

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
(512) 463-9904
FAX: (512) 463-1049

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Yvonne Davis
CHAIR

FILE # RQ-0913-GA
I.D. # 46572

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AUG 26 2010

OPINION COMMITTEE

August 26, 2010

COMMITTEE ON URBAN AFFAIRS

RQ-0913-GA

The Hon. Greg Abbott, Attorney General
State of Texas
Post Office Box 12458
Austin, Texas 78711-2548

Dear Attorney General Abbott:

I am requesting an Attorney General's Opinion as to whether a municipality can enter into an inter-local agreement with a water district to manage and operate the daily operations of the municipality.

The issue at hand pertains to the City of Balch Springs and the Dallas County Water Control and Improvement District No. 6. Currently the Dallas County Water Control and Improvement District No. 6 serves the City of Balch Springs with water and sewer services. The Water District has common boundaries with the City's, except for a small portion which may extend outside the City. Currently efforts have risen to consolidate the Water District and the City. However, through an inter-local agreement, the consolidation and abolishment of the Water District would not occur unless its General Manager becomes the City Manager.

The underlying question is whether the General Manager may, under an inter-local agreement, fulfill the roles of the General Manager and City Manager during the consolidation process? It is my understanding the individual would hold the position of General Manager and City Manager only during the consolidation process, after which he would cease being General Manager and become solely the City Manager.

The fact that the individual would hold two positions, during and after the consolidation period, may come close to violating the common-law doctrine of incompatibility. Does the inter-local agreement presents a situation imposing conflicting-loyalties incompatibility which prohibits "an individual from simultaneously holding two positions what would prevent him or her from exercising independent and disinterested judgement in either or both positions?" {*Tex. Att'y Gen Op. No. GA0-169 (2004)*}

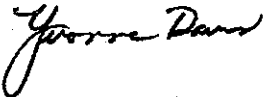
MEMBERS:

CHARLIE HOWARD - VICE CHAIR, CAROL ALVARADO, BARBARA MALLORY CARAWAY, ALLEN FLETCHER,
ROLAND GUTIERREZ, CAROL KENT, ROBERT MIKLOS, PAULA PIERSON, CHRIS TURNER, ARMANDO WALLE

Finally, is the recent ruling in Opinion No. GA-0766, which addresses a General Law City, relevant to a Home Rule City?

I respectfully request your attention to this request.

Sincerely,



Yvonne Davis, Chair
House Committee on Urban Affairs

Enclosure

cc: State Rep. Robert Miklos
Mayor, City of Balch Springs
City of Balch Springs City Council
Mr. Monte Akers, Balch Springs City Attorney
Mr. Ed Morris, Balch Springs City Manager

THE STATE OF TEXAS §

COUNTY OF DALLAS §

INTERLOCAL AGREEMENT

DALLAS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 6

AND

THE CITY OF BALCH SPRINGS

TO

ALLOW DON HAMON TO SERVE AS CITY MANAGER FOR THE CITY OF
BALCH SPRINGS AND AS DISTRICT MANAGER OF DALLAS COUNTY
WATER CONTROL & IMPROVEMENT DISTRICT NO. 6

THIS AGREEMENT, made and entered into pursuant to the provisions of Chapter 791 of the Texas Government Code (the Interlocal Cooperation Act) by and between the Dallas County Water Control and Improvement District No. 6 (the "District"), a municipal utility district created and operating pursuant to the Constitution of the State of Texas and Chapters 49 and 54 of the Texas Water Code, and the City of Balch Springs (the "City"), a Type A General Law municipal corporation, organized and operating pursuant to Chapter 51 of the Texas Local Government Code for the purposes and consideration set forth below. The District and the City are sometimes collectively referred to herein as the "Parties" find as follows:

WHEREAS, the City and the District desire that effective, efficient and responsible local government be provided to the citizens of the City and District.

WHEREAS, The City of Balch Springs is desirous of hiring the General Manager from the District, hereinafter referred to as the "District Manager," to serve as City Manager of the City, hereinafter referred to as the "City Manager", and other District employees as ~~may be~~ selected by the General Manager;

WHEREAS, the City and the District desire to negotiate and enter into an agreement to benefit of City, the citizens of Balch Springs, the District, and the residents and customers of the District ~~which is generally over~~ the same geographical area where the two entities co-exist with the General Manager of the District serving at the same time as the City Manager of the City for a two year period; and

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties hereto agree as follows:

Article I.

PURPOSE

Section 1.01 The purpose of this Agreement is to establish through contractual agreement the terms and conditions that the General Manager and the named employees of the District will serve the City during the term of this Agreement so long as Don Hamon's serves the District as District Manager. It is contemplated by both the City and the District that Don Hamon shall be the only individual that fulfills the positions of City Manager and District Manager concurrently.

Section 1.02 During the term of this Agreement, the City will continue to operate and perform all City services in the manner and to the extent determined by law and the Balch Springs City Council.

Section 1.03 During this same period of time, the District Manager will continue to operate and perform all District services in the manner and to the extent determined by law and the District's Board of Directors.

Section 1.04 This Agreement shall not conflict with any other interlocal or other agreement between the City and the District. If a conflict exists between this Agreement and any of the aforementioned agreement, the terms of those agreements shall control.

Article II.

SERVICES TO THE DISTRICT

Section 2.01 The General Manager of the District will continue to operate and perform all managerial services for the District in the manner and to the extent determined by law and the District's Board of Directors, and will continue to maintain an office, supervise the District's employees, conduct meetings and oversee the operations of the District in the same manner he currently services. This agreement in no way changes the terms of his employment with the District nor the responsibilities vested in him.

Article III.

SERVICES TO THE CITY

Section 3.01 The General Manager of the District as shall be appointed by the City Council to serve as City Manager concurrently while he is serving as General Manager where he shall be the chief administrative and executive officer of the City, and shall be

responsible to the City Council for the administration of all affairs of the City. While serving as City Manager, Don Hamon will provide oversight to the City operations and serve as its City Manager in the manner and to the extent determined by the Balch Springs City Council in compliance with the City Charter, City Code of Ordinances, state and federal law. The City Manager's empowered to:

- a) Appoint, and when he deems necessary for the welfare of the City, suspend or remove any or all City employees, except those employees which ~~this the City of Balch Springs Charter ("City Charter")~~ or state law places under the control and supervision of another authority including but not limited to Department Heads, the City Secretary, and Civil Service Employees; and he shall promulgate such rules and regulations as he may deem necessary and appropriate for the exercise of this authority;
- b) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by law or ~~this the City Charter~~;
- c) See that all state laws and City ordinances are effectively enforced;
- d) Attend all City Council meetings and have the right to take part in discussions;
- e) Prepare and submit to the City Council the annual budget and capital program, and administer the budget as adopted by the City Council;
- f) Keep the City Council fully advised as to the financial condition and future needs of the city, and makes such recommendations concerning the affairs of the city as he or the City Council deems desirable or necessary;
- g) Make reports as he or the City Council may require concerning the operations of the city departments, offices or agencies subject to his/her direction or supervision; ~~and~~
- h) Perform such other duties as are specified in the City Charter or may be required by the City Council, and are not inconsistent with the ~~City Charter and~~
- i) Review as required and update the Employees Personnel Policies and Regulations Handbook of the City annually.

Section 3.02 The City Manager shall, at his sole discretion, provide Personnel from the District as he deems necessary to serve ~~as~~ as department heads and other duties of the City. Among those serving from the District in dual capacities will be the Assistant General Manager of the District who shall serve as an Assistant City Manager; the Director of Finance of the District who shall serve as the Assistant City Manager over all Fiscal Affairs of the City; the Information Technology Manager of the District who shall serve with an additional monthly compensation from the City as determined by the City Manager as Director of Information Technology for the City; and the Administrative Assistant of the District who will serve ~~as~~ Director of Human Resources for the City.

Add:

Section 3.03 At the end of 90 days, after execution of this Agreement, City Manager/General Manager shall report (written and oral) to City Council his evaluation of the delivery of City services and "fiscal" strategic plan.

Add:

Section 3.04 The City Manager shall provide two (2) "internal" Assistant City Manager positions to ensure that the daily operations of the City are addressed by staff that is housed within City facilities.

Article IV.

COMPENSATION

Section 4.01 The City Manager will receive no compensation from the City except for reimbursement of travel and incidental business expenses incurred on behalf of the City.

Section 4.02 The District's IT Manager will receive from the City one thousand dollars and no/100 (\$1,000.00) per month in addition to the compensation he receives from the District for his services to the City.

Section 4.03 All other District personnel who serve in dual capacities will receive no compensation from the City *with the exception of reimbursement for business expenses incurred on behalf of the City, including but not limited to Texas Municipal League or other conferences, seminars, continuing education; all of which shall be approved by the City Manager.*

Section 4.04 It is understood that all District employees will continue to perform all their District duties and will be compensated by the District for all salaries and expenses except as provided herein. All employee benefits will be the responsibility of the District.

Section 4.05 The City agrees to and shall defend, indemnify and hold harmless the District, its officers, employees, and agents against any and all claims, demands, lawsuits, administrative claims, judgments, orders, costs and expenses for personal injury (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by any negligent act or omission of the District, its officers, employees, and agents or contractors, as a result of this Agreement; except that the indemnity provided for in this

paragraph shall not apply to any liability resulting from the negligence of the District, its officers, employees, agents, or contractors, and in the event of joint and concurring negligence or fault of the City or the District, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without waiving any governmental immunity available to the City or the District under Texas law and are made solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Section 4.05 Any injuries sustained on City premises or otherwise by any of the employees of the District engaged in the City's business under this Agreement will be covered under the Workman's Compensation insurance policy carried by the City.

Section 4.06 Unless provided otherwise by agreement or the law, the initial term of this Agreement shall be two (2) years from the effective date set forth below and shall be reevaluated at that time unless the Agreement is terminated pursuant to Section 4.07, below.

Section 4.07 Either party may terminate this Agreement without cause upon sixty days written notice to other party.

This Agreement is entered into and effective on the _____ day of August, 2010.

Hand-out #1

Don Hamon will:

1. Create professionalism and pride in the job and work performance
2. Create fiscal and budget awareness - The District has an emergency reserve - the City needs one
3. Create new revenues - Several ways to generate revenue were discussed and Mr. Hamon indicated he would also look to the employees for input.
4. Create Routine Services - instill pride and care of equipment in employees. At the District there are routine checks, maintenance done on all equipment - the same thing needs to be done at the City.
5. Create Capital Projects Budget - capital equipment replacement schedule. Ms. Gray has indicated the City currently does not have either. This is done through careful planning and budget awareness.
6. Create a personnel evaluation process. Personnel would be restructured and a personnel handbook would be created along with standard operating procedures. Regular Personnel evaluations will be established which will help identify employee performance.
7. Create a new budget format. The District's format has worked for us and shows by department what expenses are and also monthly reports show where we stand. This would be instituted at the City. The monthly reports are gone over regularly in Staff meetings to allow department heads the opportunity to have information for planning.
8. Institute informative and informal staff meetings with departmental reports of progress in various areas and to create opportunities to discuss problems/upcoming events and projects/etc. Staff would be allowed to speak freely and respectfully disagree with each other while obtaining information they might otherwise not have.