

Locke Lord QuickStudy: Texas Attorney General's Office Opines ?on Public Facility Corporations Operating on a Statewide Basis

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On March 8, the Texas Office of the Attorney General (the “**AG Office**”) issued a [legal opinion](#) regarding the ability of a public facility corporation (“**PFC**”) formed by a municipal management district (“**MMD**”) to acquire property outside of the geographic boundaries of the MMD. Rather than providing a definitive conclusion, the AG Office characterized the question as factual in nature and therefore beyond the scope of an advisory opinion.

A [request for legal opinion](#) was submitted to the AG Office in the wake of a growing number of property tax exemptions being granted under [Texas Local Government Code Section 303.042](#) (the “**PFC Exemption**”) in favor of PFCs acquiring property located outside the jurisdiction of the PFC’s sponsoring MMD. The request described the practice as one in which “one governmental entity, though its PFC, would unilaterally impose a cost of the citizens of another governmental entity.”

The focus of the AG Office’s analysis was whether a “direct benefit” would result from an MMD acquiring property outside of its boundaries through its PFC. [Texas Local Government Code Section 375.092\(f\)](#) allows an MMD to operate property located outside its boundaries to the extent that doing so will “directly benefit property in the district.” The AG Office noted that in determining the existence of a direct benefit [Texas Local Government Code Section 375.111](#) gives the board of an MMD the authority to determine whether a direct benefit is provided. The AG Office stated further that such a determination is “subject to judicial review for abuse of discretion.” The AG Office cited these factors in declining to provide a general conclusion on the matter, noting that doing so would require “consideration of fact issues, a task outside the scope of an advisory opinion.”

The legal opinion, however, did include the following footnote: “We question, however, whether the board could reasonably determine that the provision of housing in counties well outside the boundaries of the district directly benefits property in the district as required by subsection 375.092(f), particularly when subsection 3971.0103(c) provides that the creation of the district is necessary to promote, develop, encourage, and maintain housing in the district.”

In conclusion, the opinion stated that a court could conclude that current Texas law allows a PFC created by an MMD to acquire real estate outside the MMD’s boundaries.

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