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STATE of TEXAS
HOUSE of REPRESENTATIVES

JOE DESHOTEL

Texas State Representative
22nd Legislative District

FILE # ML-47955-16
47955

DISTRICT OFFICE

One Plaza Square, Suite 203

Port Arthur, TX 77642

409-724-0788

Fax: 409-724-0750

joe.deshotel@house.state.tx.us

RQ-0094-KP

February 9, 2016

The Honorable Ken Paxton
Attorney General, State of Texas
Open Records Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Re: The application of Section 171.001 of the Local Government Code as it relates to members of local Boards, Commissions and staff.

Dear General Paxton:

The City of Beaumont is a home-rule municipality in my district that is struggling to resolve the issue of the legality regarding a Planning and Zoning Commission vote pertaining to a Historic Preservation District land use issue in which at least two of the members reside and have a property interest in the district. This city has created a historic cultural landmark preservation overlay district in its zoning ordinance with a historic-cultural landmark preservation designation. This district is geographically identified on the official zoning map of the city.

Members of the Planning and Zoning Commission generally have the duties and responsibilities of the zoning commission provided for in V.T.C.A. Local Government Code, section 211.007. These duties include land use matters as they relate to properties within the historic overlay district. The land uses in the district are determined and regulated pursuant to the underlying zoning district classifications.

The governing body of the City has also created by ordinance a Historic Landmark Commission for the purpose of approving or making recommendations on the alteration, reconstruction, demolition, or relocation of buildings and structures

within the district. The City's ordinance prohibits construction, reconstruction or alterations of any nature without first obtaining a Certificate of Appropriateness from the Commission. The Commission's interest is in preserving the integrity of the district and balancing the City's interest in encouraging growth through commerce. The expressed stated purposes of the preservation designation are as follows:

- (1) To stabilize and improve property values;
- (2) To encourage neighborhood conservations;
- (3) To foster civic pride in the beauty and accomplishments of the past;
- (4) To protect and enhance the city's attractions to tourists and visitors;
- (5) To strengthen and help diversify the economy of the city; and
- (6) To promote the use of historic-cultural landmarks for the education, pleasure and welfare of the community.

Also, the Planning staff member who is primarily responsible for preparing the Planning and Zoning staff report and the Historic Landmark Commission staff report and who makes recommendations to the commissions also lives in the historic district.

At the public hearing where an application for a specific use permit for a business office was being considered by the Planning and Zoning Commission, residents of the district testified that the application, if approved, would have "a negative impact on their property values." That it would allow for further commercial intrusion into the district.

A similar conflicts of interest issue was addressed in Tex. Att'y Gen. Op. No. DM-309 (1994). Although the aforementioned opinion determined that Planning and Zoning Commissioners were public officials pursuant to Chapter 171 of the Local Government Code as it pertains to a business entity; the opinion did not address the issue as it might relate to members who reside or have a substantial interest in real property in a geographically identifiable area such as the historic district.

Tex. Att'y Gen. LO-96-049 (1996) addressed city council members as public officials voting on zoning matters regarding the "subdivision" in which they reside. It was determined that "under Chapter 171 of the Local Government Code, a city council member may not vote or decide on a matter regarding the subdivision in which the member owns a residence if it is reasonably foreseeable that the action

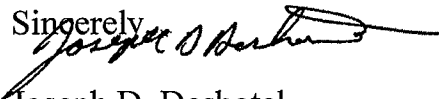
on the matter will have a special economic effect on the value of the member's residence, distinguishable from its effect on the public."

Tex. Att'y Gen. Op. No. DM-130 (1992) answered the question of whether a home-rule city council member is barred by state law from voting on zoning matters affecting "territory" which includes that member's residence. The answer provided was "under certain circumstances, the provisions of Chapter 171 of the Local Government Code would require a home-rule city council member to abstain from voting on a zoning matter affecting territory in which the member's residence is located." The caveat is given that it is advisable for a member to comply with the affidavit and abstention requirements of the provision if there is a doubt. These opinions have addressed "subdivisions", "territories" and now the question of a "geographically identifiable" historic district is being raised.

The question posed is whether a Planning and Zoning Commissioner or Historic Landmark Commissioner and/or staff member, as public officials pursuant to Chapter 171 of the Local Government Code, who resides or owns property in the geographically defined historic district may vote or decide on matters that affect that district where preserving the value of property in the district is a major focus?

We are interested in receiving your opinion on the subject. If you need further information, please do not hesitate to contact me at 409-781-9221.

Sincerely,



Joseph D. Deshotel
State Representative
22nd Legislative District