



State of Texas
House of Representatives

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

RQ-0298-9c

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October 17, 2000

1698

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

FILE # mh-41710-00
I.D. # 41710

Dear Attorney General Cornyn:

The Port of Port Arthur Navigation District of Jefferson County, Texas (the "Port") is a governmental body established pursuant to Article XVI, section 59 of the Texas Constitution and is governed by a Board of Commissioners. As a port district organized under Article XVI, Section 59 of the Texas Constitution, the Port is subject to the provisions of Chapter 60 of the Texas Water Code, and the Port has adopted Subchapter N of Chapter 60 pertaining to competitive bidding requirements.

In 1998, The Port requested proposals from stevedoring companies for a contract for loading and unloading services to be provided to the Port. At the time the request for proposals was prepared, the Port's Board of Commissioners made a factual determination that the services to be provided under the loading and unloading contract involved significant and varied management and marketing functions which required special knowledge and a high order of learning skill and intelligence and concluded that the services to be provided under the loading and unloading contract would constitute professional services. Therefore, in accordance with Attorney General Letter Opinion No. 97-059, the Port utilized the request for proposals procedures set forth in Section 60.405 of the Texas Water Code.

As a result of the request for proposals process, the Port entered into a contract for the requested loading and unloading services. Due to certain restrictions and covenants contained in tax-exempt revenue bonds issued and sold by the Port, the primary term of the loading and unloading contract was limited to two (2) years. The contract provides that at the end of the two (2) year primary term, the contract will be automatically renewed for successive one (1) year terms in the event both parties wish to continue same.

The purpose of this letter is to request your opinion regarding the Port's ability and authority to establish a policy which would allow its contract to automatically renew on an annual basis for a

total period not to exceed five (5) years so long as the Port's Board of Commissioners finds it to be in the best interests of the Port, its taxpayers, its customers and the public, even if the Port receives a request from a competitor of the existing contractor that the Port request proposals upon expiration of the primary term or any renewal term, as the case may be.

The Port's Board of Commissioners believe that being required to request proposals for loading and unloading services as frequently as every two (2) years would be economically disadvantageous to the Port. The Board, with input from its staff, its customers and prospective bidders, has determined that bids for loading and unloading services would be substantially less favorable to the Port in the event prospective bidders might be required to mobilize and demobilize equipment, change/relocate personnel, and recapture capital expenditures in as little as two (2) years from the effective date of any contract. Accordingly, the Port's customers would be required to pay higher rates for use of the Port's facilities, and competition from other public ports likely would result in a decrease in Port business, all of which would be detrimental to the Port, its taxpayers, its customers and the public.

Should you have any questions regarding the foregoing or need any additional information, please do not hesitate to contact me. Otherwise, in an effort to clarify this issue, I respectfully request that your office render an opinion regarding the Port's authority to establish a policy as set forth above upon finding that such policy would be in the best interests of the Port, its taxpayers, its customers and the public.

Sincerely,

A handwritten signature in cursive script that reads "Ron Lewis".

Ron Lewis

RL/mb