



The State of Texas
House of Representatives
Austin

ELLIOTT NAISHTAT
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RQ-0346-JC

February 7, 2001

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FEB 12 2001

OPINION COMMITTEE

FILE # 11L-41877-01

I.D. # 041877

Honorable John Cornyn
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Decision Pursuant to
Texas Government Code Section 552.301

Dear General Cornyn:

The City of Austin, the Austin Housing Finance Corporation and the Austin Independent School District (AISD) are actively seeking authority to engage in a venture pursuant to Chapter 272.001 of the Local Government Code (Sale or Lease of Property by Municipalities, Counties, and Certain Other Local Governments) to provide low-income or moderate-income housing to teachers and possibly classified employees of the Austin Independent School District. Such a program would enable the school district to attract badly needed teachers and employees to serve the 78,000+ students of Austin Independent School District.

BACKGROUND

At any given time the Austin Independent School District typically employs approximately 10,000 employees, of which 5200 are teachers. Approximately 700-900 teachers are hired each year depending on turnover and the number of new positions allocated for growth or new programs. Retention of those employees is often a problem for AISD given the significant rising costs of living in the Austin area and the serious lack of affordable housing for teachers and classified employees. The starting salary of an AISD teacher is \$30,270 with a Bachelor's degree and \$31,090 with a Master's or Ph.D. The average base teacher salary for 2000-01 is approximately \$37,280 (not including benefits). With the median price of a new home in Austin exceeding \$150,000, it becomes clearly evident that a large portion of the teacher population may be ineligible to purchase a home and may become more prone to accepting employment elsewhere where the cost of living does not preclude him or her from home ownership. Should the legal details be worked out between the



statutes and state constitution, then such programs may be able to be instituted in other high need areas around the State of Texas.

DESCRIPTION OF PROGRAM

The proposed program is one where AISD participates by (a) providing outreach and marketing programs to promote the program with teachers and (b) by releasing tracts of land from its inventory to be developed into affordable housing for teachers and possibly classified employees (employees hired in an at-will employment relationship to the district, rather than under an employment contract). The Austin Housing Finance Corporation would provide mortgage credit certificates or mortgage revenue bond financed mortgages to eligible teachers and public employees. The bonds are available in the year 2001. Freddie Mac and local lenders would provide a "zero" down payment mortgage program. Builders would be encouraged to identify and pre-sell affordable SMART Housing units to the teachers and public employees and would pass on the SMART Housing program savings to the purchasers. The City would offer development fee waivers of approximately \$2,000-\$3,000 per house to the builders through its SMART Housing program.

BASIC UNDERSTANDING AND INQUIRIES

It is clear that under the relevant Local Government Code Section 272.001(g) that a political subdivision may convey surplus property through a public bid process or through a direct sale to the City of Austin at fair market value. It is also clear that under the same section the AISD may convey surplus property to a developer or the City of Austin at less than market value if the sale is for the development of low-income or moderate-income housing to attract and retain teachers and possibly classified employees. While similar proposals have been instituted in other parts of the United States, we believe this may be a case of first impression in Texas. No cases or Attorney General opinions have been located which construe Section 272.001(g).

Your assistance is sought to determine the following:

- 1) Is AISD's expenditure of public funds for marketing and outreach of the proposed program permitted pursuant to Section 45.105 of the Education Code and Article III, Sections 51 and 52 of the Texas Constitution?
- 2) If the school board determines that the property it holds is no longer needed for school purposes, may it convey the property to an entity such as the City of Austin for use for low-income and moderate-income housing for less than its fair market value and without having to go through the competitive bid process pursuant to Section 272.001(g) of the Local Government Code?
- 3) Although the first sentence of Section 272.001(g) clearly states that a "political

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subdivision may acquire or assemble land or real property interest . . . and sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate-income housing," the second sentence states that the "municipality shall determine the terms and conditions of the transactions so as to effectuate and maintain the public purpose." Emphasis added. Given the ambiguity of the wording in Section 272.001(g), was it intended for Subsection (g) to apply to all political subdivisions, including school districts, or merely to municipalities?

- 4) Would the Austin Housing Finance Corporation, a not-for-profit subdivision of the City of Austin, be a permissible entity the AISD could convey property to given the specific language of Section 272.001 of the Local Government Code?
- 5) Does a real estate or property conveyance pursuant to the statute at less than fair market value constitute an impermissible gift under Article III, Sections 51 and 52(a) of the Texas Constitution?

Your assistance and cooperation in addressing these matters of vital concern are greatly appreciated.

Sincerely,



Elliott Naishtat
State Representative

EN/nw