

Warren Chisum
STATE REPRESENTATIVE

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House of Representatives

March 25, 2002

RQ-0527-JC

The Honorable John Cornyn
Office of the Attorney General
209 W. 14th Street
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-42536-02
I.D. # 42536

Dear Attorney General Cornyn:

This letter is a formal request for an Attorney General's Opinion regarding the authority of city with regards to the dissolution of an economic development corporation. I have attached a letter from Don R. Lane which explains the questions in more detail.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Warren Chisum".

Warren Chisum,
State Representative

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Pampa, Texas 79065

DON R. LANE
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March 22, 2002

The Honorable Warren Chisum
State Representative, District 88
P. O. Box 2061
Pampa, TX 79066-2061

Re: Request for Attorney General's Opinion
Dissolution of the Pampa Economic Development
Corporation, Inc. ("PEDC")

Dear Representative Chisum:

This letter is a follow-up to my telephone call to you on Thursday, March 21st, to ask if you would request an Attorney General's opinion on some issues which have arisen in the dissolution of the PEDC primarily involving the oversight authority of the City which created it. The PEDC was established in 1992 under Section 4A of Article 5190.6 of Vernon's Annotated Civil Statutes (Development Corporation Act of 1979, as amended (hereinafter referred to as "the Act")).

At an election held on November 6, 2001, the voters approved the dissolution of the PEDC. It is now in the process of dissolution. At the time of the election, the PEDC had several notes payable relating to projects which it had funded prior to November 6th. Included in its assets are notes receivable, a commercial building subject to a lease with an option to purchase, one section of land "sold" to the PEDC for \$10.00, a 213 acre tract of land which was to be developed for industrial sites, and some personal property. There is one project which has possible financial obligations which may accrue because of increased employment criteria after all of the indebtedness of the PEDC is satisfied. The PEDC also funded certain improvements on a building purchased under a contract through the Texas Capital Fund between the City and the Texas Department of Housing and Community Development with title to the property in the name of the City.

First Issue

Does the City of Pampa, as the creating unit, have approval authority over the plan of dissolution of the PEDC including, but not limited to, the terms of the sale of assets?

It is my opinion that the current law is unclear on the relationship of a creating unit and the board of directors of an EDC which is being involuntarily dissolved.

Section 4A(k) of the Act provides, in part: "If a majority of voters voting on the issue approve the dissolution, the corporation shall continue operations only as necessary to pay the principal of and interest on its bonds and to meet obligations incurred before the date of the election

and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations."

Section 21 of the Act provides in part: "The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation."

Section 23(a) of the Act provides that the corporation shall have the powers, privileges, authority and functions given by the general laws of this to non-profit corporations incorporated under the Texas Non-Profit Corporation Act except where there is a conflict between such laws and the Act and, if so, the Act prevails. In the categories listed under Section 23(a), subparagraph (12) states: "whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any and all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created."

Section 4A(d) of the Act provides that the directors serve at the pleasure of the governing body.

The bylaws of the PEDC contain the following provisions which would be applicable to this issue:

1. Subsection 5.10: "In accordance with State law, the City Commission shall require that the Pampa Economic Development Corporation, Inc. be responsible to it for the proper discharge of its duties provided in these bylaws. The Board shall determine its policies and direction within the limitations provided by applicable laws, the Articles of Incorporation, these Bylaws, contracts entered into with the City, and budget and fiduciary responsibilities."

2. Section VI of the Bylaws is entitled "Functional Corporate Duties and Requirements." There is a requirement that an annual budget be prepared and Subsection 6.02 provides that the budget of the PEDC "shall not be effective until the same has been approved by the Commission." Under Subsection 6.06, any major deviation from the approved budget must be submitted to the City Commission for approval.

Since Section 4A(k) makes no mention of the creating unit approving how the EDC disposes of its assets and satisfies its obligations, it is argued that the absence of such provision means that the EDC may proceed with the dissolution process without the City's approval.

The whole tenor of the Act, however, reflects oversight authority by the creating unit (i.e., City) of an EDC. I don't think there could be any stronger language than that which appears in Section 23(a) which states that the powers, duties and responsibilities of an EDC "shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created." It is quite clear, in my opinion, that the creating unit has oversight authority of the EDC's

Honorable Warren Chisum
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board regarding projects and the expenditures of money and its budget. It does not seem consistent that, upon an involuntary dissolution, that the City has lost all of its oversight authority of the dissolution plan and its process.

Second Issue

May a reserve account be established to meet future financial commitments after the outstanding obligations have been paid?


There is one project which has future financial commitments over a time-span which could extend beyond the time that all of the indebtedness of the PEDC has been paid. Those future financial commitments are determinable since they are based on a fixed dollar amount on fixed numbers of increased employment. The amount of sales tax revenue, if continued to the end of the project commitment, would far exceed the amount necessary to fund this future amount.

Article 1396-6.02 of the Non-Profit Corporation Act provides that "All liabilities and obligations of the corporation shall be paid, satisfied and discharged." The form promulgated by the Office of the Secretary of State on articles of dissolution of a non-profit corporation states that "all debts, obligations and liabilities of the corporation have been paid and discharged or adequate provision has been made therefor." (Emphasis added.)

Conclusion

The City respectfully requests that these issues be presented to the Office of Attorney General to assist the City and its PEDC in this dissolution process.

Sincerely,



Don R. Lane

DRL:gr

xc: Mr. Robert D. Eskridge
City Manager
City of Pampa
P. O. Box 2499
Pampa, TX 79066-2499

Pampa Economic Development Corporation
ATTN: Mr. Dalton Lewis
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