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RQ-0289-GA

November 2, 2004

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OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
P. O. Box 12548  
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FILE # MC-44007-04  
I.D. # 044007

Re: Request for Opinion on Authority to Make a Certain Expenditure by a Section 4A Development Corporation

Dear General Abbott:

I am writing on behalf of the Athens Economic Development Corporation ("AEDC"), to request an opinion with respect to whether a certain expenditure is authorized under Article 5190.6, Revised Civil Statutes of Texas, the Texas Development Corporation Act ("the Act"). AEDC is organized under Section 4A of the Act and derives its revenues from sales tax proceeds collected within the City of Athens.

AEDC desires to contribute toward the construction of an overpass at the intersection of Loop 317 and FM Road 1616 in Athens. There presently exists a simple intersection on FM 1616 where several fatalities have occurred. The Texas Department of Transportation ("TxDOT") has determined that one of these roads must pass over the other in order to remedy what TxDOT deems an unacceptably dangerous condition.

Accordingly, TxDOT has made plans, under a program sponsored by the federal government, to construct an overpass for FM 1616 to pass over Loop 317. All but \$50,000 of the funds for this project would come either from the federal government or the State of Texas. The City of Athens would be able to fund the remaining \$50,000. One problem exists in this alternative as it is not possible for an overpass of FM 1616 over Loop 317 to have entrance and exit ramps between the two roads. Therefore, traffic would no longer be able to get from one road onto the other.

AEDC's involvement in this problem is that it has acquired certain land and established thereon an industrial park in Athens, including several existing



manufacturing and industrial firms; a primary job training facility used by Trinity Valley Community College; and a 400,000 square foot warehouse facility. This park is located on FM 1616, a short distance from its intersection with Loop 317. The only access to the park is from FM 1616. If traffic cannot interchange between Loop 317 and FM 1616, then traffic in and out of the park, including heavy trucks, must gain access to Loop 317 and other highways at other locations on the Loop or by going through the City of Athens, an extremely cumbersome and tedious proposition. The park, and in particular the distribution facility, would thus be rendered unattractive, if not unacceptable, to both existing users and prospective enterprises. Moreover, the AEDC would lose any hope of obtaining a new owner for the distribution facility and the jobs and other economic benefits that such a new owner would bring with it.

TxDOT has presented a second alternative to passing FM 1616 over Loop 317. This alternative allows Loop 317 to pass over FM 1616. This option would allow for entrance and exit ramps from one road to the other and would in fact be a significant improvement to the present transportation capabilities of the industrial park. This alternative, however, would be much more expensive than the former, requiring approximately \$700,000 from sources other than the state and federal governments. This is an amount of money the City of Athens cannot undertake to pay from its generally available fund and would have only a remote chance of being obtained through a bond election. It is an amount, however, to which AEDC may be able to make a substantial enough contribution as to enable construction of the overpass.

AEDC believes that such an expenditure, allowing Loop 317 to pass over FM 1616, should be considered an expenditure on "targeted infrastructure ... for the creation or retention of primary jobs" so as to come within the meaning of "project" as that term is defined in Section 2 (11) (A) of the Act, inasmuch as such overpass is both "required [and] suitable for the development, retention, [and] expansion of manufacturing and industrial facilities, ... distribution centers, ... [and] primary job training facilities for use by institutions of higher education..." Additionally, it would be an indenture "required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads..." See Art. 5190.6, §2(11) (A). AEDC asserts the overpass would be likely to promote and develop new and expanded business enterprises, in contrast to the situation presented in Opinion 95-072 (1995).

Weighing against this interpretation, though, is Section 4A (i) of the Act, which in pertinent part provides that a Section 4A development corporation "may not undertake a project the primary purpose of which is to provide transportation facilities ...." That Section further provides, however, that "the corporation may provide those facilities to benefit property acquired for a project having another

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primary purpose.”

AEDC submits the proposed expenditure comes within the express requirements of Section 2 (11) (A) of the Act, regardless of any purported limitation imposed by Section 4A (i). Your opinion on these matters is respectfully requested.

Sincerely yours,

  
Todd Staples

TS/JM/pb