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OPINION COMMITTEE

March 3, 2015

FILE # ML-47708-15
I.D. # 47708

RQ-0015-KP

VIA REGULAR MAIL

Honorable Ken Paxton
Texas Attorney General
ATTN: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Opinion

Dear Attorney General Paxton:

The City of Sunset, Texas (the "City") was a Type A General Law Municipality. It was duly incorporated in accordance with the Texas Local Government Code in 1995 and operated under such authority until May 16, 2007. On May 12, 2007 a vote was held by general election, in accordance with the Texas Local Government Code, and the voters elected to abolish the City. The City Council canvassed the votes and determined that the election did result in the abolition of the City. The Mayor has certified the election results and the certification has been delivered to the County Judge of Montague County, Texas. The Montague County Commissioner's Court accepted the certification and entered it in their minutes on May 31, 2007, effectively abolishing the City.

After the City was abolished, it retained outstanding debts owed by it totaling \$371,468.82. In order to see that those debts were paid, the City Council decided to continue in their role, liquidate the assets of the City and pay the debts owed by it under the authority granted them by Texas Local Government Code §62.161. They have done so since 2007 and have continued to collect ad valorem taxes each year during that time in order to pay down the debts owed by the City.

As of the end of the 2014 tax year, the City has paid all of the debts owed by it and has placed no tax burden on its citizens for tax year 2015. In fact, after the payment of all of its debts, the City has a balance of roughly \$10,000.00 remaining in its accounts.

Further, on or about April 23, 2007, a former employee of the City, named

pled guilty to the offense of theft by a public servant over \$20,000.00, but less than \$100,000.00, a third degree felony. This plea was as a result of actions of embezzlement committed by toward the City. As part of the plea bargain, agreed to ten years community supervision under an order of deferred adjudication and the payment of restitution in the amount of \$93,138.03. To date, has paid approximately \$48,000.00 of that restitution and owes approximately \$45,000.00, to be paid over the next 2 years.

Additionally, a civil judgment was obtained by the City against in the amount of \$247,949.79, including \$108,335.62 in actual damages, \$100,000.00 in exemplary damages, \$1,502.50 in prejudgment interest, and \$38,111.67 in attorney fees and costs. To date, no amount has been paid on that judgment apart from the restitution received by the City as a result of the aforementioned criminal judgment.

With these facts in mind, it appears that the City continues to control assets possibly totaling up to \$164,811.76, if all is paid according to the various judgments that are in place. However, with the debts of the City now paid, the City Council cannot continue to operate in accordance with Texas Local Government Code §62.161 and must close its operations. The problem, and ultimately the question posed by this request is what to do with the assets that the City still controls.

I have been unable to find any section of the state's various codified laws which specifically provide for a procedure for this situation. After exhausting my own research, I spoke with the staff attorneys at the Texas Municipal League. They agreed that there is no law that specifically provides a solution to this problem. The closest analog would be Texas Local Government Code §62.094, which pertains to the actions and duties of a receiver appointed by a District Court to liquidate the assets of a city. According to Texas Local Government Code §62.094:

“(c) After the final settlement of the receivership, the receiver shall deliver money or other property remaining to the trustees or other officers in charge of any public school district located completely within the boundaries of the abolished municipality, and the money or property shall be used for the benefit of the school district. If there is no such public school district, the receiver shall deliver the remaining money or property to the county in which the municipality is located. The money shall be deposited in the general fund of the county, and the property shall be used for the benefit of the county.”

The City of Sunset is entirely serviced by the Bowie Independent School District (Bowie ISD”).

However, during each of the years from 2007 to the present the property owners of the City have paid their respective shares of the tax burden allotted by Bowie ISD and continue to do so. Within the City there are several not-for-profit corporations which have obtained tax exempt status under Internal Revenue Code sect. 501(c)(3) and which directly benefit the City's citizens, including the Sunset Community Park Corporation and the Sunset Economic Development Corporation.

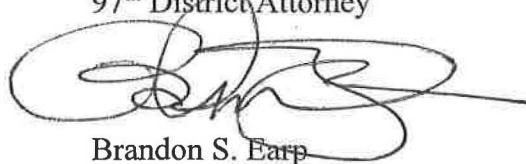
Therefore, the question upon which we seek an opinion is whether the City may pay its remaining assets and assign its interests in the described judgments to the local not-for-profit corporations which directly benefit its citizens, or, if not, then to whom must it pay its remaining assets and assign its interest in the described judgments?

Thank you in advance for your consideration of this matter. Please do not hesitate to contact us or our staffs if you have any questions or need further information.

Yours Truly,



Paige Williams
97th District Attorney



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