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SENATE DISTRICT 25



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2008 - 2009

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July 13, 2010

COUNTIES IN
SENATE DISTRICT 25

Bexar (north) Hays
Comal Kendall
Guadalupe Travis (south)

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinions Committee
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

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JUL 15 2010

OPINION COMMITTEE

FILE # ML-46522-10

I.D. # 46522

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OPINION COMMITTEE

RQ-0899-GA

RE: Whether Section 6 of H.B. 734, 72nd Regular Session and Texas Transportation Code Section 451.616(a), which became effective August 26, 1991, may be retroactively applied to a Unit of Election (Texas Municipality) that Withdrew from an Authority (Metropolitan Rapid Transit Authority) on January 19, 1988.

Dear General Abbott:

As Chairman of the Senate Jurisprudence Committee, I ask for your opinion regarding the retroactive application of Texas law as codified in the Texas Transportation Code Section 451.616 to the City of West Lake Hills (the "City").

As background, Capital Metropolitan Transit Authority ("*Capital Metro*") was created in 1985 when voters in the City of Austin and various other surrounding cities (including the City) approved of Capital Metro's creation. In 1987, the Texas Legislature passed H.B. 943, 70th Regular Session, which allowed cities to withdraw from Capital Metro. The citizens of the City voted to withdraw from Capital Metro effective on January 19, 1988.

Capital Metro provides special transit services to certain residents with disabilities who reside in the City. Capital Metro then receives reimbursement for the cost of providing the special transit services to the City's residents (less the nominal fares collected from the participants themselves) from the Texas Comptroller of Public Accounts (the "*Comptroller*") who deducts such amount from the amount of the monthly sales and use tax revenue that is otherwise due to the City. The Comptroller then remits such reimbursement to Capital Metro directly.



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Statutory authority for the payment arrangement between the Comptroller, Capital Metro and the City is purportedly found in Section 451.616(a) of the Texas Transportation Code. The Texas statutory authority for Capital Metro to provide special transit services to disabled persons in a withdrawn city is found in Section 451.610 of the Texas Transportation Code. Sections 451.610 and 451.616(a) were originally added to the Texas statutes as subsections (p)(1) and (p)(2) of Article 1118x, Vernon's Texas Civil Statutes by H.B. No. 734, 72nd Regular Session, effective August 26, 1991.

Article 1, Section 16 of the Texas Constitution forbids the enactment of retroactive laws. Similarly, Section 311.022 of the Texas Government Code (known as the Code Construction Act) states that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective."

Given the fact that Sections 451.610 and 451.616(a) of the Texas Transportation Code became law on August 26, 1991, and the residents of the City of West Lake Hills voted to withdraw from Capital Metro effective as of January 19, 1988, I respectfully request an opinion on the following question:

Does Capital Metro have the authority to charge the City for special transit services that Capital Metro provides to the City's residents?

Thank you for your assistance in this matter.

Sincerely,



Jeff Wentworth
Chairman
Senate Jurisprudence Committee

JW/kh