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OPINION COMMITTEE



HOUSE COMMITTEE ON
LAND AND RESOURCE MANAGEMENT

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June 8, 2012

RQ-1068-GA

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The Honorable Gregg Abbott
Texas Attorney General
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Abbott:

With this letter I would like to waive the Section 402.042 Sub-section C requirements for asking a formal opinion from the Attorney General. The Texas Department of Housing and Community Affairs (Department) has adopted a 2012 - 2013 Qualified Allocation Plan (Plan) governing the allocation of Housing Tax Credits authorized by federal income tax laws. Section 2306.6710(b)(1), Government Code, lists the criteria the Department must consider in allocating tax credits, and prioritizes the criteria into a ranking order that the Department must follow in its evaluation of application.

In Attorney General Opinion Number GA-0208, you concluded:

The Department of Housing and Community Affairs must first score and rank applications for low-income housing tax credits according to the nine statutory criteria prioritized in descending order in Government Code section 2306.6710(b)(1), as amended in 2003 by Senate Bill 264. It may score and rank applications according to other criteria and preferences established in 26 U.S.C. §42 and chapter 2306 by giving those other criteria and preferences less weight than the section 2306.6710(b)(1) criteria. To the extent the Department's 2004 qualified allocation plan for allocating low-income housing tax credits gives other criteria and preferences greater weight, it is inconsistent with section 2306.6710(b)(1) and exceeds the Department's statutory authority.

Section 2306.6710(b)(1)(B) grants second highest ranking to "quantifiable community participation with respect to the development, evaluated on the basis of written statements from any **neighborhood organization on record with the state or county** in which the development is to be located and whose boundaries contain the proposed development site;". (Emphasis added.) Under §50.9(b)(2)(B)(i)(I) of the Plan support letters from neighborhood organizations will receive 24 points.

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Under §50.9(b)(2)(B)(i)(III) of the Plan "applications for which no Neighborhood Organization exists will receive a score of (18 points);". Further, §50.9(b)(13)(A) grants as many as 6 additional points to applications for which no Neighborhood Organization exists, giving 2 points "for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located." Thus, an application for which no neighborhood organization exists can receive as many points as an application with the support of a neighborhood organization on record with the state or county, even though the former is not specified or prioritized in Section 2306.6710(b)(1), Government Code.

Additionally, Section 2306.6710(b)(1)(C), Government Code, lists "the income levels of tenants of the development" as the third highest priority in the point system. §50.9(b)(3) of the Plan grants a maximum of 22 points to this criteria, while applications for which no neighborhood organization exists—a criteria not specified or prioritized in statute—can receive 24 points.

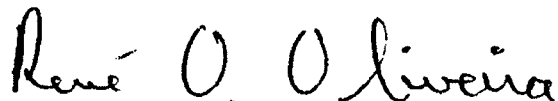
The total number of points that can be awarded to an application for which no neighborhood organization exists can exceed eight criteria listed and prioritized in statute, and equal a ninth.

In addition to the conclusion of GA-0208 mentioned above, you also state in the opinion that "section 2306.6710(b) does not authorize the Department to modify or add to the nine section 2306.6710(b)(1) criteria and that the statute does not authorize the Department to give other chapter 2306 criteria greater weight or higher priority than any of the nine." (There are now ten criteria after the section was amended by Senate Bill 1908, 80th Regular Session.)

I respectfully request your formal opinion as to whether the 2012 - 2013 Qualified Allocation Plan is in compliance with Section 2306.6710(b), Government Code, when the Plan scores a criterion not enumerated in the statute above most of the criteria in the statute. Because some applications and areas may have ready been or may be irreparably harmed, and because you have previously found that the Department has enacted a qualified allocation plan that "contradicts section 2306.6710(b)'s plain language and exceeds the Department's authority...", I respectfully request you expedite your opinion, so that your decision may be given effect in the impending allocation of 2012 Housing Tax Credits by the Department.

Should you wish to discuss this or any other matter with me, please feel free to contact me at your convenience. Should your staff have questions regarding this request, please direct them to J.J. Garza of my Austin office. Thank you.

Sincerely,



René O. Oliveira
Chairman, House Committee on Land & Resource Management