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CHAIRMAN
BUSINESS AND COMMERCE

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The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, TX 78701

FILE # ML-47134-12
I.D. # 47134

RQ-1084-GA

Dear General Abbott:

As chair of the Senate Committee on Business & Commerce, I respectfully request a formal opinion from you on the question of whether an economic development corporation may provide employee benefits for its employees through a risk pool established under Chapter 172, Local Government Code.

Section 172.004(a), Local Government Code, authorizes a political subdivision or group of political subdivisions under an interlocal contract to "directly or through a risk pool . . . provide health and accident coverage for political subdivision officials, employees, and retirees or any class of officials, employees, or retirees, and employees of affiliated service contractors." For purposes of Chapter 172, Local Government Code, a political subdivision is defined as a "county, municipality, special district, school district, junior college district, housing authority, or other political subdivision of this state or any other state." Sec. 172.003(3), Local Government Code.

Economic development corporations are governed by Subtitle C1, Title 12, Local Government Code. Section 501.055, Local Government Code, provides that an economic development corporation established under that subtitle is "not a political subdivision . . . for purposes of the laws of this state."

However, Section 501.067, Local Government Code, provides that:

[n]otwithstanding any law to the contrary and with the consent of the corporation's authorizing unit, a corporation may obtain . . . health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the authorizing unit's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision

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Section 501.067 was enacted long after 1989 when risk pools could first be formed. The original wording of Chapter 172 required that risk pools have membership consisting exclusively of political subdivisions. Economic development corporations could not have been intended to be political subdivisions at the time of the enactment of that statute. In 2001, Chapter 172 was subsequently amended to allow risk pools to cover employees of an "affiliated contractor" of a political subdivision. That term is currently defined in Section 172.003(1), Local Government Code as follows:

'Affiliated service contractor' means an organization qualified for exemption under Section 501(c), Internal Revenue Code (26 U.S.C. Section 501(c)), as amended, that provides governmental or quasi-governmental services on behalf of a political subdivision and derives more than 25 percent of its gross revenues from grants or funding from the political subdivision.

Obtaining an exemption under Section 501(c) ordinarily requires a determination of that status by the Internal Revenue Service.

Therefore employers that join a risk pool must be either a political subdivision or an affiliated contractor as defined by Section 172.003, Local Government Code cited above. Under the statutes discussed, it is unclear whether an economic development corporation is a political subdivision or an affiliated contractor, and which criteria has to be met for risk pool membership. Accordingly, for participation in a risk pool established under Chapter 172 of the Local Government Code, does Section 501.067 of that Code consider an economic development corporation to be a political subdivision by implication for the limited purpose of purchasing employee benefits for its employees, or must an economic development corporation meet the requirements of an affiliated contractor, including seeking a status determination by the Internal Service, to purchase employee benefits for its employees?

Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you need any additional information regarding this request.

Sincerely,



Senator John Carona
Chair, Senate Committee on Business & Commerce