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OPINION COMMITTEE



STATE OF TEXAS
HOUSE OF REPRESENTATIVES
DISTRICT 103

June 5, 2014

FILE # ML-47592-14
I.D. # 47592

RQ-1205-GA

RAFAEL ANCHIA
MEMBER

Via Email [Opinion.Committee@texasattorneygeneral.gov]

The Honorable Greg Abbott
Attorney General of Texas
Office of the Attorney General
ATTN: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-254

Re: Request for attorney general opinion on a charitable organization's ability to retain a property tax exemption

Dear Attorney General Abbott:

Due to the Dallas Central Appraisal District's recent denial of predetermination request on a charitable organization's qualifications for a property tax exemption, pursuant to Section 402.02 of the Government Code, please advise whether a charitable organization may maintain a total property tax exemption authorized by Section 11.18 of the Tax Code when it leases property it owns to a limited partnership that would, in turn, fund and construct new improvements on the property controlled by the charitable organization, equitably owned by the charitable organization and used to expand the charitable organization's social services.

Factual Background

The Deaf Action Center, Inc. ("DAC") is a Texas non-profit 501(c)(3) organization that serves deaf and hard-of-hearing people in Dallas and throughout Texas with a comprehensive range of social services. More specifically, DAC provides communications and interpreting services, community education programs, teaching services, advocacy services, employment assistance, literacy programs, counseling, a "Senior Services Center" and other services all without regard to the ability to pay for those services. DAC also owns a 40-unit apartment complex and three adjacent vacant lots in the Oak Lawn area of Dallas (hereinafter, collectively the "Property"). For many

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years, the Property has received total exemptions from *ad valorem* taxes pursuant to Tax Code § 11.18.¹

In addition to the above-referenced social services, DAC manages and rents the Property to individuals and families with deaf or hard-of-hearing members and to other tenants, many of whom receive housing assistance.² This rental revenue funds DAC's social services and it is necessary to ensure that DAC's social services can be provided without regard to their beneficiaries' ability to pay. Currently, residents in 32 units on the Property are receiving social services from DAC.

DAC wants to expand the number of apartment units on its Property from 40 units to approximately 120 units. To fund this expansion, DAC wants to demolish the Property's existing improvements and lease the Property back to a limited partnership (the "Proposed LP"). The Proposed LP would construct new improvements utilizing funding from the sale of low income housing tax credits issued by the Texas Department of Housing and Community Affairs (the "TDHCA"), the issuance of bonds by either TDHCA or the Dallas Housing Finance Corporation, and/or by obtaining a HUD/FHA insured loan and a loan or grant from the City of Dallas. Although the Proposed LP would own the new improvements, DAC would hold equitable title to the new improvements. Upon completion, a portion of the new units would be leased only to low income tenants, including deaf and hard-of-hearing persons and their families. The ratio of low-income to market rate units on the Property is projected to be 60% low-income and 40% market rate.

Furthermore, DAC will manage and control the Proposed LP through a wholly-owned general partner, retain legal title to the Property (post-construction, the land only) and, as mentioned above, at all times, hold equitable title to the new improvements constructed on the Property. Moreover, utilizing the increased rental revenue, DAC will continue to provide social services to the Property's deaf and hard-of-hearing tenants and to others in Dallas and the state of Texas in a more modern and expanded facility and on a larger scale, all without regard to those persons' ability to pay.

Legal Authority

The Texas Constitution provides that the legislature may exempt institutions of purely public charity from taxation.³ Presently, Tax Code § 11.18⁴ provides a total

¹ See enclosed letters from the Dallas Central Appraisal District to DAC dated Jan. 11, 2010, marked Exhibits A and B.

² A majority of DAC's current tenants are seniors and below poverty.

³ See TEX. CONST. ART. VIII, 2(a).

property tax exemption to qualifying charitable organizations. More specifically, Tax Code § 11.18(d)(3) provides a total exemption to charitable organizations, such as DAC, that provide various forms of support to elderly and handicapped persons, without regard to those persons' ability to pay for said support.⁵

Moreover, on multiple occasions the Texas Supreme Court has held that properties can qualify for total property tax exemptions when charitable organizations retain equitable title, even when the properties are owned by for-profit entities, provided the charitable organizations continue to control the properties.⁶ More specifically, in *AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist.* and in *Galveston Cent. Appraisal Dist. V. TRQ Captain's Landing*, the Texas Supreme Court held that multi-tenant housing complexes owned by for-profit entities qualified for total property tax exemptions authorized Tax Code § 11.182 because community housing development organizations (which were also non-profit 501(c)(3) charitable organizations) retained equitable title and control of the complexes.⁷ As explained in *AHF-Arbors*, the tiered ownership of housing complexes allows greater flexibility for investors in the properties, it encourages the involvement of private funds in developing low-income housing, and the *ad valorem* tax exemption allows charitable organizations to operate with less revenue.⁸

Other Texas courts have utilized equitable ownership to determine that properties owned equitably by public entities can retain their total property tax exemptions, even when record title for the properties resides with non-public entities.⁹ For example, in *Tex. Dep't. of Corr. v. Anderson County Appraisal Dist.*, the Tyler Court of Appeals held that a prison unit that was only equitably owned by the state of Texas could qualify for a total property tax exemption because it was being used for public purposes.¹⁰ Similarly, in *Harris County Appraisal Dist. v. Southeast Tex. Hous. Fin. Corp.*, the Amarillo Court of Appeals held that a housing project that was only equitably owned by a housing finance corporation could remain totally exempt, and that determining a housing corporation's wholly-owned subsidiaries were not exempt from

⁴ See TEX. TAX CODE ANN. § 11.18 (LexisNexis 2014).

⁵ See *id.* at § 11.18(d)(3).

⁶ See *e.g.*, *Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing*, 423 S.W.3d 374 (Tex. 2014); *AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist.*, 410 S.W.3d 831 (Tex. 2012).

⁷ See *AHF-Arbors*, 410 S.W.3d at 837-39; *TRQ*, 423 S.W.3d at 375-76.

⁸ See *AHF-Arbors*, 410 S.W.3d at 837.

⁹ See *e.g.*, *Harris County Appraisal Dist. v. Southeast Tex. Hous. Fin. Corp.*, 991 S.W.2d 18 (Tex. App. – Amarillo 1998, no writ); *Tex. Dep't of Corr. v. Anderson County Appraisal Dist.*, 834 S.W.2d 130 (Tex. App. – Tyler 1992, no writ).

¹⁰ See *Tex. Dep't. of Corr.*, 834 S.W.2d at 132.

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taxation would defeat the Legislature's purpose behind exempting housing corporations from property taxes.¹¹

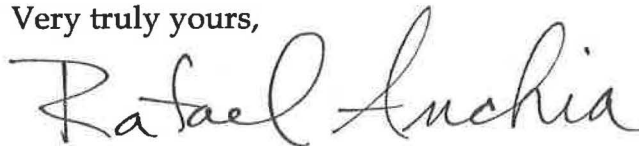
Finally, in plain language, Tax Code § 11.18 also provides that the use of property exempt under that section by persons who are not qualified charitable organizations does not result in the loss of the exemption if such use is incidental to use by the qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.¹²

Conclusion

DAC's anticipated use and control of the Property and its new improvements will be consistent with DAC's current use and control of the Property, which has been determined to be tax exempt to date. Also, the Proposed LP's use and DAC's equitable ownership of the new improvements will directly serve DAC's beneficiaries, and permitting DAC's retention of a total property tax exemption is consistent with the Texas Supreme Court's recent interpretation of similar exemption issues. If anything, in light of DAC's retained equitable ownership interest, the Proposed LP's ownership and use of said improvements would only be incidental to DAC's charitable use of the Property, all to the benefit of DAC and those it serves in the community. Accordingly, I respectfully request that you determine that DAC will continue to qualify for a Tax Code § 11.18 exemption after it completes the proposed expansion of its facilities utilizing the foregoing plan.

Thank you for your attention to this matter. Please contact me with any questions or if you require any further information that may assist your efforts.

Very truly yours,



State Representative Rafael Anchia
Texas House of Representatives, District 103

Encl.

cc: Deaf Action Center [Via Email]
Ms. Ellen Rourke [Via Email]
Mr. John Shackelford, Esq. [Via Email]

¹¹ See *Southeast Tex.*, 991 S.W.2d at 22-23.

¹² See TEX. TAX CODE ANN. at § 11.18(b).