

THE SENATE OF THE STATE OF TEXAS



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JUN 26 2002

OPINION COMMITTEE

RQ-0568-jc

June 26, 2002

The Honorable John Cornyn  
Attorney General  
209 West 14th Street  
Austin, TX 78711-2548

FILE # ML-42682-02  
I.D. # 42682

Dear General Cornyn:

Please accept the enclosed letter as a request for an Attorney General opinion. Thank you for your consideration, and please do not hesitate to contact my office with any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Jane Nelson".

Senator Jane Nelson

May 1, 2002

Mr. Bob McFarland  
Cribbs & McFarland, P.C.  
1000 W. Abram  
Arlington, TX 76013

re: Request for Attorney General Opinion concerning  
The Euless Economic Development Corporation

Dear Bob:

It has been suggested that the proposed request for opinion to the Texas Attorney General should be more complete in its description of the underlying transaction concerning Mr. Bennett. I suggest that the following language be used in the request:

The Cities of Dallas and Fort Worth own a tract of land at the northwest corner of the intersection of Highways 183 and 360 (the "DFW Tract"), which is part of DFW Airport, but which is not suitable for surface development of the airport because it is on the opposite side of Highway 360 from the airport. An opportunity has arisen to exchange the DFW Tract for a tract of land on the east side of Highway 360 owned by a man named Bennett (the "Bennett Tract"). The Bennett tract is not only suitable for surface development of the airport, it is also on the extended centerline of a proposed new runway, less than a mile away, which means that the Bennett Tract would probably have to be condemned when the runway is built. The Bennett Tract is also immediately adjacent to the airport's police training facilities where automatic weapons training is routinely conducted outdoors. The Bennett Tract is currently zoned for multifamily residential use, which not only provides additional impetus for condemnation when it is eventually developed, but which would also make condemnation extremely expensive after the property is developed. Appraisals indicate that if the DFW Tract were sold for cash, it would not produce enough revenue to cover the cost of condemning the Bennett Tract, even in an undeveloped state, which makes the proposed exchange a financially beneficial means of obtaining title to the Bennett Tract. Mr. Bennett is willing to make the exchange because it would allow him to develop some other property he owns adjacent to the DFW Tract.

Since the Cities of Dallas and Fort Worth are political subdivisions, they generally cannot convey title to real property without competitive bidding, as required by Texas Local Government Code § 272.001. The proposed exchange of property cannot be accomplished through competitive bidding, because the bidders cannot be limited to Mr. Bennett, nor can the bids be limited to the particular consideration the cities desire to receive. The purpose of this request is to determine whether the Cities of Dallas and Fort

Worth can lawfully participate in the exchange, without competitive bidding, by virtue of an exception in the bidding statute [272.001(b)(5)], and by using the Euless Economic Development Corporation as an intermediary. Specifically, it is proposed that both parties convey their respective tracts to the Euless Economic Development Corporation, and in a simultaneous transaction the Euless Economic Development Corporation would convey the tracts to the opposite parties, thus effecting the exchange. No additional consideration either way is contemplated, except that the Cities of Dallas and Fort Worth intend to retain an avigation easement over the DFW Tract.

The above-referenced exception to the bidding statute [272.001(b)(5)] allows political subdivisions to convey real property title without competitive bidding to "a governmental entity that has the power of eminent domain". The Euless Economic Development Corporation was created pursuant to Article 5190.6, Section 4B, Vernon's Civil Statutes, and is commonly known as a Section 4B Corporation. Attorney General Opinion No. JC-0109 determined that Section 4B Corporations are not political subdivisions, and are therefore not subject to the general rule of Texas Local Government Code § 272.001. Thus, once the Euless Economic Development Corporation obtains legal title to the DFW Tract, it could legally convey that title to Mr. Bennett without competitive bidding. The question is whether the Cities of Dallas and Fort Worth can legally convey title to the DFW Tract to the Euless Economic Development Corporation without competitive bidding. More specifically, the question is whether the Euless Economic Development Corporation is "a governmental entity that has the power of eminent domain", for purposes of Section 272.001(b)(5).

Article 5190.6, the Development Corporation Act of 1979, specifically provided in Section 22 that development corporations do not have the power of eminent domain. However, in 1991 the Act was amended to add Section 4B, which among other things gave Section 4B corporations the power of eminent domain, subject to the approval of the city council [see subsection 4B(j)]. Further defining characteristics include the following:

- A. Only governmental entities can incorporate Economic Development Corporations;
- B. Economic Development Corporations are subject to the Texas Open Meetings Act pursuant to Section 11(b) of Article 5190.6;
- C. Economic Development Corporations are subject to the Texas Open Records Act pursuant to Section 14A of Article 5190.6;
- D. Section 4B Economic Development Corporations are subject to the Texas Tort Claims Act pursuant to Section 4B(m) of Article 5190.6, which specifically states that for purposes of the Texas Tort Claims Act the Section 4B Corporation "is a governmental unit and its actions are governmental functions";
- E. Section 4B Economic Development Corporations may receive tax revenues levied by the governing body of the city following an election,

pursuant to Section 4B(d); and

- F. As to the power of eminent domain, though it is subject to city council consent, the power is nevertheless exercised in the name of the Section 4B Corporation itself.

Bob, thank you for your assistance and patience in this matter, and please thank the Eules City officials for theirs as well.

Sincerely,

Paul Tomme  
Legal Counsel