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OPINION COMMITTEE



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August 17, 2015

The Honorable Ken Paxton
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion Regarding what is included under the term "site improvements" within §501.103, Local Government Code

Dear Attorney General Ken Paxton:

The City of El Campo Section 4A Economic Development Corporation (the "El Campo CDC") was created in February 25, 1992 pursuant to the terms of the Development Corporation Act of 1979 (the "Act") now codified in Chapters 501 and 504, Local Government Code as a Section 4A development corporation. As a Section 4A development corporation, the El Campo CDC can additionally expend funds for projects within the gambit of Section 501.103, Local Government Code.

Section 501.103, Local Government Code (the "Code") entitled "Certain Infrastructure Improvement Projects" authorizes economic development corporations to spend sales tax monies on projects that are required or suitable to promote or develop new or expanded business enterprises. Specifically, Section 501.103 of the Code provides:

In this subtitle, "project" includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:

- (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, *site improvements*, and related improvements;
- (2) telecommunications and Internet improvements; or
- (3) beach remediation along the Gulf of Mexico.

Tex. Local Gov. Code §501.103

The statute does not provide a definition for the term "site improvements." As a result, the foregoing statute gives rise to possible ambiguity as a reasonable person could find numerous meanings for the term "site improvements." Since current law, court cases, and Attorney Generals' opinions do not specifically define projects encompassed under the term "site improvements" as set forth in §501.103, I am seeking clarification as to whether a certain program it offers falls under the purview of site improvements as set forth under §501.103 of the Code.

The El Campo CDC created a "Revitalization and Site Improvement Campaign" to promote For-Profit and Non-Home-Based businesses located within the El Campo City Limits. The Campaign uses CDC funds to provide matching grants to qualified El Campo businesses (both retail and industrial) to enhance their property and provide visual improvements to their facilities. The criteria for "Eligible Improvements" includes: "exterior painting, glass replacement, general property clean-up or removal of debris, architectural or accent lighting, new landscaping, and signage". Ineligible expenses include such things as "seasonal lighting, holiday decorations, flags and banners, mowing, or compensation for time". See **Exhibit "A"** (The City of El Campo, Texas Revitalization Terms and Conditions & Site Improvement Application). The El Campo CDC bases its authority to use 4A sales tax dollars for this program on the phrase "site improvements" contained in Section §501.103(1) of the code.

As set forth above, §501.103 of the Code does not provide a clear definition of the words "site improvements" as used in the statute. Further, it is unclear whether §501.103(1) of the Code limits "site improvements" to similar types of projects that are described in section (1) such as streets and roads, rail spurs, water and sewer utilities, etc. The concern is since many of the businesses participating in the program are either retail or service related; may 4A Economic Development Corporation sales tax dollars be used for the El Campo CDC's Revitalization program?

I therefore seek clarification as to the following issue:

- I. *Whether the El Campo CDC's "Revitalization and Site Improvement Campaign" to promote beneficial improvement to businesses in the City of El Campo qualifies as site improvements under Section 501.103 of the Code?*

Thank you for your consideration of this request.

Sincerely,



G. A. Maffett, III
Wharton County Attorney