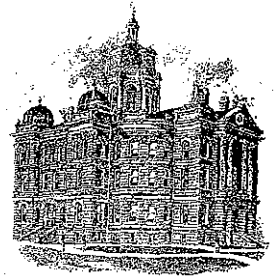




DAVID A. CASTILLO  
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MAY 02 2006

OPINION COMMITTEE

RQ-0483-GA

April 26, 2006

THE HONORABLE GREG ABBOTT  
ATTORNEY GENERAL OF TEXAS  
P.O. BOX 12548  
AUSTIN, TEXAS 78711-2548

FILE # ML-44773-06  
I.D. # 44773

RE: Request for Attorney General Opinion

Dear Mr. Abbott:

I am writing to request your opinion on the following question:

Is it lawful for the Copperas Cove City Council to issue a Certificate of Obligation based on a water system improvement based on a study done before issuance of the Certificate of Obligation project, then have a second study done and use the proceeds obtained based on the first study for the second study project instead of the first study project?

A. Background

Our office has been approached by a group of concerned citizens regarding the recent usage of a Certificate of Obligation. Copperas Cove is located within Coryell County, Texas and is governed by the City Council under Home Rule Law. After a water evaluation it was determined that the water system was in need of some repairs. The Council requested and paid for a study to be done to see what repairs were needed. After the study was completed, the Council took the appropriate steps to issue a Certificate of Obligation to have the work done that the study recommended. The Certificate of Obligation was issued, but before the work begun the Council decided to have a second study done. The second study results recommended different repairs than the first study. The Council then decided to follow the suggestion in the second study but used the Certificate of Obligation obtained based on the first study. Is this a lawful action on part of the Council?

Catherine Ferguson-Gilbert  
Assistant District Attorney

Trent D. Farrell  
Assistant District Attorney

Lisa White  
Grand Jury/Office Coordinator

Gina M. DeBottis  
Special Prosecutor

Bobbie Wright, Paralegal  
Juv./Adult Revocation Coordinator

Melissa Tull  
Litigation Coordinator

Kristen Ramsey  
Victims Assistance Coordinator

B. Applicable Law

Copperas Cove City Council is operating under a Charter as allowed for V.T.C.A, Local Government Code § 55.072. The Copperas Cove City Charter provides as follows:

Sec 103. Home Rule.-Copperas Cove City Charter

- (a) The city shall be a home rule city with full powers of local self-government, including the right to amend this charter, as provided by the constitution and laws of this state. The city and its people shall have all the powers granted to cities by the Constitution of the State of Texas, V.T.C.S. Art 1175 as amended, may be amended or disposed of in the future and other laws of this state, together with all the implied powers necessary to carry into execution such granted powers.
- (b) All Power of the city shall be vested in the city council, except as otherwise provided by law or this charter and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.
- (c) The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular power in the charter shall not be construed as limiting in any way the general power granted by the state or this charter.

Sec 1.10 Water System-Copperas Cove City Charter

The city shall have the power to provide for and own a water system and to prescribe charges, rules, regulation, rates and restriction with reference to the use consumption, waste, payment, cutoff, turn on, connections and management of such system and to prescribe penalties for violation of such rules and regulation. The technical operational employees shall meet state certification requirements.....

Sec. 6.15 Estimated expenditures shall not exceed estimated resources.-Copperas Cove City Charter

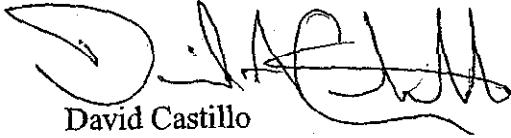
The total estimated expenditures of the general fund and debt services fund shall not exceed the total estimated resources of each fund.....

It appears that the Council in fact has the right to have a study done, raise the funds to pay for the improvements and have the improvements completed. The issue at hand is: Did the Council have the power to issue the Certificate of Obligation obtained based on an initial study to complete water work recommended in a subsequent study?

Our office has researched this issue. We believe that this may be a case of first impression and request your opinion on the legality of the action of the Copperas Cove City Council.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Castillo', written over a horizontal line.

David Castillo  
52nd District Attorney