes made by the individual during the time he served after being elected and up to the time a change would be made in either his service or the tax abatement.

Due to the fact that the individual presently serves as an elected council member in one of the cities in Senate District 10, I would appreciate as prompt a response as possible and I thank you for your attention to this request.

Sincerely,

Chris Harris





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August 24, 1999

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AUG 26 1999

Opinion Committee

The Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711

Dear General Cornyn:

I earlier requested an opinion which your office shows as File # ML-40948-99.

At this time I would appreciate you adding a third issue to the above referenced request:

3. Does the property continue to qualify for a tax abatement when an individual who has ownership in the company receiving the abatement is elected to serve on the city council after the abatement has been initially given? Basically, the question has arisen based on Section 312.204(d) of the Tax Code and therefore I am requesting an opinion on this issue.

Thank you for adding this third issue and I look forward to your response.

Sincerely,

Chris Harris

Att: Tax Code Sec. 312.204(d)



Sec. 312.204. Municipal Tax Abatement Agreement.

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, subject to the rights of holders of outstanding bonds of the municipality, on the condition that the owner of the property make specific improvements or repairs to the property. An agreement may provide for the exemption of the real property in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality, and other than inventory or supplies. In a municipality that has a comprehensive zoning ordinance, an improvement, repair, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

(b) The agreements made with the owners of property in a reinvestment zone must contain identical terms for the portion of the value of the property that is to be exempt and the duration of the exemption. For purposes of this subsection, if agreements made with the owners of property in a reinvestment zone before September 1, 1989, exceed 10 years in duration, agreements made with owners of property in the zone on or after that date must have a duration of 10 years.

(c) The property subject to an agreement made under this section may be located in the extraterritorial jurisdiction of the municipality. In that event, the agreement applies to taxes of the municipality if the municipality annexes the property during the period specified in the agreement.

(d) Property that is in a reinvestment zone and that is owned or leased by a member of the governing body of the municipality or by a member of a zoning or planning board or commission of the municipality is excluded from property tax abatement or tax increment financing.

(e) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner or lessee of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed 10 years a portion of the value of the real property or of personal property, or both, located within the zone and owned or leased by a certificated air carrier, on the condition that the certificated air carrier make specific real property improvements or lease for a term of 10 years or more real property improvements located within the reinvestment zone. An agreement may provide for the exemption of the real property in each year covered by the agreement to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of the personal property owned or leased by a certificated air carrier located within the reinvestment zone in each year covered by the agreement other than specific personal property that was located