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OPINION COMMITTEE



The State of Texas
House of Representatives

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Wednesday, August 29, 2012

The Honorable Greg Abbott
Attorney General of the State of Texas
Attention: Opinions Committee
P.O. Box 12548
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FILE # ML-47119-12
I.D. # 47119

RQ-1078-GA

Re: Request for Attorney General Opinion to Determine Whether the Texas Comptroller of Public Accounts may Implement Rules Respecting the Collection of Sales and Use Tax that are Inconsistent with Section 43.0751(k) of the Texas Local Government Code

Dear General Abbott:

As a member of the House of Representatives, an office authorized to request your ruling under Texas Government Code § 402.042(b), I respectfully request your opinion as to whether the Texas Comptroller of Public Accounts (the "Comptroller") may interpret Chapter 43 of the Texas Local Government Code ("Chapter 43") and Chapter 321 of the Texas Tax Code ("Chapter 321") and implement rules with regard to the collection of sales and use tax that are inconsistent with certain provisions of Chapter 43. I request your opinion in this matter to resolve uncertainty so that the City of Lewisville (the "City") may receive the full benefit of a certain Strategic Partnership Agreement (defined below) it entered into with several districts located in the City's extra-territorial jurisdiction.

Background

The City is a home-rule municipal corporation principally situated in Denton County, Texas and authorized¹ to levy a sales and use tax not to exceed two percent.² Pursuant to Section 43.0751 of the Texas Local Government Code,³ the City entered into a Strategic Partnership Agreement dated as of July 20, 2009 (the "Agreement"), with the Denton County Fresh Water Supply Districts No. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, and 1-H (collectively, the "Districts"). Under the Agreement, the City agreed, among other things, to provide Fire Services, Emergency Medical Services, and Law Enforcement Services to the Districts, and the Districts agreed to allow, upon their annexation by the City for limited purposes, the

¹ Tex. Tax Code Ann. § 321.101(a-b) (Vernon 2008).

² Tex. Tax Code Ann. § 321.101(f) (Vernon 2008).

³ Tex. Loc. Gov't Code Ann. § 43.0751 (Vernon 2008 & Supp. 2011).

imposition of “a Sales and Use Tax within the [Districts on] the receipts from the sale and use at retail of taxable items at a rate equal to the Sales and Use Tax imposed by the City within its corporate boundaries.”⁴ Since its inception, under the Strategic Partnership Agreement, the City has collected sales taxes from within the Districts.

On or about November 8, 2011, the City held an election to create a city-wide Crime Control District and Fire Control District and levy an additional \$.0025 sales and use tax in support thereof. The City requested the Comptroller collect the additional \$.0025 sales and use tax in the Districts pursuant to the Agreement, however the Comptroller declined to collect the additional \$.0025 sales and use tax in the Districts because said Districts exist outside the City’s corporate boundary.

Question Presented

1. Is the Comptroller permitted to implement rules with regard to the imposition and collection of a sales and use tax that prevent a municipality from imposing a sales and use tax, levied pursuant to an existing Strategic Partnership Agreement, on districts that have been annexed for limited purposes?

Discussion

For the reasons stated below, the City argues that the Comptroller is not permitted to implement rules regarding sales and use taxes that prevent a municipality from imposing a sales and use tax on districts annexed by the municipality for limited purposes. Further, the City argues that the Legislature authorized it to levy, and required the Comptroller to collect and remit to the City the proceeds of, the additional \$.0025 sales and use tax within the Districts pursuant to the Agreement.

Analysis of the plain language of Section 43.0751(k) of the Texas Local Government Code shows that the City is authorized to impose a sales and use tax within the Districts.

This Office has clearly explained the rule of statutory construction that an unambiguous statute will be interpreted according to its plain meaning.⁵ Because the final text of a statute was voted on by the legislators and finalized through consensus and compromise, courts will attempt to determine the Legislature’s intent by examining the actual text of the statute.⁶ Courts will give effect to the plain meaning of a statute if its

⁴ Strategic P’ship Agreement Between the City of Lewisville, Tex. and Denton County Fresh Water Supply Dist. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, and 1-H 6 (July 20, 2009) (on file with requestor) [hereinafter *Agreement*].

⁵ See Op. Tex. Att’y Gen. No. DM-400 (2001) at 5 (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239 (Tex. 1994)).

⁶ *Id.* (citing *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)).

meaning was plain to the legislators who voted for it.⁷ In this case, the City entered into the Agreement pursuant to Section 43.0751 of the Texas Local Government Code.⁸ Section 43.0751(k) states that “a municipality that has annexed all or part of a district for limited purposes under this section may impose a sales and use tax within the boundaries of the part of the district that is annexed for limited purposes.”⁹ The statutory language is unambiguous and expressly authorizes a municipality to levy a sales and use tax in the district it has annexed for limited purposes. In this case, the Agreement expressly provides that as soon as the Agreement was approved by the City, it would annex the Districts for limited purposes only.¹⁰ Therefore after giving effect to the plain meaning of Section 43.0751(k), the City is authorized to impose a sales and use tax within the Districts’ boundaries as, pursuant to 43.0751, the area subject to the Agreement is considered annexed, or to be part of the corporate boundaries of the City for the purposes of levying a sales tax.

Chapter 321 authorizes municipalities to levy sales and use taxes. For all intents and purposes, the Crime Control and Prevention District sales tax is a municipal sales tax, imposed for the benefit of the City. The Comptroller’s 2007 Notice Publication entitled “City Sales Tax Options” itself denotes that the Crime Control and Prevention District sales tax is listed as a City sales tax because the Crime Control and Prevention District is created by the City and is for the benefit of the City. This is all the more relevant since the proceeds of the sales tax will be used for public safety purposes and the City is the sole provider of public safety services in the Districts. Once again, the plain meaning of Section 43.0751(k) should be given effect. In this case, the statute says that a municipality may impose “a sales and use tax” in districts that have been annexed for limited purposes.¹¹ Webster’s Ninth New Collegiate Dictionary defines “a,” when used as an indefinite article, to mean any.¹² Therefore giving effect to the plain meaning of the statute, the City is permitted to impose any of the available sales and use taxes in the Districts, in that those Districts are considered annexed for the purpose of sales taxes. Of course, the combined rate of all sales and use taxes imposed by the City and other Texas political subdivisions in the Districts could not

⁷ *Id.*

⁸ See Tex. Loc. Gov’t Code Ann. § 43.0751 (Vernon 2008 & Supp. 2011). The statute provides that a municipality and a conservation and reclamation district operating under Chapter 49 of the Texas Water Code may enter into a written agreement that provides for, among other things, the district’s limited-purpose annexation by the municipality and the exchange of services between the municipality and the district. See *id.* at (a) and (f).

⁹ *Id.* at (k).

¹⁰ Agreement, *supra* note 4, at 4.

¹¹ See Tex. Loc. Gov’t Code Ann. § 43.0751 (Vernon 2008 & Supp. 2011) (emphasis added).

¹² Webster’s Ninth New Collegiate Dictionary 43 (1990). Words and phrases not defined by statute are construed “according to the rules of grammar and common usage.” Tex. Gov’t Code Ann. § 311.011 (Vernon 2005).

exceed two percent.¹³ The plain meaning analysis of Section 43.0751(k) gives full effect to Chapter 43 by allowing the City and the Districts to enter into a strategic partnership agreement and receive full benefit of their bargain.

The Comptroller's interpretation of Section 43.0751(k) violates the statutory plain language of Chapter 43.

Here again, this Office has clearly set forth the determinative analysis. Where an agency has been authorized to interpret or enforce a statute, the agency's interpretation will be given serious consideration as long as the interpretation is reasonable and does not contradict the statute's plain language.¹⁴ In this case, although the Comptroller is authorized to create and enforce rules regarding the provisions of Chapter 321,¹⁵ the Legislature did not authorize the Comptroller to interpret or enforce any provision of Chapter 43. Therefore the Comptroller's interpretation of Section 43.0751(k) preventing the City from imposing a sales and use tax in the Districts annexed for limited purposes should be disregarded. The Legislature went further by expressly providing that Chapter 321 will govern the "imposition, computation, administration, governance, and abolition of the sales and use tax" *except* to the extent that any Chapter 321 provision is inconsistent with Section 43.0751(k).¹⁶ Clearly, by prohibiting the imposition of a sales and use tax on the Districts that the City has annexed for limited purposes, the Comptroller is relying on its authority found in Chapter 321 to administer sales and use tax provisions. However, any Comptroller reliance on Chapter 321 authority, to the extent such authority conflicts with Section 43.0751(k), was expressly prohibited by the Legislature. Furthermore, our Supreme Court has held that an agency's interpretation of a statute that violates the statute's plain language will not be respected.¹⁷

The plain meaning analysis of Section 43.0751(k), authorizing the City to impose a sales and use tax on the Districts that have been annexed for limited purposes, furthers public policy.

The annexation provisions found in Subchapter D of Chapter 43 serve a vital public purpose. The provisions allow municipalities to contract with water reclamation districts located in the municipality's extra-territorial jurisdiction to provide and receive valuable

¹³ See Tex. Tax Code Ann. § 321.101(f) (Vernon 2008).

¹⁴ See Op. Tex. Att'y Gen. No. DM-0448 (1997) at 6 (citing *Tarrant County Appraisal Dist. v. Moore*, 845 S.W.2d 820, 823 (Tex. 1993)).

¹⁵ See Tex. Tax Code Ann. § 321.306 (Vernon 2008) (The comptroller may adopt reasonable rules and prescribe forms that are consistent with this chapter for the administration, collection, reporting, and enforcement of this chapter.)

¹⁶ Tex. Loc. Gov't Code Ann. § 43.0751(k) (Vernon 2008 & Supp. 2011).

¹⁷ See Op. Tex. Att'y Gen. No. GA-0739 (2009) at 3 (citing *In re Am. Homestar of Lancaster, Inc.*, 50 S.W.3d 480,490-91 (Tex. 2001) (orig. proceeding)).

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services from each other without the time-consuming procedures involved in a full-purpose annexation. The strategic partnership agreement provides flexibility to the municipality and the districts regarding the types of services provided, the duration of the services, and the payment therefore. If the Comptroller's interpretation were supported, the "partnership" characteristic of the limited-purpose annexations would break down. Districts might be able to receive law enforcement services from a municipality, but the municipality would only be able to recover its expenses in providing such law enforcement services if it annexed the district. Confronted by limited budgets, fewer municipalities would be willing to extend valuable services to districts located in the municipalities' extra-territorial jurisdiction. Such condition is *exactly the opposite* outcome intended by the Legislature.

Conclusion

The plain meaning analysis of Section 43.0751(k) of the Texas Local Government Code authorizes a municipality to impose a sales and use tax on districts annexed by the municipality for limited purposes and furthers public policy. The Comptroller's interpretation of Section 43.0751(k) of the Texas Local Government Code prohibiting a municipality from imposing a sales and use tax on districts annexed by the municipality for limited purposes violates the statute's plain meaning and was expressly prohibited by the Legislature.

Thank you for your assistance on this question. I am available to provide any other information or assistance you need to facilitate a response.

Very truly yours,



Burt R. Solomons
Chairman, House Committee on Redistricting

Enc. (2)

CC: Susan Combs, Texas Comptroller
Rep. Harvey Hilderbran, Chairman of House Ways & Means
Sen. Tommy Williams, Chairman of Senate Finance