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August 10, 2017

The Hon. Ken Paxton
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OPINION COMMITTEE

VIA CMRRR# 7014 2870 0000 2896 1926

FILE # HL-48190-17
I.D. # 48190

Re: Opinion Request

RQ-0174-KP

Dear Sir:

On behalf of Mr. Ronald Heggemeier, City Manager of the City of Petersburg, Texas, and pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on the following questions:

1. Does the City of Petersburg ("the City") have any authority, given the provisions of Article III, section 52(a) of the Texas Constitution, that would allow the use of employees of the City for various tasks related to events sponsored by the Petersburg Area Chamber of Commerce ("the Chamber"), such as Christmas on the Plaza and Petersburg Days?¹
2. Does the City have any authority, given the provisions of Article III, section 52(a) of the Texas Constitution, that would allow the use of City-owned equipment and supplies for various purposes related to events sponsored by the Chamber, such as Christmas on the Plaza and Petersburg Days?
3. Does the City have any authority, given the provisions of Article III, section 52(a) of the Texas Constitution, that would allow the use of City-owned and -maintained facilities and property, for events sponsored by the Chamber, such as Christmas on the Plaza and Petersburg Days?

¹These questions are paraphrased versions of the questions propounded by Mr. Heggemeier in his request to our office for assistance in obtaining your opinion. A copy of that request, as noted below, is enclosed with this letter as Exhibit A.

4. Are the provisions of Article III, Section 52(a) of the Texas Constitution the controlling law in reference to the foregoing questions, or are there any other applicable constitutional provisions?

Factual Background

The City of Petersburg lies in southeastern Hale County. The 2010 United States Census counted the population as 1,202 people.² The Chamber stages the events referenced in the questions presented, Petersburg Days and Christmas on the Plaza. The Chamber, a non-profit, private corporation, exists to promote the Petersburg community. Petersburg Days involves a parade, vendors, a barbeque cook-off, and a motorcycle “fun run.” The event also draws back former residents for class and family reunions.³ The Chamber advertises Petersburg Days around the area with the belief that the event is “one of the best ways to promote our community.”⁴

The Chamber describes Christmas on the Plaza as follows:

Our highly-anticipated event, Christmas on the Plaza, occurs the second Wednesday in December from six to nine o’clock. It is an evening of holiday fun and shopping. Santa comes too. Vendors set up in a large storefront to offer-close-to home Christmas shopping, Christmas baked goodies and a little old fashioned cheer. Other shops on Main St. are open late as well. Last year a horse-drawn carriage took people on rides to see the lighted houses nearby.⁵

Legal Authorities

Because this office requests your opinion on behalf of Mr. Heggemeier, the remainder of our brief appears in his brief, enclosed with this letter as Exhibit A. Exhibit A also contains additional factual information provided by Mr. Heggemeier.

Thank you for your attention to this matter. We shall await your opinion. Please let me know if you require additional information or briefing. With best regards, I am,

²2010 U.S. Census Gaeteeer Files, <https://www2.census.gov/geo/docs/map-date/date/gazetteer>, retrieved August 10, 2017.

³See, “Petersburg Day,” at <http://www.petersburgtxchamber.com>, viewed August 10, 2017.

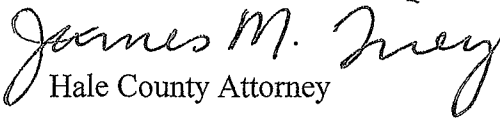
⁴*Id.*

⁵*Id.*, “Christmas on the Plaza,” viewed August 10, 2017.

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Sincerely yours,

JAMES M. TIREY


Hale County Attorney

Enclosure

cc: Mr. Ronald Heggemeier (via email attachment)
The Hon. Susie Martinez (via certified mail)
Office File

EXHIBIT A

FACTUAL BACKGROUND

Petersburg, Texas is a Type A General-Law municipality located in Hale County, Texas. The Petersburg Area Chamber of Commerce, Inc. ("PACC") is a Texas corporation which was incorporated on February 28th, 2000 (filing number 0157311801). The City of Petersburg has no affiliation or connection to the PACC.

The PACC holds various fund raising activities during the year and most of their money goes to funding scholarships and for other PACC activities. Two main events held each year are the "Christmas on the Plaza" and the "Petersburg Day" parade. The parade is part of the overall Chamber event called "Petersburg Day".

Over the years the Chamber has asked the City of Petersburg to do various things for the PACC activities. In recent years the list of items requested has increased. PACC asks for items which involve City personnel's time, use of City equipment, and use of City facilities for no cost to the PACC.

CONTROLLING LAW

The Petersburg City Council has been advised of the provisions of Article III (Section 52(a) of the Texas Constitution which provide in pertinent part:

"...the Legislature shall have no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend its credit or to grant public money or **thing of value in aid of**, or to any individual, association or **corporation whatsoever...**" TEX. CONST. art. III, 52(a) (emphasis added)

Because Petersburg is a Type A General-Law municipality with a Mayor/Council form of government Petersburg only has that power granted to it by the Constitution (or implied therefrom) and that power granted to it by the Legislature. The provisions of Article III, Section 52(a) of the Texas Constitution forbid the Legislature from granting power to Petersburg to aid or give public money to a corporation. There appear to be no other Constitutional provisions granting power to a municipality such as Petersburg that would allow it to lend its credit to, grant public money to, and/or aid a private corporation such as the PACC.

Furthermore, there is neither a benefit to the taxpayers of Petersburg nor a recognizable governmental function being performed for the expenditure of public funds to aid the PACC in their events and fund raising activities.

DISCUSSION

PACC has requested assistance from the City of Petersburg which would, if given, cause the City to expend public funds for payment of salary and related benefits to City workers to complete the work the PACC has requested and/or to give things of value (equipment, supplies, etc) to PACC for their use which have been purchased with public funds. Additionally, the PACC has requested free use of the Community Center which is owned and operated by the City of Petersburg and supported by the use of public funds. This use would cause the City to expend public funds for the payment of utilities, payment of cleaning costs following the function, and general wear and tear on the facility.

QUESTIONS PRESENTED

First Question: Does the City of Petersburg have any authority, given the provisions of Article III, Section 52(a) of the Texas Constitution, that would allow the use of city workers/employees of Peterburg for various tasks for events of the PACC such as Christmas on the Plaza and Petersburg Days?

Second Question: Does the City of Petersburg, given the provisions of Article III, Section 52(a) of the Texas Constitution, that would allow the use of city equipment and supplies of Peterburg for various purposes for events of the PACC such as Christmas on the Plaza and Petersburg Days?

Third Question: Does the City of Petersburg have any authority, given the provisions of Article III, Section 52(a) of the Texas Constitution, that would allow the use of city facilities and city property, owned and maintained by the City of Petersburg, for various events of the PACC such as Christmas on the Plaza and Petersburg Days?

Fourth Question: Are the provisions of Article III, Section 52(a) the controlling law in reference to the foregoing questions presented or are their other relevant constitutional provisions that would apply?