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OPINION COMMITTEE

The Honorable Greg Abbott
Texas Attorney General
Attn: Opinions Committee
P. O. Box 12548
Austin, Texas 78711-2548

RQ-0515-GA

FILE # ML-44843-06

I.D. # 44843

Dear General Abbott:

The purpose of this letter is to request an attorney general's opinion on whether the 2006 Texas Department of Housing and Community Affairs (TDHCA) Qualified Allocation Plan (QAP), as adopted by its Board, is consistent with Senate Bill 264, 78th Texas Legislature, Regular Session.

The Texas Legislature was previously intensely involved in the development of S. B. 264, the sunset legislation for the Texas Department of Housing and Community Affairs (TDHCA). TDHCA's low income housing tax credit program and the allocation criteria associated with this program were examined by the House Committee On Urban Affairs, and subsequently by your office as Opinion No. GA-0208.

A review of TDHCA's 2006 QAP has again raised an issue as to whether the intent of the legislature has been followed. It appears that TDHCA has again ignored the intent of the legislature by setting a provision in the 2006 QAP that does not conform to S. B. 264 and Chapter 2306 of the Texas Government Code.

Specifically, Section 2306.6710(b) of the Texas Government Code provides:

If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

(A) ...

(B) quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site; [Emphasis added].

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In contrast to the statutory language, TDHCA has implemented language in its 2006 QAP that allows participation from a more limited realm of neighborhood organizations. Section 50.0(i)(2)(iv) of the 2006 Qualified Allocation Plan provides:

... "Neighborhood organizations" include homeowners associations, property owners associations, and resident councils (only for Rehabilitation or demolition with New Construction applications in which the council is commenting on the rehabilitation or demolition/ New Construction of the property occupied by the residents). ..."

No reason is given in the QAP for limiting a resident council's right to support or oppose a proposed tax credits housing developments within their boundaries. I have a concern that this TDHCA-imposed limitation does not conform to S. B. 264 and Chapter 2306 of the Texas Government Code.

Therefore, I ask you to determine the answer to the following questions:

1. Whether Section 2306.6710(b) as amended by S. B. 264 is a mandatory provision that requires the 2006 QAP to rank applications for Low Income Housing Tax Credits by a point system that includes as a factor quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site?
2. Whether TDHCA has discretionary authority to impose additional limiting criteria for quantifiable community participation by neighborhood organizations under Section 2306.6710(b)?
3. Whether the TDHCA implemented language in Section 50.0(i)(2)(iv) of the 2006 Qualified Allocation Plan that limits quantifiable community participation by a Resident Council, a qualified neighborhood organization, is in compliance with Section 2306.6710(b) of the Texas Government Code, as amended by S. B. 264, that requires quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site?

If the answer to any of the above questions is in the negative, what steps must TDHCA take to ensure the 2006 application cycle is conducted in accordance with the law?

It is important that these questions be resolved in a timely manner to allow for fair and legal consideration of 2006 applications and in view of your extensive work on Opinion GA-0208, I request that you expedite this request.

Sincerely,



Ismael "Kino" Flores

State Representative

Chair, House Committee on Licensing and Administrative Procedures