

Tom Green County

RECEIVED

JUL 21 2015

OPINION COMMITTEE



CHRIS TAYLOR -- COUNTY ATTORNEY

122 W. Harris

CRIMINAL JUSTICE CENTER

San Angelo, TX 76903

(325) 659-6562

1-888-588-5600

Fax: (325) 655-6430

FILE # ML-47767-15

I.D. # 47767

RQ-0037-KP

July 15, 2015

The Honorable Ken Paxton
Attention: Opinion Committee
Attorney General of Texas
PO Box 12548
Austin, Texas 78711

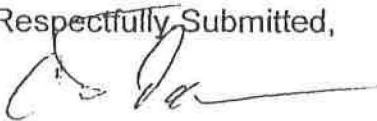
Re: Whether the City of San Angelo's Zoning Board of Adjustment and City Counsel of San Angelo have authority under state law to reimburse an appellant for costs incurred in an appeal to the City of San Angelo's Zoning Board of Adjustment

Dear General Paxton,

On July 3, 2015, the City of San Angelo sent a request for the Office of the County Attorney of Tom Green County requesting a written opinion from the Attorney General for clarification of the authority of the City of San Angelo's Zoning Board of Adjustment under state law. Attached you will find the City of San Angelo's request.

On behalf of the City of San Angelo, I respectfully ask that you provide an opinion as to whether or not the City Counsel of San Angelo and the City of San Angelo's Zoning Board of Adjustment have authority under state law to reimburse an appellant for costs incurred in an appeal to the City of San Angelo's Zoning Board of Adjustment.

Respectfully Submitted,



Chris G. Taylor
County Attorney



Office of the City Attorney
72 W. College
San Angelo, Texas 76903
(325) 657-4407 FAX (325) 481-2695

July 3, 2015

Chris Taylor
Tom Green County Attorney
122 W. Harris
San Angelo, Texas 76903

Dear Mr. Taylor

Accompanying this letter, please find the letter addressed to you by Daniel Valenzuela, our City Manager, asking that you request a written opinion from the Attorney General for clarification of the authority of our Zoning Board of Adjustment under state law. The authority to make such requests for written opinion from the Attorney General is located at Government Code Section 402.042. We had initially addressed this request to Representative Drew Darby; however he has asked that we address it to you as County Attorney.

We sincerely appreciate your assistance in making the request on behalf of the City of San Angelo.

Please let me know if there is any additional information that we might provide to assist you in securing a written opinion.

Sincerely,

A handwritten signature in cursive script that reads "Dan T. Saluri".

Dan T. Saluri, Interim City Attorney

The City of

San Angelo, Texas

72 W. College Avenue - 76903



Office of the Mayor

July 3, 2015

Chris Taylor
Tom Green County Attorney
122 W. Harris
San Angelo, Texas 76903

RE: City of San Angelo request that you present a request to the Attorney General for clarification of the authority of a city council and zoning board under state law to reimburse an appellant for costs incurred in an appeal to a zoning board.

Dear Mr. Taylor:

On behalf of the City of San Angelo, I am requesting that you present the following questions that our City Council has for clarification of municipal and zoning board authority under our Texas State Constitution and state statute to provide for reimbursement to an appellant of costs incurred in an appeal to a zoning board.

The City of San Angelo is a home rule municipality. San Angelo has appointed a Zoning Board of Adjustment (ZBA) pursuant to Local Government Code Sec. 211.008.

Under Chapter 211 of the Local Government Code and ordinances adopted pursuant thereto, our ZBA is authorized to hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of the subchapter or an ordinance adopted under the subchapter.

On application of a property owner proposing a commercial development for a frac sand transloading facility in central San Angelo, the Director of Development Services, pursuant to authority under city ordinance, made a written interpretation of the city zoning ordinance finding that the particular zoning district permitted the proposed commercial use; i.e. frac sand transloading facility, as a matter of right.

Several citizens living in neighborhoods proximately located to the proposed commercial development appealed the decision of the Director to the ZBA, requesting reversal of the Director's interpretation of the ordinance. One of the appellants to the ZBA incurred expenses in creating

DVD's, pictures, documentation and other physical evidence demonstrating the adverse health and safety effects of frac sand transloading facilities. The evidence was presented to the ZBA at public hearing on the appeal and the Board found it persuasive in its decision to reverse the Director's interpretation.

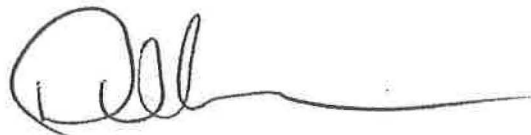
Reversal of the decision of the Director by the ZBA effectively disallowed development of the proposed frac sand transloading facility. The ZBA and City Council have determined that reversal of the Director's interpretation of the ordinance and disallowance of the proposed development was of a substantial health and safety benefit to the community.

The appellant has requested that City Council authorize a reimbursement of the expenses incurred that were reasonably necessary to inform the ZBA of the adverse health and safety effects of the proposed commercial development for central San Angelo.

Although Chapter 211 of the Local Government Code, Section 211.009 does not specifically provide the ZBA with authority to reimburse for costs incurred by an appellant whose appeal served a public purpose and benefit, our City Council members would like to know if:

1. the ZBA can authorize or recommend reimbursement of such appellant expenses by the City without violating the Texas State Constitution, Article Section 52, prohibiting gifts or grants of public money or Chapter 211 of the Texas Local Government Code; and
2. the City Council can, on its own motion authorize reimbursement of such expenses incurred by an appellant without violating the Texas State Constitution Article Section 52, prohibiting gifts or grants of public money.

Respectfully submitted,



Daniel Valenzuela, City Manager

Tom Green County Texas

Home

I WANT TO

County Offices

Other County Offices

District Court

Financial Transparency

Public Notices & News

Employment Opportunities

Bail Bond Board

TGC Partnership for Better Health

Contact Us

Employee Self Service

Tom Green County Information

TGC Emergency Management

Public Notices Calendar

State of Texas Emergency
Assistance Registry

Jail Visitation



County Attorney

Chris Taylor

122 W. Harris
San Angelo, Tx 76903

Phone: 325-659-6562

Fax: 325-655-6430

Email: [Chris Taylor](mailto:Chris.Taylor@tgc.net)

County Attorney Links

- [Domestic Violence Prosecution Unit](#)
- [Hot Check Unit](#)
- [County Attorney Contacts](#)

Duties & Responsibilities of County Officials

Provided by the County Information Resources Agency, Powered by eTask