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WILLIAMSON COUNTY ATTORNEY

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I.D. # 43054

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March 26, 2003

The Honorable Greg Abbott
Texas Attorney General
209 West 14th Street
Austin, Texas 78701

RQ-0038-GA

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MAR 28 2003

OPINION COMMITTEE

Re: Request for Opinion (Attached)

Dear General Abbott;

Some time ago, the attached request for opinion was submitted to you for your consideration. To date we have not received a response. The Hutto Economic Development Corporation and this office will appreciate having this matter checked into.

Sincerely,



Wayne Porter
First Assistant
Office of the County Attorney

Copy to Ted Hejl (HEDC)

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November 13, 2002

The Honorable John Cornyn
Texas Attorney General
209 West 14th Street
Austin, Texas 78701

Re: Request for Opinion whether the board of directors of a corporation created pursuant to the Development Corporation Act of 1979 (Article 5190.6 Texas Revised Civil Statutes, ("Act"), Section 4A) is authorized to determine a promotional purpose allowed under the Act, Section 4A(b)(1) allowing payment of not more than 10 percent of the corporate revenues for the promotional project.

Dear General Cornyn:

I respectfully request your opinion on issues concerning the Hutto Economic Development Corporation ("HEDC") posed by the Mayor of Hutto, Texas. The HDEC was incorporated November 6, 1997, under the provisions of the Development Corporation Act, Article 5190.6, Section 4A Vernon's Annotated Civil Statutes.

The City of Hutto, the Hutto Chamber of Commerce, the Hutto Independent School District and the Hutto Community use a Hippo (hippopotamus) as their mascot. The Hippo mascot is unique and attracts attention to the City, School, and Community which are often referred to as "Hutto Hippos". The Covert car dealership located in Hutto uses the term Covert "Hippoplex" in reference to its Hutto dealership in many ad-

vertisements. Other business entities in Hutto, Texas, also use the Hippo in advertising and promotion.

The HEDC Board of Directors ("Board") voted twice to participate in a project to construct a large fiberglass Hippo statue that will be placed in the City in a highly visible location. The Board subsequently rescinded its action because of objections raised by members of the Hutto City Council.

The Mayor believes a statue portraying the mascot as a community "landmark" will promote and advertise the City to potential businesses and industries and create an interest in the City for businesses and industries to locate there. The Mayor further believes the advertisement value of the Hippo will be immense and ongoing, to the City of Hutto and Community, as well as an attraction to businesses and industries.

The Hippo statue construction cost is estimated to be approximately \$100,000.00. The HEDC initially voted to contribute \$19,000.00 in one fiscal year and \$19,000.00 in the second fiscal year to the construction cost of the Hippo, provided the remaining construction cost is paid by other contributors and the construction is supervised by a third party under a planned budget.

Section 4A(b)(1) of the Act provides that a 4A economic development corporation can spend no more than 10 percent of the corporate revenues for promotional purposes. The HEDC by-laws do not require approval of promotional activities by the Hutto City Council, but the by-laws do require the City Council to approve the HEDC annual budget.

The powers granted to a 4A Corporation include all powers stated in Section 23 of the Act as well as powers to effect purposes of the Corporation, subject to the governing body of the unit under which the Corporation was created. [Section 23(a)(12)].

The Mayor of the City of Hutto asks the following:

1. Does the HEDC Board have authority to participate in and pay a portion of the Hippo statue construction cost under Section 4A(b)(1) of the Act allowing 10 percent of the Corporate income to be used for that promotional purpose?
2. Does the HEDC require specific Hutto City Council approval of the Hippo project as a promotional activity under Section 23(a)(12) of the Act, or is the HEDC authorized to undertake promotional activities without City Council approval?
3. Does the 10 percent limitation on promotional activities apply to annual revenues or 10 percent of all revenues collected by the HDEC?

No case law exists for the questions. Based on the information provided, and examination of the Act, HEDC Articles of Incorporation and by-laws the requestor believes:

The HEDC by-laws do not restrict the Board from promotional activities without City Council approval. The by-laws are the operational guidelines established by the City for the HEDC and, therefore, must be relied upon until amended. The entire HEDC budget is subject to annual approval by the City Council and the City Council may indirectly control all activities of the HEDC through the budget approval process.

Section 23(a)(12) of the Act granting powers to the Corporation, subject to the governing body, are not specific, but specific authority is granted to the Corporation to spend 10 percent of its revenues under Section 4A(b)(1). Consequently, the specific pro-

vision granting authority to spend 10 percent of revenues on promotional activities is not limited by the non-specific powers in Section 23(a)(12) requiring City Council approval of promotional activities.

Section 4A(b)(1) does not limit the 10 percent cap to anything other than revenues. The limitation is cumulative of all revenues paid to the Corporation and does not impose the 10 percent limit to revenues paid only during a specific time period.

In *Rufus Gaut v. Amarillo Economic Development Corporation*, the economic development corporation was not limited to funding projects listed under the Act. In this case, the Act does not define promotional activities thereby allowing the Board, unless otherwise limited by the by-laws, authority to determine promotional purposes.

Respectfully submitted,

Eugene D. Taylor
County Attorney
Williamson County, Texas