

SENATOR JEFF WENTWORTH..

SENATE DISTRICT 25

AUSTIN

Capitol Building, Room 1E.9
P. O. Box 12068
Austin, Texas 78711
(512) 463-0125
Toll-Free (888) 824-6984
FAX (512) 463-7794
TDD 1-800-735-2989

INTERNET E-MAIL

jeff.wentworth@senate.state.tx.us

SAN ANGELO

2121-B Knickerbocker Road
San Angelo, Texas 76904
(915) 942-8522
FAX (915) 942-8621

SAN ANTONIO

1250 N. E. Loop 410, Suite 720
San Antonio, Texas 78209
(210) 826-7800
FAX (210) 826-0571



**The Senate of
The State of Texas**

November 24, 1999

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Opinion Committee

The Honorable John Cornyn
Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Re: Request for Opinion

Dear General Cornyn:

I have been asked by the Mayor of the City of San Antonio to seek an Attorney General's opinion on the question of whether the common law doctrine of incompatibility prohibits a member of the City Council from nominating himself to a board made up of citizens of the City of San Antonio who are appointed by the City Council if the ordinance establishing such board provides that an elected official may serve on such board. The following facts are presented:

1. On November 4, 1999, the San Antonio City Council passed and approved an ordinance creating the Greater Kelly Development Authority (GKDA) to oversee the redevelopment of Kelly Air Force Base as it moves from public operation to private ownership.
2. The GKDA Board is an 11-member body with each member of the San Antonio City Council nominating one member subject to the approval by the City Council as a whole.
3. To that end, a sitting member of the City Council, whose district includes Kelly Air Force Base, nominated himself to the GKDA Board of Directors.

COMMITTEES

Chairman, Nominations
Jurisprudence
State Affairs

**COUNTIES IN
SENATE DISTRICT 25**

Bandera	Llano (part)
Bexar (part)	Mason
Blanco	Medina (part)
Comal (part)	Schleicher
Gillespie	Sutton (part)
Guadalupe (part)	Tom Green (part)
Kendall	Travis (part)
Kerr	Williamson (part)
Kimble	

RQ-0152-JC

FILE # ML-41135-99
I.D. # 44135



The Honorable John Cornyn
November 24, 1999
Page Two

4. This nomination was approved by the full Council along with the passage of the creating ordinance. Under this ordinance, "*an individual who is otherwise eligible to serve on the Board is not ineligible because the individual is an elected official.*"

Enclosed a copy of Ordinance Number 90826, passed and approved on November 4, 1999, which establishes the GKDA and its Board of Directors.

In the past, the Attorney General has stated that if an ordinance is passed under statutory authority, it repeals the common law in all respects in which inconsistencies exist. (Op. JM-1087).

Another Attorney General's opinion held that a home-rule city may overcome common-law doctrine of incompatibility if the statute allowed for composition of the board to include elected officials. (Op. 96-064).

An expedited response would be greatly appreciated, as the Councilman in question has decided not to attend any of the board meetings, or be involved in any board functions, until your office has ruled on this matter.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wentworth", with a horizontal line extending from the end of the signature.

Jeff Wentworth

Enclosure