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FILE# **ML-49270-23**
I.D.# **49270**

THE SENATE OF TEXAS

SENATOR PAUL BETTENCOURT
DISTRICT 7

May 10, 2023

VIA Email to: opinion.committee@oag.texas.gov
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Using Maintenance and Operations tax collections to pay debt service

Dear Attorney General Paxton,

This letter serves as a formal request for your *expedited* opinion regarding the legality of using Maintenance and Operations tax collections to pay for debt service.

BACKGROUND:

In 2020, the Austin City Council adopted a tax rate higher than the voter-approval tax rate, triggering an election under Tex. Tax Code section 26.07. Section 26.07(c) prescribes the ballot wording:

> At the election, the ballots shall be prepared to permit voting for or against the proposition: "Approving the ad valorem tax rate of $_____ per $100 valuation in (name of taxing unit) for the current year, a rate that is $_____ higher per $100 valuation than the voter-approval tax rate of (name of taxing unit), *for the purpose of (description of purpose of increase).* Last year, the ad valorem tax rate in (name of taxing unit) was $_____ per $100 valuation."

In August, 2020, before the Project Connect tax-rate increase election in November 2020, the Austin City Council adopted a resolution, as distinguished from an ordinance, that the Council called a "contract with the voters." RESOLUTION NO. 20200807-003 at 4-5. The Resolution said, "The City Council, by this official action, clarifies and declares its intent and commitment to the voters to create a contract with the voters that specifies and commits that the proceeds from the Project Connect Tax Revenue collected shall be used to invest in a citywide rapid transit system, known as Project Connect, which includes associated transit-supportive anti-displacement strategies." At least initially, Project Connect is a massive capital improvement program for changes to streets, rail lines, including a potential tunnel and bridge expansions that, uniquely, is paid for from the City's Maintenance & Operation property tax instead of from debt to be repaid with an Interest & Sinking fund receiving revenue form the City's Debt Service Tax Rate.

COMMITTEES:

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Austin voters approved an additional $0.0875-cent property tax rate increase for the 2020 taxes. This was equivalent to 20.789% of the City's General Fund (Maintenance & Operation) property tax revenue in 2020. That percentage was adopted as being the amount of the City's M&O property tax revenue that would be transferred each year in perpetuity from the City to the Austin Transit Partnership Local Government Corporation (ATP), a nonprofit entity created to fund and implement Project Connect using the property tax revenue transferred from the City. The intent is for ATP to issue some form of debt, *e.g.,* revenue bonds, to pay for Project Connect infrastructure engineering and construction.

QUESTION TO THE ATTORNEY GENERAL:

In a tax-rate increase election held pursuant to Tex. Tax Code section 26.07, the ballot must include a description of the "purpose" of the increase. Does section 26.07 authorize a municipality to "earmark" use of a voter-approved increase in its Maintenance and Operation property tax revenue for purposes other than maintenance or operation, *e.g.,* debt service?

If not, can such an increase in a municipality's Maintenance and Operation property tax be transferred to a local government corporation (created pursuant to Tex. Trans. Code Chapter 431, Subchapter D) to be used for debt service on debt issued by the local government corporation?

Thank you for your consideration of this request.

Sincerely,

Paul Bettencourt, Chairman
Senate Committee on Local Government