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OPINION COMMITTEE



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FILE # ML-47455-13

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RQ-1165-GA

November 14, 2013

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

Opinion.committee@texasattorneygeneral.gov

Dear Attorney General Abbott:

Pursuant to the authority to issue advisory opinions granted to the Attorney General in §22 of Article IV of the Texas Constitution and §402.041, et seq. of the Texas Government Code, this letter is submitted to request an opinion regarding certain provisions of Local Government Code Chapter 377, Municipal Development District.

The City of Goliad has a Municipal Development District [hereinafter MDD] as authorized under Local Government Code [hereinafter LGC], Sec. 377, which collects sales tax within the city and within the extra-territorial jurisdiction of the county.

ISSUE

An attorney general opinion to clarify whether or not a "Senior Citizens and Civic Center" to be owned and operated by Goliad County Senior Citizens, Inc., a non-profit corporation, qualifies as a "project" under Sec. 377.001 (3).

FACTS

The application for funding seeks a \$30,000 grant per year for four years, for a total of \$120,000, to replace an existing center [2500 sq. ft.], which has been in operation since 1979, with a new center [3840 sq. ft.]. The non-profit organization serves approximately 14,821 meals per year. The meals are available to the public, with a \$3.00 suggested donation for 60 years old and above and a \$6.00 suggested donation for those below age 60. The building serves as a hub for events such as health and nutrition education, games, social and business events and entertainment. The center is available for rent to the community. The current building has no hot water in the bathrooms, no central air-conditioning or heat, is "not handicap friendly" and does not meet critical public building or electrical code.

The proposed new building, for which funding is sought, will be fully equipped with an updated kitchen, additional space and meeting rooms for civic activities for the city of Goliad at large...weddings, social and business events, games, exercise, entertainment and programs.

The current center employs nine part time employees, all of which will retain their jobs at the new center. The center does not anticipate creating any additional sales tax as a result of the new facility.

This detail is provided so that the character of this project can be understood.

LEGAL APPLICATION

LGC Chapter 377 appears to provide for two categories of "development projects", eligible for funding: 1.) Those that meet the "Type B Corporation" criteria [listed in LGC Sec. 505.151-505.158], and 2.) The convention center/civic center category, listed under LGC Sec.377.001 (3) (B).

The definition of a "civic center" or "civic center building" can be as general as "a center where the members of the community can gather for social or cultural activities". This project appears to meet that criteria, however, what is unclear is a "civic center" or "civic center building" may be owned and operated by a non-profit organization and still qualify as a civic center building under Sec. 377.001 (3) (B).

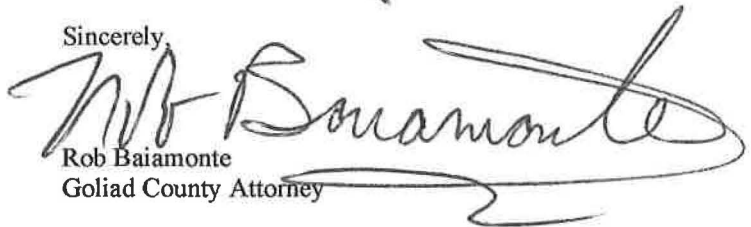
QUESTIONS PRESENTED

In conclusion, we request you provide an opinion on whether or not the above described project meets the criteria for a development project based both on the proposed purpose/usage [does it meet the definition of civic center?] and as to ownership of the project [can a non-profit own a civic center building, as defined under Sec. 377.001(3) (B)?].

Alternatively, if this project does not meet the "civic center" criteria, does this project meet any other qualifying "development project" under LGC Sec.377.001 (3)?

Thanks you for your time and attention to this matter. Please feel free to call me if I can provide anything else to assist with your analysis.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Baiamonte", with a large, sweeping flourish underneath.

Rob Baiamonte
Goliad County Attorney