

October 24, 2022

The Honorable Ken Paxton
Texas Attorney General
Attn: Committee Opinion
P.O. Box 12548
Austin, TX 78711

Re: Brief on Pending Opinion Request RQ-0481-KP

Dear General Paxton:

This letter serves as a Brief on Pending Opinion Request RQ-0481-KP submitted by Senator Bettencourt on October 10, 2022. Senator Bettencourt seeks your opinion regarding the authority of a public facility corporation (PFC) sponsored by a municipal management abstract to purchase and acquire property outside the district's boundary.

Background Facts

Williamson County has a specific issue regarding PFC's that we feel is germane to the issue raised by Senator Bettencourt.

The SH 130 Municipal Management District (the MMD), located entirely in Travis County, "sponsored" the creation of the Texas Essential Housing Public Finance Corporation (TEHPFC). A development group, Zmodular, conveyed without monetary consideration a 15-acre tract in Jarrell, Texas to the TEHPFC, which in turn leased the property back to Zmodular for 99 years. The TEHPFC then filed an application with the Williamson County Appraisal District (WCAD) claiming a 100% property tax exemption. The basis of the exemption was stated in Exhibit "A" of the PFC's application to WCAD, said exhibit being attached to this brief as Exhibit "A". As a basis for the exemption, the PFC claims that while a PFC is performing charitable functions, it is exempt from taxation, citing Section 303.042(c) of the Texas Land Government Code. The PFC further cited the same section as stating that a multi-family development owned by a PFC is eligible for a tax exemption if at least 50% of the units are reserved for occupancy by individuals or families earning less than 80% of the area median income.

Williamson County takes issue with both basis for claims for exemption. The PFC's first claim as a basis for exemption states that while a PFC is performing charitable functions, it is exempt from taxation. In Letter Opinion No. 98-028, your office opined that "Property is not public property merely because of PFC holds legal title to the property." The Letter Opinion further states "But we decline to hold as a matter of law that any facility owned by a PFC is used for public purposes merely because the statute says so." This position was recently made clear in Texas Supreme Court case of *Odyssey 2020 Academy, Inc. vs. Galveston Central Appraisal District*, 624 S.W. 3rd 535, 536 (Tex. 2021), which held that "...our Constitution does not allow

the Legislature to recharacterize a property interest that is not in fact publicly owned so that it qualifies for an exemption.” *Id* at p. 536.

The PFC’s second claim cites Section 303.042(c) yet repeats the eligibility requirements for exemptions found in Section 303.042(d). This section only applies to multi-family developments owned by a PFC created by a housing authority. The TEHPFC was created by the SH 130 MMD, not a housing authority. This second claim for a basis of tax exemption should be rejected as not following state law.

In conclusion, Williamson County strongly supports Senator Bettencourt’s opinion that the granting of significant property tax exemptions to private developers without the knowledge or approval of local taxing units is without any statutory or constitutional basis.

EXHIBIT A

Basis for Property Tax Exemption

Certain multifamily developments owned by public facility corporations are exempt from taxation. A municipality, county or public housing agency may create a public facility corporation (a "PFC").¹ While a PFC is performing its charitable functions, it is exempt from taxation by this state or any political subdivision of this state (the "Tax Exemption").² Further, a multifamily residential development owned by a PFC is eligible for the Tax Exemption if at least 50% of the units are reserved for occupancy by individuals or families earning less than 80% of the area median family income (the "Affordability Restrictions").³

A leasehold interest in such a property is treated in the same way. For so long as a PFC owns fee title to a public facility (such as a multifamily residential development that meets the Affordability Restrictions), a leasehold interest granted by the PFC is eligible for the Tax Exemption,⁴ and the property should be listed on the tax rolls in the name of the property owner.⁵

Applied to the Property, TEHPFC is a PFC and the transaction contemplates that (i) TEHPFC will be the fee owner of the Property, (ii) TEHPFC will perform its public functions by owning and supporting the construction and operation of the Development to be built on the Property, (iii) the Regulatory Agreement recorded with the county requires the Property meet the Affordability Requirements, and (iv) TEHPFC will grant a leasehold interest in the Property to Lessee. Therefore, each Property and Lessee's leasehold interest in each Property meet the requirements for and should both receive the Tax Exemption, and each Property should be listed on the tax rolls in TEHPFC's name.

¹ TEX. LOC. GOV'T CODE § 303.002

² *Id.* at § 303.042(c)

³ *Id.* at § 303.042(c)

⁴ TEX. LOC. GOV'T CODE §§ 303.042(f), 379B.011(b)

⁵ Tex. Tax Code § 25.07(a)