



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 27, 1997

The Honorable Bill G. Carter  
Vice Chair, Committee on Local and Consent Calendars  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768

Letter Opinion No. 97-056

Re: Whether tenant commissioner of  
municipal housing authority may contract  
with authority to provide lawn maintenance  
services (ID# 39480)

Dear Representative Carter:

The former Chair of the Committee on Local and Consent Calendars, who requested an opinion on the question before us, has left his position as committee chair and has not been replaced. Accordingly, we address our answer to you in your capacity as vice chair of the committee.

The requestor asked whether a tenant representative on the board of a municipal housing authority may contract with the authority to provide lawn maintenance or another service for pecuniary gain. Section 392.011 of the Local Government Code creates a housing authority in each municipality in the state, which may not transact business or exercise its powers until the governing body of the municipality declares by resolution that there is a need for the authority. The presiding officer of the governing body appoints five persons to serve as commissioners of the housing authority.<sup>1</sup> At least one tenant shall be appointed commissioner.<sup>2</sup>

Section 392.042 of the Local Government Code prohibits housing authority commissioners from having various kinds of economic interests in housing projects.<sup>3</sup> For purposes of this conflict of interest provision, "housing project" is defined broadly to include activities necessary to provide low income housing and appurtenant facilities.<sup>4</sup> Subject to statutory exceptions, a commissioner "may not have dealings with a housing project for pecuniary gain" and may not own, acquire, or control a direct or indirect interest in, among other things, a "housing project" or a "contract or proposed contract for the sale of materials or services to be furnished or used in connection with a

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<sup>1</sup>Local Gov't Code § 392.031(a).

<sup>2</sup>*Id.* § 392.0331. A tenant serving as commissioner is subject to conflict of interest provisions that bar him or her from participating in certain matters relating to his or her tenancy or the tenancy of relatives related to him or her within the first degree by consanguinity.

<sup>3</sup>The conflict of interest provisions apply to commissioners generally, without any exception for a tenant serving as commissioner.

<sup>4</sup>*Id.* § 392.002(6).

housing project.”<sup>5</sup> This provision incorporates the public policy of this state, which forbids public officers from placing themselves in a position in which their individual personal interests conflict with their public duty.<sup>6</sup>

In Attorney General Opinion JM-610 (1986), this office concluded that furnishing bookkeeping or consultant services to a housing authority constituted “dealings for pecuniary gain with the housing projects of that authority.”<sup>7</sup> In our opinion, providing lawn maintenance services to the housing authority for compensation would also constitute “dealings with a housing project for pecuniary gain,” prohibited to a commissioner by section 392.042 of the Local Government Code. Furthermore, a commissioner may not have a direct or indirect interest in a “contract or proposed contract for the sale of materials or services to be furnished or used in connection with a housing project.”<sup>8</sup> This provision would also prohibit a commissioner from contracting to sell services, including lawn maintenance services, to a housing project.

We are also asked whether the exception in section 392.042(c) of the Local Government Code for a commissioner’s continuing interest in a housing project applies to a continuing interest in a contract for services provided in connection with the housing project. Under section 392.042(c) of the Local Government Code, a commissioner may, among other things, “continue to own or control an interest in a housing project held by the commissioner before the commissioner’s term of office began.”<sup>9</sup> Section 392.042 prohibits a commissioner from having both an “interest in a housing project” and “an interest in a contract for the sale of services in connection with a housing project,” while section 392.042(c) excepts a commissioner’s continuing interests in a housing project, but not in a contract for the sale of services to a project. Accordingly, we believe that contracts for the sale of services to a housing authority are not within the exception for a commissioner’s continuing interests.

Finally, we are asked whether the prohibitions applicable to commissioners of a municipal housing authority apply to its nonprofit subsidiary corporations, thus prohibiting contracts between such corporations and their board members if similarly prohibited under the Texas Housing Authorities Law. The brief that accompanies the request letter states that the housing authority has created several nonprofit, tax-exempt subsidiary corporations to serve as instrumentalities of the housing authority and to supplement its programs. The subsidiary corporations act as public bodies by complying with the Texas Open Meetings Act and other laws applicable to public bodies. In

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<sup>5</sup>*Id.* § 392.042(b)(5).

<sup>6</sup>*See Meyers v. Walker*, 276 S.W. 305 (Tex. Civ. App.—Eastland 1925, no writ); Attorney General Opinion M-1096 (1972) at 2 (concluding that a predecessor of Local Government Code section 392.042 forbade tenant of housing authority from serving as a commissioner thereof). The statute was later amended to authorize, and then to require, a tenant to serve as a commissioner. *See* Attorney General Opinion JM-308 (1985).

<sup>7</sup>Attorney General Opinion JM-610 (1986) at 5.

<sup>8</sup>Local Gov’t Code § 392.042(b)(5).

<sup>9</sup>*Id.* § 392.042(c)(3).

addition, the corporations are all staffed by housing authority personnel and are managed and operated out of the housing authority's offices. Commissioners of the housing authority automatically serve on the board of the nonprofit subsidiary corporations.

We have been provided with very little information about the activities of the nonprofit subsidiary corporations established by the housing authority, but we assume that they were established to carry out the purposes of chapter 392 of the Local Government Code and are part of the structure of the housing authority.<sup>10</sup> A commissioner serves as a board member of a subsidiary corporation as a duty of office as housing authority commissioner. Under these circumstances, section 392.042 of the Local Government Code would apply to contracts between a commissioner and a subsidiary to the same extent that the provision applies to contracts between a commissioner and the housing authority. Moreover, since the subsidiaries are part of the housing authority, the statutory prohibitions apply to contracts between any commissioner and any of the subsidiaries, not only the subsidiary on whose board the commissioner serves.

### S U M M A R Y

Section 392.042 of the Local Government Code, which prohibits the commissioners of a housing authority from contracting with or having various kinds of economic interests in the housing projects under their jurisdiction, prohibits a commissioner, including a tenant commissioner, from contracting to sell lawn maintenance services to a housing project. The exception in section 392.042(c) of the Local Government Code for "an interest in a housing project held by the commissioner before the commissioner's term of office began" does not apply to contracts for the sale of services to a housing authority.

Section 392.042 also applies to commissioners' contracts with or interests in nonprofit subsidiary corporations established by the housing authority to carry out its purposes.

Yours very truly,



Susan Garrison  
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Opinion Committee

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<sup>10</sup>See generally V.T.C.S. art. 717s (authorizing housing authorities to create public facility corporations).