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I.D. # 40755 Opinion Committee

Office of the Attorney General
Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an opinion:
Use of G.O. Bond Proceeds for Arbitration

Dear Sirs:

I am in receipt again of correspondence from Mr. Frank DiMuccio, Jr. of Copperas Cove, Texas. He provides several enclosures, all of which I am including herewith. Mr. DiMuccio seeks an opinion as referenced above.

In a request letter to you dated March 20, 1998, our County Attorney, Edwin Powell stated the issue for opinion in this manner: "Can general obligation bond proceeds be used to finance expenses to defend or pursue arbitration of construction despite that result from the purposes for which the general obligation bond was originally issued?"

As Mr. Powell added, the expenses attendant to the arbitration included legal fees.

As Mr. DiMuccio points out in his prior correspondence, little opinion (A.G. or otherwise) is available.

I understand your procedure to require the requesting authority to provide you their own opinion when yours is sought.

I have conferred with Mr. Powell, who advised essentially that he finds no authority to base an opinion upon.

My own research provides a rather inconclusive view which basically leads to a position that since there is no express prohibition against the use of bond sale proceeds to litigate the issues substantive to the bond sale project, such necessary expenditures are lawful. That would include legal fees for arbitration.

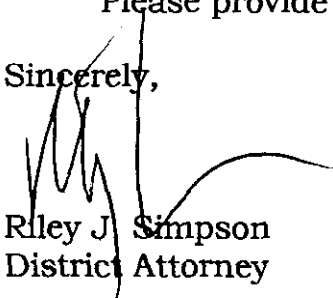
My list of authorities consulted:

- (1) Davis v. City of San Antonio, 135Sw2d306
- (2) Young v. Taylor, 92 Sw2d 1075
- (3) 142 Tex.262; 177 Sw2d 198
- (4) 203 Sw2d 787
- (5) 263 Sw2d 185
- (6) 307 Sw2d 309

None of the above is entirely on point. The City of Copperas Cove, being a charter city (Home Rule) can exercise such authority which is not otherwise denied by the State of Texas or by the United States. This power is greater of course, than non-charter cities which are dependent on express legislative conferral of authority.

Please provide me an opinion to the above submitted issue.

Sincerely,



Riley J. Simpson
District Attorney

cc: Mr. Frank A. DiMuccio, Jr.
Mr. Edwin E. Powell