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**OPINION COMMITTEE**

The State of Texas  
House of Representatives

FILE # ML-46423-10  
I.D. # 46423



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April 9, 2010

**RQ-0877-GA**

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

**Re: Request for Legal Opinion**

Dear General Abbott:

I respectfully request an opinion from your office with regard to the following questions:

- (1) Whether the Paris Economic Development Corporation, a 4A Economic Development Corporation created pursuant to the Development Corporation Act of 1979, codified under *Chapters 501 through 504 of the Texas Local Government Code* may grant \$10,000 in 4A sales tax funds to Paris Living, Inc., a local non-profit corporation that provides affordable housing assistance to qualifying persons of low-to-moderate income in the Northeast Texas region?
- (2) Does the Development Corporation Act of 1979 allow for 4A Economic Development Corporations (such as PEDC) to use 4A sales tax funds to support an affordable housing program or project?

Paris Living has asked the Paris Economic Development Corporation ("PEDC") to donate \$10,000 to Paris Living from PEDC's unencumbered 4A sales tax revenue fund so that Paris Living can hire a consultant to prepare and facilitate an application to the United States Department of Treasury for \$100,000 in technical assistance funding in advance of applying for certification as a first lien lender under the Community Development Financial Institutions Fund. A copy of 2010 CDFI Program Combined Application and Eligibility Questionnaire are attached hereto as Exhibit "A."

The Paris Economic Development Corporation is a non-profit corporation created pursuant to the Texas Development Corporation Act of 1979. By special election held on May 1, 1993, the citizens of Paris, Texas voted to create an Economic Development Corporation under Section 4A of the Development Corporation Act and authorized the levy of an additional one-quarter of one percent (.25%) sales and use tax on all goods and services sold in the City of Paris.

The proceeds of the Section 4A sales tax are dedicated by statute to economic development projects to promote new and expanded industrial and manufacturing activities. Over the years, the Texas Legislature has expanded the types of projects that 4A tax revenue can be used for, to include: the provision of land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements that are for the creation or retention of primary jobs for projects such as manufacturing and industrial facilities, research and development facilities, military facilities, including closed or realigned military bases, recycling facilities, distribution centers, small warehouse facilities, primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities.

Additionally, to qualify for Section 4A tax money, the economic development project must show that it will create or retain primary jobs. A "primary job" is defined as a job that is available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national or international markets infusing new dollars into the local economy and falls under one of the enumerated sectors of the North American Industry Classification System (NAICS) set out below:

Permissible 4A Tax Sectors under NAICS:

Crop Production 111  
Animal Production 112  
Forestry and Logging 113  
Commercial Fishing 11411  
Support Activities for Agriculture and Forestry 115  
Mining 211 to 213  
Utilities 221  
Manufacturing 311 to 339  
Wholesale Trade 42  
Transportation and Warehousing 48 & 49  
Information (excluding movie theaters and drive-ins) 51  
Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles 523-525  
Scientific Research and Development Services 5413, 5415, 5416, 5417 and 5419  
Management of Companies and Enterprises 551  
Telephone Call Centers 56142  
Correctional Institutions 922140; or a job that is included in North American Industry Classification System (NAICS) sector number 928110, National Security, for

corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

Additionally, the following three categories of projects are also authorized Section 4A projects and eligible for 4A tax funds:

- Job Training Classes – similar to the funding PEDC provided for welding certification classes at Paris Junior College to benefit Turner Pipe's needs for more certified welders;
- Career Centers – does not pertain to Paris, Texas, because the City is already located in the Paris Junior College District;
- Certain Infrastructural Improvements which promote or develop new or expanded business enterprises – the Economic Development Corporation may allocate 4A tax funds for necessary infrastructure improvements necessary to promote or develop new or expanded business enterprises.

There is some confusion as to whether PEDC can legally donate 4A sales tax revenue to a local non-profit corporation that specializes in providing affordable housing assistance to qualifying persons of low-to-moderate income in the Northeast Texas region? Specifically, whether PEDC can donate \$10,000 of PEDC's 4A sales tax revenue to Paris Living so that Paris Living can hire a consultant to prepare and facilitate a grant application to the U.S. Treasury Department, Community Development Financial Institutions Fund seeking \$100,000 in Technical Assistance funds and ultimately CDFI Lender Certification.

I respectfully submit the forgoing questions to your office for an opinion. If we can provide any additional information, please advise.

Sincerely,



Mark Homer  
Member, Texas House of Representatives

Enclosures:

cc: Steve Gilbert, Executive Director  
Paris Economic Development Corporation  
1125 Bonham St.  
Paris, Texas 75460