CAUSE NO. 2025DCV-4399-D

NUECES COUNTY, TEXAS, *Plaintiff* V. CORPUS CHRISTI HOUSING AUTHORITY, *Defendant and Cross-Claim Defendant* AND 2921 AIRLINE PE, LLC, ET AL. *Intervenor Defendants and Cross-Claim Plaintiffs* V. CATHY MEHNE, ET AL. *Cross-Claim Defendants*	§ §	IN THE DISTRICT COURT 105TH JUDICIAL DISTRICT NUECES COUNTY, TEXAS

Intervenors' Supplemental Brief in Further Support of Summary Judgment

On January 6, 2026, the CCHA board passed a resolution purporting to confess to a violation of TOMA.[1] The CCHA passed its resolution soon after Intervenors filed their motion for summary judgment, and only a few weeks after CCHA itself filed a general denial of the County's claims. The CCHA's maneuver is a transparent attempt to help the County prevail on its TOMA claim. This underscores the pretextual nature of the use of TOMA in this case.

As shown in Part I of this brief, TOMA is not an "escape hatch" for those, like CCHA, who wish to break their contracts. Part II addresses the CCHA's contention in its January 6

[1] Ex. N (Jan. 6, 2026 Corpus Christi Housing Authority Resolution).

resolution that its CEO somehow "went rogue" when entering into the contracts. The CCHA's contention is not credible and not relevant. Part III demonstrates that TOMA cannot provide support for the County's attempt to terminate the workforce housing agreements, because the CCHA is not subject to TOMA at all.

I.

The CCHA's January 6, 2026 Resolution Does Not Support the County's TOMA Claim.

Intervenors' Traditional Motion for Partial Summary Judgment demonstrates, as a matter of law, that the CCHA's meeting notices were adequate. As shown in that motion, there is no factual dispute concerning the content of the notices, and under well-settled Texas law, if the contents of a notice are undisputed, the adequacy of the notice under TOMA is a question of law. *See, e.g.*, *Burks v. Yarbrough*, 157 S.W.3d 876, 883 (Tex. App. – Houston [14th Dist.] 2005, no pet.). Because the contents of the notices are undisputed, it is irrelevant that the CCHA has reversed course to take the new position in its January 6 resolution that "all contracts and obligations . . . were undertaken without compliance with the Texas Open Meetings Act."[2] That decision is for the Court to make, not CCHA, and the CCHA's conclusory resolution contains no information to support its insincere "confession" of wrongdoing.

The law is clear that a public entity cannot use TOMA as an escape hatch when it changes its mind about following through on an executed contract. TOMA distinguishes between "an interested person" who may file a TOMA lawsuit and the "members of a governmental body" who are alleged to violate TOMA. Texas Gov't Code § 551.142(a). "The intended beneficiaries of the Act are . . . members of the interested public" who would be otherwise not have notice about the subject of upcoming meetings; obviously, the CCHA is not a member of the "public" as to its own

[2] Ex. N (Jan. 6, 2026 Corpus Christi Housing Authority Resolution).

decisions. The CCHA had full knowledge of what it was considering, independently of any TOMA requirements. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765 (Tex. 1991).

In *Cottonwood Development Corp. v. Preston Hollow Capital, LLC*, 706 S.W.3d 514 (Tex. App. – Austin 2024, pet. filed), Cottonwood Development Corp. tried to escape its contractual obligations by arguing that TOMA was violated either by Cottonwood itself or by the City that created Cottonwood. The court of appeals rejected this argument: "Cottonwood cites no authority, and we have found none, holding that TOMA allows a governmental body to sue itself, or more precisely, that a local-government corporation may sue the governmental entity that created it for TOMA violations." *Cottonwood*, 706 S.W.3d at 537.

Cottonwood makes good sense. If TOMA provided an escape hatch from government contracts, then any governmental entity could impose serious consequences on its contractual counterparty just by "confessing" to its own misconduct.

When the Legislature intends to give a governmental entity the power to void its own contracts, it does so by statute. For example, in Section 176.013(e) of the Texas Local Government Code, the Legislature provided that "the governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a [required] conflict of interest questionnaire." There is no such provision allowing a local governmental entity to void its own contracts for a TOMA violation.

In the January 6 resolution, CCHA seeks to usurp this Court's authority by purporting to declare all of the contracts "void ab initio and of no legal effect."[3] As Intervenors have shown in other briefs, CCHA has no right to unilaterally exit the contracts.[4] And a TOMA violation does

[3] Ex. N (Jan. 6, 2026 Corpus Christi Housing Authority Resolution).

[4] *See e.g.*, Intervenors' Verified Cross-claims, Joinder of Additional Defendants, and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction; Intervenors' Brief in Support of Application for Temporary Restraining Order; Intervenors' Verified Reply in Support of Application for Temporary Restraining Order.

not invalidate anything, since "an action by a governmental body in violation of this chapter is *voidable*." Tex. Gov't Code § 551.141. "It is possible that a court may not void an action even if the court finds that the action was taken in violation of the Act." Texas Municipal League, The Texas Open Meetings Act made Easy 42 (2023) (https://www.tml.org/DocumentCenter/View/3979/The-Texas-Open-Meetings-Act-Made-Easy-Updated-October-2023-X).

II.

The CCHA's Claim of "Lack of Authority" Is Not Credible and Not Relevant.

In its January 6 resolution, the CCHA contends that "the respective agreements . . . were executed by the Corpus Christi Housing Authority's Chief Executive Officer without the authority of a Corpus Christi Housing Authority board vote as to each such transaction."[5] This statement is simply false. At each meeting approving an MOU, the CCHA board passed a Resolution that "hereby authorizes and directs GARY ALLSUP, its Chief Executive Officer ('CEO'), to negotiate and enter into a Memorandum of Understanding . . . *and thereafter carry out and perform the terms and conditions of such Memorandum*," including specific authorization to assume ownership of the property, to enter into a "99 year ground lease," to assist with the obtaining of financing, and to form a CCHA subsidiary to develop the project (*i.e.*, the Operating Agreement).[6] Moreover, each of the MOU's approved by the CCHA specifically contemplates and sets out the material terms of the Operating Agreements, Ground Leases, and Regulatory Agreements, and includes an agreement "to execute such documents and do such other reasonable things as may be necessary or appropriate to facilitate the consummation of the agreements."[7]

[5] *See* Ex. N (Jan. 6, 2026 Corpus Christi Housing Authority Resolution).
[6] *See* Ex. L (Nov. 6, 2024 Corpus Christi Housing Authority Resolution).
[7] *See e.g.*, Ex. M (Memorandum of Understanding), at § L(3).

To illustrate the CCHA's lack of credibility, the Resolution accusing the CEO of acting *ultra vires* was signed by the same Board chairman who signed every one of the resolutions authorizing the CEO to enter into these agreements. Moreover, the counsel who advised the CCHA board at its January 6 meeting, when it passed a resolution purporting to declare void "each such transaction" *is the same counsel identified in each of the MOU's as representing CCHA in those same transactions.*[8]

For the purpose of TOMA, none of this is relevant. TOMA does not require "a board vote as to each such transaction." Rather, TOMA requires only "notice" of the "subject" of a meeting, Tex. Gov't Code § 551.041, and provides that "an action" taken "in violation" of that requirement is voidable. If the notice of the subject was provided, as it was here, then it is not necessary to "state all of the consequences which may necessarily flow from the consideration of the subject." *Texas Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675, 676 (Tex. 1977).

III.

The CCHA Is Not Subject to TOMA.

The County's and CCHA's misuse of TOMA is underscored by the fact that CCHA is not subject to TOMA.

TOMA provides that "a *governmental body* shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body." Tex. Gov't Code § 551.041. Only "an action taken by a *governmental body* in violation of [TOMA] is voidable." *Id.* § 551.141. And a lawsuit "by mandamus or injunction" may be brought only "to stop, prevent, or reverse a violation or threatened violation of [TOMA] by members *of a governmental body*." *Id.* § 551.142.

[8] *See e.g.*, Ex. M (Memorandum of Understanding), at §§ H(5), L(11).

TOMA defines "governmental body." *Id.* § 551.001(3). "Courts must adhere to the legislative definitions of terms when they are supplied." *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). "If a statute uses a term with a particular meaning or assigns a particular meaning to a term, *we are bound by that statutory usage*. . . Undefined terms in a statute are typically given their ordinary meaning, *but if a different or more precise definition is apparent from the term's use in the context of the statute, we apply that meaning.*" *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011).

TOMA lists thirteen types of entities in its definition of "governmental body." Tex. Gov't Code § 551.001(3). The definition does not include a housing authority established by a municipality. No court has ever found that a municipal housing authority is subject to TOMA. Rather, the only support for the proposition is Attorney General Opinion No. DM-426, issued in 1996 by Attorney General Morales.[9]

With respect to a municipal housing authority, Opinion No. DM-426 identified as "relevant" only one of the thirteen types of entities included in the definition of "governmental body": "a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality." *Id.* § 551.001(3)(D). The Attorney General opined that this provision encompassed municipal housing authorities because they have the power to make "bylaws and rules" to govern themselves, Tex. Local Gov't Code § 392.065(5), and have other powers, such as eminent domain and bond issuance.[10]

Attorney General opinions are "not controlling," and "it is well-settled that an Attorney General opinion interpreting the law cannot alter the pre-existing legal obligations of state agencies or private citizens." *In re Abbott*, 645 S.W.3d 276, 281 (Tex. 2022). An appellate court opinion

[9] *See* Ex. O (Attorney General Opinion No. DM-426).
[10] *See* Ex. O (Attorney General Opinion No. DM-426), at 2-3.

issued two years after Opinion No. DM-426 makes clear that the Attorney General misconstrued TOMA.

In *Blankenship v. Brazos Higher Educ. Auth.*, 975 S.W.2d 353 (Tex. App. – Waco 1998, pet. denied), the court of appeals addressed whether the Brazos Higher Education Authority was "a deliberative body that has rulemaking or quasi-judicial power." The court "found that a deliberative body makes binding determinations on disputes before it." *Blankenship*, 975 S.W.2d at 360. Although the Brazos Higher Education Authority exercised various powers conferred by statute, including the issuance of revenue bonds and administering a student loan program, *id.* at 355, 358, this did not make it a "deliberative body" because "clearly, Brazos does not hear or make binding determinations on disputes." *Id.* at 360.

The opposing party, Blankenship, argued that Brazos had "rulemaking . . . power," by pointing (like the Attorney General in Opinion No. DM-426) to the Authority's ability to manage its own affairs through adoption of "bylaws and rules." Tex. Local Gov't Code § 392.065(5). The court of appeals rejected this argument:

> Blankenship argues that Brazos is a governmental body because it is a deliberative body that has rulemaking or quasi-judicial power. He points to the fact that Brazos has the power to amend its by-laws, articles of incorporation, and "plan of doing business." These are powers that all corporations and nonprofit corporations possess. We conclude as a matter of law, however, that the facts asserted, assuming their truth, do not make Brazos a governmental body.

Blankenship, 975 S.W.2d at 360. The ability of a corporation to govern itself does not equate to the ability to make rules applicable to the public.

A municipal housing authority also has no "quasi-judicial power." Quasi-judicial power requires "(1) the power to exercise judgment and discretion; (2) the power to hear and determine or to ascertain facts and decide; (3) the power to make binding orders and judgments; (4) the power to affect the personal or property rights of private persons; (5) the power to examine witnesses, to

compel the attendance of witnesses, and to hear the litigation of issues on a hearing; *and* (6) the power to enforce decisions or impose penalties." *Id.* The CCHA does not have "the power to make binding orders and judgments" or "the power to enforce decisions or impose penalties."

Texas Local Government Code Section 392.060(3), which permits a housing authority to conduct hearings, allows CCHA only to make "findings and recommendations" to "appropriate agencies, including agencies charged with the duty of abating, or requiring the correction of, nuisances or similar conditions or of demolishing unsafe or unsanitary structures within the authority's area of operation." In *City of Austin v. Evans*, 794 S.W.2d 78 (Tex. App. – Austin 1990, no writ), the court held that a grievance committee did not meet the definition of "governmental body" because "it *can only make recommendations*. The only *determination* or *decision* it is vested with is to *recommend, not to adjudicate*." *City of Austin*, 794 S.W.2d at 83 (emphasis in original).

Because the CCHA "does not hear or make binding determinations on disputes," *Blankenship*, 975 S.W.2d at 360, it is not a "deliberative body that has rulemaking or quasi-judicial power," Texas Gov't Code § 551.001(3)(D), and so it is not subject to TOMA. This does not mean that CCHA is excused from posting "notice of the date, hour, place, and subject of a meeting." As Attorney General Morales noted in Opinion No. DM-426,[11] this requirement is independently imposed by the housing authorities law, Tex. Local Gov't Code § 392.054(a). But unlike TOMA, the housing authorities law does not provide for a suit by "an interested person . . . to stop, prevent, or reverse a violation or threatened violation." Tex. Gov't Code § 551.142(a). Because Nueces County relies only on TOMA, which is inapplicable, and because the housing authorities law does not provide a claim for enforcement by "an interested person," the Court should grant summary judgment against Nueces County's claim.

[11] *See* Ex. O (Attorney General Opinion No. DM-426), at 3.

IV.

Conclusion

The Court should grant summary judgment against the County's TOMA claim.

Dated: January 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served in compliance with the Texas Rules of Civil Procedure on this 28th day of January, 2026, to the following counsel of record:

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CAUSE NO. 2025DCV-4399-D

NUECES COUNTY, TEXAS, *Plaintiff* V. CORPUS CHRISTI HOUSING AUTHORITY, *Defendant and Cross-Claim Defendant* AND 2921 AIRLINE PE, LLC, ET AL. *Intervenor Defendants and Cross-Claim Plaintiffs* V. CATHY MEHNE, ET AL. *Cross-Claim Defendants*	§ §	IN THE DISTRICT COURT 105TH JUDICIAL DISTRICT NUECES COUNTY, TEXAS

DECLARATION OF ALEXXA G. LEON IN SUPPORT OF INTERVENORS' SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF SUMMARY JUDGMENT

1. My name is Alexxa G. Leon. I am over the age of 21, and I am competent in all respects to make this declaration. The information contained in this declaration is true and correct and based on my personal knowledge.

2. I am an attorney licensed to practice law in the State of Texas. I represent Intervenors in the above captioned cause. I make this declaration in support of Intervenors' Supplemental Brief in Further Support of Summary Judgment and Intervenors' Traditional Motion for Partial Summary Judgment.

3. **Exhibit N** is a true and correct copy of the Corpus Christi Housing Authority Board of Commissioner's Resolution related to CCHA Action Item No. 26-EO-01. The Resolution bears the signature of the Chair of the Board of Commissioners of the Corpus Christi Housing Authority. The Resolution appears on its face to be an official act of the Corpus Christi Housing Authority and a record of a public office.

My name is Alexxa G. Leon, my date of birth is 08/27/1993, and my office address is 1000 Louisiana Street, Suite 5100, Houston, TX 77002 in the United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Nueces County, State of Texas, on the 28th day of January 2026.

Alexxa G. Leon

Exhibit N

Action Item Number 26-EO-01
Presented to the Board on January 6, 2026

A RESOLUTION OF THE CORPUS CHRISTI HOUSING AUTHORITY
SPECIAL MEETING OF JANUARY 6, 2026

Based on the unanimous vote of the Corpus Christi Housing Authority board at the special meeting of January 6, 2026, the following resolution was adopted by the Corpus Christi Housing Authority:

All Corpus Christi Housing Authority involvement with and transactions relating to Armon Bay Apartments; Azure Apartments; Churchill Square Apartments; Ocean Palms Apartments; Sandcastle Apartments; Sawgrass Apartments; Southlake Ranch Apartments; Stoneleigh Apartments; The Icon Apartments; The Summit Apartments; The Veranda Apartments; Tuscana Bay South Apartments; and Villas of Ocean Drive Apartments as well as the creation of and the Corpus Christi Housing Authority's membership and participation in the business entities known as Armon Bay-CCHA, LLC; Azure Apartments-CCHA, LLC; Churchill Square-CCHA, LLC; Ocean Palms-CCHA, LLC; Sandcastle-CCHA, LLC; Sawgrass-CCHA, LLC; South Lake Ranch-CCHA, LLC; Stoneleigh-CCHA, LLC; Icon-CCHA, LLC; Summit-CCHA, LLC; Veranda-CCHA, LLC; Tuscana Bay-CCHA, LLC; and Villas-CCHA, LLC are hereby declared void ab initio and of no legal effect because all contracts and obligations related to all were undertaken without compliance with the Texas Open Meetings Act and the respective agreements for each were executed by the Corpus Christi Housing Authority's Chief Executive Officer without the authority of a Corpus Christi Housing Authority board vote as to each such transaction.

Accordingly, the Corpus Christi Housing Authority's current Chief Executive Officer and General Counsel are hereby authorized and instructed to take all steps necessary to promptly (1) return all of the subject properties to the private companies that conveyed them to the Corpus Christi Housing Authority; (2) withdraw as a member from all related business entities identified here or dissolve the same; (3) return all fees and rent the Authority received from these private companies as a result of these unauthorized and void transactions; and (4) take all other steps necessary to effect the changes with respect to these thirteen properties and these thirteen limited liability companies voted by the board on January 6, 2026.

Entered this 6th day of January 2026 at Corpus Christi, Texas.

Cathy Mehne

Cathy Mehne, Chair
CCHA Board of Commissioners

Exhibit O

Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

The Honorable Fred Hill
Chair
Committee on Urban Affairs
P.O. Box 2910
Austin, Texas 78768-2910

Opinion No. DM-426

Re: Whether a housing authority created under chapter 392 of the Local Government Code is subject to the Open Meetings Act (RQ-897)

Dear Representative Hill:

You ask whether a housing authority created under chapter 392 of the Local Government Code is subject to the Open Meetings Act, Gov't Code ch. 551. The Open Meetings Act applies to the meetings of governmental bodies. *Id.* § 551.002. It defines the term "governmental body" to include the following:

> (B) a county commissioners court in the state;
>
> (C) a municipal governing body in the state;
>
> (D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
>
> . . . .
>
> (H) the governing board of a special district created by law.

Id. § 551.001(3). The latter two definitions are the most relevant for purposes of your query.

Chapter 392 of the Local Government Code provides for the creation of municipal, county and regional housing authorities. Sections 392.011 and 392.012 provide for the creation of municipal and county housing authorities, which may not transact business until the governing body of the municipality or county declares by resolution that there is a need for the authority. Pursuant to section 392.013, a regional housing authority is created if the commissioners courts of two or more contiguous counties declare by resolution that there is a need for such an authority. Each type of housing authority is a "public body corporate and politic."[1] The five commissioners of a municipal or county housing authority are appointed by the municipal governing body's presiding officer or the

[1]Local Gov't Code §§ 392.011(b), .012(b), .013(b).

commissioners court, respectively.[2] Each participating county appoints at least one commissioner to a regional housing authority.[3] A housing authority "exercises public and essential governmental functions and has the powers necessary and convenient to accomplish the purposes and provisions" of chapter 392.[4] The powers of a housing authority are vested in the commissioners of the authority, who may delegate a power or duty to an agent or employee.[5]

Texas case law and opinions of this office have concluded that a municipal housing authority is a division of the city that created it.[6] Similarily, this office has concluded that a county housing authority is a division of the creating county.[7] On the basis of this authority, we conclude that a municipal housing authority is "a department, agency, or political subdivision of a . . . municipality" and that a county housing authority is a "a department, agency, or political subdivision of a county" for purposes of section 551.001(3)(D) of the Open Meetings Act.

We also conclude that a municipal or county housing authority is a "deliberative body that has rule-making or quasi-judicial power" for purposes of section 551.001(3)(D). A housing authority takes action based on a vote of the commissioners,[8] is authorized to make rules to implement its powers and purposes,[9] and has extensive governmental powers[10] that include the authority to acquire

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[2]*Id.* §§ 392.031, .032.

[3]*Id.* § 392.033.

[4]*Id.* § 392.051(a).

[5]*Id.* § 392.051(b), (c).

[6]*See Miers v. Housing Auth. of Dallas*, 266 S.W.2d 487, 490 (Tex. Civ. App.--Dallas 1954, writ ref'd n.r.e.) (holding housing authority was division of city that created it and therefore subject to bond requirements governing cities in condemnation cases); *Aetna Casualty & Surety Co. v. Glidden Co.*, 283 S.W.2d 440 (Tex. Civ. App.--Eastland 1955), *rev'd on other grounds*, 291 S.W.2d 315 (Tex. 1956) (holding housing authority was division of city that created it and therefore subject to statute governing public construction performance bonds); Attorney General Opinions DM-71 (1991) (municipal housing authority created under Local Government Code chapter 392 is division of municipality for purposes of Local Government Code, section 215.001 preempting municipal regulation of firearms), JM-573 (1986) (municipal housing authority, as division of city, is subject to competitive bidding requirements applicable to cities), MW-132 (1980) (same).

[7]Attorney General Opinion C-760 (1966) (county housing authority, as division of county, subject to laws governing sale of excess county property) (relying upon *Miers*, 266 S.W.2d 487, and *Aetna*, 283 S.W.2d 440).

[8]Local Gov't Code § 392.036.

[9]*Id.* § 392.065(5).

[10]*See id.* §§ 392.051, .052.

real property by eminent domain[11] and to issue bonds.[12] Furthermore, a municipal or county housing authority's ability to act, which is separate from and does not require the approval of the creating municipality or county, distinguishes it from departments of cities and counties that do not fall within the definition of "governmental body" because they are merely advisory bodies. *See, e.g.*, Attorney General Opinion H-467 (1974) (city's library board, which acted solely in advisory capacity and had no rule-making authority, not subject to Open Meetings Act).

We also note that this office has stated that "[j]ust as the Housing Authorities may receive the benefit of statutes applying to cities and counties, so they must comply with the statutes applying to cities and counties where such statutes do not conflict with the powers granted to them" by law.[13] Chapter 392 requires a housing authority to hold a public meeting about a proposed housing project before the site for the project is approved.[14] Some of the statutory requirements specifically applicable to such a meeting exceed the requirements of the Open Meetings Act.[15] We do not believe that these requirements conflict with the Open Meetings Act, because a housing authority can comply with these specific meeting requirements in chapter 392 and comply with the more general requirements in the act. A housing authority's compliance with the Open Meetings Act would not conflict with any provision of Local Government Code chapter 392. Therefore, we conclude that a municipal or county housing authority is a "governmental body" under section 551.001(3)(D) of the Open Meetings Act.[16]

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[11]*Id.* § 392.061.

[12]*See id.* ch. 392, subch. E.

[13]Attorney General Opinion C-760 (1966) at 5.

[14]*See* Local Gov't Code §§ 392.053, .054(a) ("In addition to any other notice required by law . . . .").

[15]*See, e.g., id.* §§ 392.053(d) (requiring housing authority to allow certain persons to comment at meeting), .054 (requiring notice to be posted at county courthouse and city hall, published in newspaper, mailed to certain persons, and posted on sign at the proposed location 30 days prior to meeting).

[16]We have received a letter brief from the Dallas Housing Authority ("DHA") contending that it is not subject to the Open Meetings Act. The letter brief refers to an excerpt from a transcript of a hearing before a federal district court in which the court ruled from the bench that the "Open Meetings Act is not applicable to the DHA board of directors. It is not within the plain language of the Act. The DHA board is not a deliberative body. It does not have rule-making or quasi-judicial power. It is without question not a department, agency or political subdivision of the City of Dallas." Transcript of Hearing Before the Honorable Jerry Buchmeyer at 201, *Public Housing Steering Comm., Inc. v. Housing Auth.*, No. 3:95-CV-1374-R (N.D. Tex. Sept. 19, 1995).

Lower federal court decisions interpreting Texas law are not binding on Texas courts. *See Longview Bank & Trust v. First Nat'l Bank*, 750 S.W.2d 297, 300 (Tex. App.--Ft. Worth 1988, no writ); *Woodard v. Texas Dep't of Human Resources*, 573 S.W.2d 596, 598 (Tex. App.--Amarillo 1978, writ ref'd n.r.e.) (citing *Texas Oil & Gas Co. v. Vela*, 405 S.W.2d 68, 73-74 (Tex. Civ. App.--San Antonio 1966), *judgm't set aside on other grounds*, 429 S.W.2d 866 (Tex. 1968)). Given the many state cases supporting the conclusion that a municipal housing authority is a division of the city that created it, *see* authorities cited *supra* note 6, and the fact that chapter 392 of the Local Government Code vests the power of a housing authority in the commissioners of the authority, *see* Local Gov't Code § 392.051(b), provides that the commissioners

(continued...)

A regional housing authority is created by two or more counties and extends into two or more counties. We are not aware of any cases holding that a regional housing authority is a division of a county or counties. Given the lack of precedent that would support the conclusion that a regional housing authority is a governmental body under section 551.001(3)(D), we consider whether a regional housing authority is a "special district" under section 551.001(3)(H) of the Open Meetings Act. In *Sierra Club v. Austin Transportation Study Policy Advisory Committee*, 746 S.W.2d 298 (Tex. App.--Austin 1988, writ denied), the court of appeals considered whether the Austin Transportation Study Policy Advisory Committee ("ATSPAC") -- a seventeen-member committee consisting of state, county, regional, and municipal government officials, created pursuant to federal law to enable state and local participation in planning federal highway projects -- was a "special district" under the definition of "governmental body" now set out in section 551.001(3)(H). Noting that the term "special district" had not yet been defined in case law, the court relied upon the following broad definition of "special district" in *Black's Law Dictionary*:

> A limited governmental structure created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, to provide services in otherwise unincorporated areas, or to accomplish a primarily local benefit or improvement, *e.g.*, parks and planning, mosquito control, sewage removal.[17]

Emphasizing the importance of ATSPAC in planning and obtaining federal funds for highway construction in the Austin urban area (which extended into five counties) and finding that ATSPAC was an official body designated by the governor in order to "accomplish a primarily local benefit or improvement," the court concluded that ATSPAC was a "special district" within the Open Meetings Act's definition of "governmental body."

A regional housing authority falls within the *Sierra Club* court's broad construction of the term "special district." Because a regional housing authority has extensive governmental powers[18] -- including the authority to acquire real property by eminent domain[19] and to issue bonds[20] -- and a circumscribed mission -- to provide low-income housing -- it is a "limited governmental structure." In addition, the legislature appears to have authorized contiguous counties to join together to create

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[16](...continued)
take action based on a majority vote, *see id.* § 392.036, and authorizes the commissioners to make rules, *see id.* § 392.065(5), we believe a state court addressing this question would reach a different conclusion.

[17]*Sierra Club*, 746 S.W.2d at 301 (quoting BLACK'S LAW DICTIONARY 1253 (5th ed. 1986)).

[18]Local Gov't Code §§ 392.051 (general powers), .052 (operation of housing projects), .056 (ownership of real property), .057 (investment of funds), .065 (miscellaneous powers).

[19]*Id.* § 392.061.

[20]*See id.* ch. 392, subch. E.

a regional housing authority in order to allocate the task of providing low-income housing to an entity with particular expertise and to accomplish a primarily local benefit or improvement. Even a regional housing authority extending into several counties would be no less local in scope than the committee at issue in *Sierra Club*, whose activities affected a five-county area. Finally, a regional housing authority, with its extensive authority to act to achieve its purpose,[21] is in no respect merely an advisory body.[22] Accordingly, we conclude that a regional housing authority under chapter 392 is a "governmental body" subject to the Open Meetings Act.

SUMMARY

A municipal, county or regional housing authority created under chapter 392 of the Local Government Code is a "governmental body" subject to the Open Meetings Act, Gov't Code ch. 551.

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[21] *See supra* notes 18-20.

[22] In Attorney General Opinion JM-1185, this office concluded that a criminal justice council is not a special district under *Sierra Club* because it acts in an advisory capacity only. Attorney General Opinion JM-1185 (1990) at 5.