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ROBERT L. NICHOLS
STATE SENATOR

June 15, 2015

The Honorable Ken Paxton
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion concerning METRO's participation in the Uptown Houston Transit Project a/k/a the Post Oak Boulevard Dedicated Bus Lanes Project (the "Project" or "BRT")

Dear Attorney General Paxton:

Please treat this letter as a request for your office to issue an opinion concerning the legality of a currently contemplated mobility project in Houston, Texas.

In 2003, Houston voters narrowly approved the construction of a 4.4 mile commuter light rail line on Post Oak Boulevard. Part of the referendum included language that, if passed, the agreements approved therein would be binding on METRO and would constitute binding and enforceable contracts with the voters.

Instead of constructing light rail on Post Oak, the current project, which is a joint venture between the City of Houston, METRO and Uptown, intends to utilize the same approved light rail route along Post Oak but with a different technology, known as a Bus Rapid Transit ("BRT") system, which is designed to connect workers to Uptown via Houston's HOV network. More specifically, in lieu of light rail, this Project will connect the Northwest Transit Center and the future Westpark Transit Center via exclusive dedicated bus lanes situated in the expanded median of Post Oak Boulevard.

The Project will allegedly not be built or funded by METRO, but METRO will nevertheless fully participate in the Project by operating and maintaining the dedicated Project bus lanes and dedicated Project buses. METRO will also develop bus specifications, operating plans, fare collection policy and systems, bus schedules and other system characteristics necessary to operate the dedicated bus service. METRO will also procure the dedicated buses.

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Given the fact that the voters authorized light rail on Post Oak instead of BRT, would METRO's involvement as described herein be illegal in that it would violate the contract METRO entered into with the voters via the 2003 referendum?

Houston's Mayor Parker and Uptown have scheduled a groundbreaking ceremony for Monday, June 15, 2015. Scheduled construction of sanitary sewer improvement is imminent, and the eminent domain process is already underway. Time is therefore of the essence, as there is a very real threat that tax dollars and bond proceeds will be obligated and/or spent on an illegal activity, for which millions of dollars are at stake.

I am aware of the fact that your office has up to 180 days in which to issue an opinion. However, under these exigent circumstances, I respectfully request that you consider issuing an opinion as quickly as possible. In that regard, please be advised that Harris County Attorney Vince Ryan made a similar request in 2014, which was supported by a letter from METRO's board chairman, and was further accompanied by a well-written and compelling legal brief. That request was styled as RQ-1217-GA. In that package of information, METRO contended that it could not legally sign a letter requested by the Texas Transportation Commission to build only a bus lane in the same location--as what should otherwise have been the location of the 2003 voter-approved light rail segment--because it would violate its contract with the voters. However, this opinion request was withdrawn prior to the issuance of an opinion. Given the passage of time between the request and withdrawal of that request, it is likely that the Opinions Committee had already researched and perhaps even drafted an opinion. If that assumption is correct, then your office can hopefully issue this opinion in an expedited fashion.

Sincerely,

Robert L. Nichols
State Senator, District 3