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OPINION COMMITTEE



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State of Texas
House of Representatives

TODD HUNTER

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November 15, 2010

RQ-0931-GA

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

Attention: Nancy Fuller - Chair, Opinions Committee

Dear General Abbott:

I am submitting this letter to formally request an Attorney General's Opinion regarding Sec. 271.121 of the Local Government Code. The specific situation relates to the following:

RE: Request for opinion confirming that Sec. 271.121, Local Government Code, prevents governmental entities in Texas from requiring a contractor or other vendor to sign a project labor agreement as a condition of being able to submit a bid to a governmental entity engaging in procuring goods or services, awarding a contract or overseeing procurement or construction for a public work or public improvement.

I have enclosed a letter written to me by Jon Fisher President of the Associated Builders and Contractors of Texas that details the situation and the need for clarification on the pertaining statute.

I appreciate your attention to this request.

Sincerely,


Todd Hunter

State Representative, District 32

COMMITTEES: JUDICIARY & CIVIL JURISPRUDENCE (CHAIR), INSURANCE, GENERAL INVESTIGATING & ETHICS

TODD.HUNTER@HOUSE.STATE.TX.US



November 8, 2010

The Honorable Todd Hunter
Chair, Committee on Judiciary and Civil Jurisprudence
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

Dear Chairman Hunter:

The purpose of this letter is to request an Attorney General's opinion confirming that Sec. 271.121, Local Government Code, prevents governmental entities in Texas from requiring a contractor or other vendor to sign a project labor agreement as a condition of being able to submit a bid to a governmental entity engaging in procuring goods or services, awarding a contract or overseeing procurement or construction for a public work or public improvement.

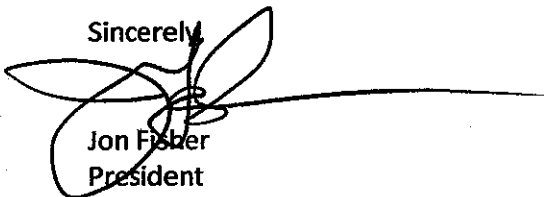
The statute clearly says that "a governmental entity...may not consider whether a vendor is a member of or has another relationship with any organization...".

For purposes of this opinion request, a project labor agreement (PLA) is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project. A PLA may also be described as a multi-employer, multi-union pre-hire agreement designed to systemize labor relations at a construction site. It requires that all contractors and subcontractors who will work on a project subscribe to the agreement; that all contractors and subcontractors agree in advance to abide by a master collective bargaining agreement for all work on the project; and that wages, hours, and other terms of employment be coordinated or standardized pursuant to the PLA across the many different unions and companies working on the project. The implementation of this PLA on a project underwritten by a governmental entity is accomplished by making agreement to the PLA a bid specification, thereby allowing the contracting authority to ensure that firms at every level—from the general contractor to the lowest level of subcontractor—comply with the terms of the PLA. (Building and Const. Trades Dept. v. Allbaugh, 295 F. 3d 28 - Court of Appeals, Dist. of Columbia 2002)

Clearly, the application hinges on whether a project labor agreement as described above establishes a relationship with an organization. Since a project labor agreement is a contract, and contracts establish relationships, it appears this statute prevents governmental entities in Texas from requiring project labor agreements as described even though this type of relationship is not specifically spelled out in the statute. The statute appears to give teeth to Texas' longstanding Right to Work law.

I appreciate any consideration you can give to this request.

Sincerely,



Jon Fisher
President

Local Government Code

Sec. 271.121. RIGHT TO WORK. (a) This section applies to a governmental entity while the governmental entity is engaged in:

- (1) procuring goods or services;**
- (2) awarding a contract; or**
- (3) overseeing procurement or construction for a public work or public improvement.**

(b) Notwithstanding any other provision of this chapter, a governmental entity:

- (1) may not consider whether a vendor is a member of or has another relationship with any organization; and**
- (2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.**