

SENATOR JUAN "CHUY" HINOJOSA
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OPINION COMMITTEE

TEXAS SENATE COMMITTEE ON
INTERGOVERNMENTAL RELATIONS

January 6, 2015

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RQ-0004-KP

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th Street
Austin, TX 78701

Dear General Paxton:

As chair of the Senate Committee on Intergovernmental Relations, I respectfully request a formal opinion from you regarding the following questions:

(1) Does the provision of the Galveston City Charter that regulates eligibility to serve on a board created by the city apply to members of the board of directors of a tax increment reinvestment zone created under Chapter 311, Tax Code?

(2) If the charter provision does apply, do the residency requirements and term limits provided by the provision apply to board members of a tax increment reinvestment zone?

These questions arise from a provision in the Galveston City Charter that may affect a tax increment reinvestment zone designated by this home-rule municipality. In relevant part, Section 11, Article XIV, Galveston City Charter, provides:

Excepting where otherwise required by this Charter, laws of the State of Texas, or Articles of Incorporation or By-laws, all boards, commissions, committees, corporations, and political subdivisions created by the City ("boards") shall have the powers and duties prescribed for them by the Council, and the members of such boards shall be appointed by the Council

As a threshold matter, does this provision of the Galveston City Charter apply to a tax increment reinvestment zone designated by the city under Section 311.003, Tax Code?

If the charter provision does apply to a tax increment reinvestment zone designated by the city, may the city require that a board member of the zone be a resident of the city? Tax increment reinvestment zones are governed by Chapter 311, Tax Code, and Section 311.008(b), Tax Code, provides that "a municipality . . . may exercise any power necessary and convenient to carry out this chapter" Section 11, Article XIV, Galveston City Charter, prohibits a person from serving as a member of a board covered by that provision "if that person has not been a

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resident of and domiciled in the City for at least one (1) year immediately preceding the appointment."

A potential conflict arises in Section 311.009, Tax Code, which governs the appointment of the board of directors of a tax increment reinvestment zone. Section 311.009(e), Tax Code, provides, in relevant part, that to be eligible for appointment to a board, an individual must:

(1) if the board is covered by Subsection (a):

(A) be a resident of the county in which the zone is located or a county adjacent to that county; or

(B) own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county; or

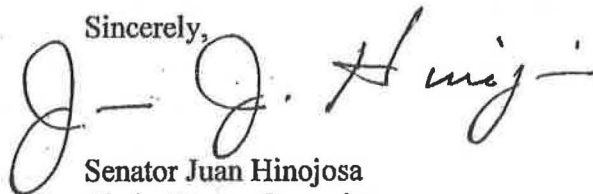
(2) if the board is covered by Subsection (b), own real property in the zone or be an employee or agent of a person that owns real property in the zone.

Under Section 311.009(e), Tax Code, in either type of zone covered by that subsection, an individual may reside outside the municipality that created the zone and be eligible for appointment by the municipality to the board, and Section 311.018, Tax Code, states that "[t]o the extent of a conflict between this chapter and a municipal charter, this chapter controls." Does Section 311.009(e), Tax Code, preempt the Galveston City Charter's requirement of residency in the city, or does Section 311.008(b), Tax Code, allow the city to impose additional residency requirements?

In addition to imposing residency requirements on board members, Section 11, Article XIV, Galveston City Charter, provides a term limit of six consecutive years for members of boards governed by that provision but does not include any provision that would affect the two-year term for board members of tax increment reinvestment zones under Section 311.009(c), Tax Code. Chapter 311, Tax Code, does not provide a term limit for zone board members. Does Section 311.008(b), Tax Code, enable a municipality to impose a term limit on board members of a tax increment reinvestment zone?

To assist you in addressing these questions, the City of Galveston may provide you with additional information. Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you need any additional information regarding this request.

Sincerely,



Senator Juan Hinojosa
Chair, Senate Committee on
Intergovernmental Relations