

**In rebuke to regional transportation council, Texas Attorney General Greg Abbott says it could not have required Richland Hills to pay up if it had withdrawn from The T**



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Last year, when the voters of Richland Hills were preparing to decide whether to remain part of The T, Fort Worth's transit agency, folks at the Regional Transportation Council were eager to make clear that if they pulled out, they'd suffer consequences.

State law, after all, requires that service stop within a city that withdraws from a regional transit agency. Michael Morris, the transportation director for the council, said he favored asking the city to reimburse the council for federal funds it had steered to the city for transit-related enhancements if voters withdrew from the T.

Voters decided in November to remain part of The T, making the point moot for now.

Today, Texas Attorney General Greg Abbott issued a legal opinion that says even if the city had withdrawn, the council has no authority under state law to either shut down service in Richland Hills, or any city in its situation, or to require a refund.

The transit agency and its board are the legally relevant powers, and the RTC has no authority to impose its own will, Abbott said. (If a grant can be subject to recall in this way, such a provision would have to be contained in a valid contract, Abbott noted. And nothing in his opinion would prevent the RTC from asking the city for a voluntary reimbursement.)


Here's his ruling on the reimbursement issue, with citations omitted.

"You next inquire about RTC's authority to collect from the City reimbursement for federal and local air quality funds spent on improvements related to the transit station. The Transportation Code authorizes the executive committee of the Authority to determine the amount of the financial obligation of a withdrawing city. Neither chapter 452 nor any other Texas statute expressly grants the RTC a means of seeking reimbursement from unit of election that withdraws from a regional transportation authority.

... It has been suggested that the RTC may seek reimbursement because it provided federal funds to the City for improvements to roads and sidewalks for the Transit Station. Neither you nor the parties submitting briefing in connection with this request cite to a particular federal statute or provide copies of a contract or agreement relevant to the federal funding of the transit station at issue here. Though this office does not construe contracts in attorney general opinions, we believe that RTC's right to reimbursement of

federal funds, if any, may be dictated by specific terms of any agreements related to the transit station." *Letter from Abbott, with citations omitted.*

At the time, Morris and others acknowledged their weak legal grounds in making the request. But the AG's decision to issue the opinion, despite last November's vote making it moot, suggests he wanted to remind the council that stay law puts the transit agencies, not the council, in charge of their operations.

  
**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 25, 2011

The Honorable Jane Nelson  
 Chair, Committee on Health  
 and Human Services  
 Texas State Senate  
 Post Office Box 12068  
 Austin, Texas 78711-2068

Opinion No. GA-0836

Re: Authority of the Regional Transportation  
 Council over transit related projects located in  
 Richland Hills (RQ-0901-GA)

The Honorable Todd Smith  
 Chair, Committee on Elections  
 Texas House of Representatives  
 Post Office Box 2910  
 Austin, Texas 78768-2910

Dear Senator Nelson and Representative Smith:

On behalf of the City of Richland Hills (the "City"), you each pose two questions about the authority of the Regional Transportation Council over a transit station located in the City.<sup>(1)</sup> Specifically, you both ask:

- 1) Does the Regional Transportation Council have the authority to close the Trinity Railway Express train station which is inside the city limits of the City of Richland Hills?
- 2) Does the Regional Transportation Council have the authority to collect repayment by the City of Richland Hills for federal and local air quality funds spent on improvements to roads and sidewalks in the City of Richland Hills related to the transit station?

Nelson Request Letter at 1; *see also* Smith Request Letter at 1.

You tell us that in 1992 the citizens of the City "voted to join the Fort Worth Transportation Authority [the "Authority"] to establish public transportation" in the City and that a sales tax has been collected in the City for that purpose. *See* Smith Request Letter at 1. You also tell us that the City has called for an election "to allow the citizens of the city to choose whether to remain in the agreement with [the Authority] or not." *Id.* You indicate that your questions are prompted to "get a clear understanding of the rights, privileges and responsibilities of all the parties involved with public transportation within the [City, including the] surface streets and rail." *Id.* at 2. Notwithstanding the fact that the City did not vote to withdraw from the Authority in the recent election, we address your questions at your ongoing request.

The Authority is a regional transportation authority under chapter 452 of the Transportation Code. *See* Tex. Transp. Code Ann. §§ 452.001-.720 (West 2007 & Supp. 2010); *see also id.* §§ 452.561-.563 (West 2007) (subchapter N entitled "Subregional Board in Authority Having No Municipality with Population of More than 800,000"). You provide no information about the Regional Transportation Council ("RTC"), but briefing we received indicates that it is the policy body<sup>(2)</sup> of the North Central Texas Council of Governments ("NCTCOG").<sup>(3)</sup> *See* Tex. Loc. Gov't Code Ann. §§ 391.001-.015 (West 2005 & Supp. 2010) (governing regional planning commissions such as the NCTCOG). The NCTCOG is the designated Metropolitan Planning Organization ("MPO") for the Dallas-Fort Worth region. *See* 23 U.S.C. § 134 (2006 & Supp. II 2008) ("Metropolitan transportation planning"); *see also* Governor's Designation of NCTCOG as MPO for Dallas-Fort Worth (Aug. 26, 1988) (copy on file with the Opinion Committee).

At issue is a transit station located in the City that is part of the Trinity Railway Express transit system between Dallas and Fort Worth.<sup>(4)</sup> *See* RTC Brief at 1. You first ask about the power of the RTC, not the Authority, to close the station. *See* Nelson Request Letter at 1; Smith Request Letter at 1. Chapter 391 of the Local Government Code, governing regional planning commissions, contains no provision granting authority to the NCTCOG or the RTC over the transportation system or the transit station. *See*

generally Tex. Loc. Gov't Code Ann. §§ 391.001-.015 (West 2005 & Supp. 2010) (governing regional planning commissions). Moreover, chapter 452 vests the Authority with power over operation of the transportation system and, thus, the Authority is the entity with power to determine whether to close the transit station under its mandate to cease providing transportation services in the withdrawn member. See Tex. Transp. Code Ann. §§ 452.056(a)(1) (West Supp. 2010) (authorizing authority to operate public transportation system in the territory of the authority), 452.054(a) (West 2007) (granting authority "any power necessary or convenient" to carry out chapter 452); see also *Tri-City Fresh Water Supply Dist. No. 2 of Harris Cnty. v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940) (recognizing special district's implied authority reasonably necessary to accomplish a delegated purpose); Tex. Transp. Code Ann. § 452.657(a)(1) (West 2007) (providing that the Authority "shall cease providing transportation services in the withdrawn unit of election"). We therefore conclude that the RTC does not have authority to close the transit station located within the City.

You next inquire about RTC's authority to collect from the City reimbursement for federal and local air quality funds spent on improvements related to the transit station. See Nelson Request Letter at 1; Smith Request Letter at 1-2. Section 452.659 of the Transportation Code authorizes the executive committee of the Authority to determine the amount of the financial obligation<sup>(5)</sup> of a withdrawing city. See Tex. Transp. Code Ann. § 452.659(d) (West 2007); see also *id.* §§ 452.001(5) (defining "executive committee" as the "authority directors who serve as the governing body of the authority"); 452.659(a) (specifying the financial obligation of the withdrawing city is "to the authority"). Neither chapter 452 nor any other Texas statute expressly grants the RTC a means of seeking reimbursement from unit of election that withdraws from a regional transportation authority. See generally *id.* §§ 452.001-.720 (West 2007 & Supp. 2010).

It has been suggested that the RTC may seek reimbursement because it provided federal funds to the City for improvements to roads and sidewalks for the Transit Station. See Nelson Request Letter at 1 (inquiring about federal and local air quality funds); Smith Request Letter at 1 (same). Neither you nor the parties submitting briefing in connection with this request cite to a particular federal statute or provide copies of a contract or agreement relevant to the federal funding of the transit station at issue here. Though this office does not construe contracts in attorney general opinions, we believe that RTC's right to reimbursement of federal funds, if any, may be dictated by specific terms of any agreements related to the transit station. See Tex. Att'y Gen. Op. No. GA-0690 (2009) at 3 (stating that this office does not construe contracts).

#### S U M M A R Y

Under chapter 452, Transportation Code, the Regional Transportation Council ("RTC") does not have authority to close the Trinity Railway Express transit station located within the City of Richland Hills (the "City").

Any right in the RTC to seek from the City repayment of federal funds expended in relation to the transit station would likely be determined under existing contracts or agreements governing the provision of those funds.

Very truly yours,



GREG ABBOTT  
Attorney General of Texas

Daniel T. Hodge  
First Assistant Attorney General

David J. Schenck  
Deputy Attorney General for Legal Counsel

Nancy S. Fuller  
Chair, Opinion Committee

Charlotte M. Harper  
Assistant Attorney General, Opinion Committee

## Footnotes

1. See Jane Nelson Request Letter at 1 [hereinafter Nelson Request Letter]; Todd Smith Request Letter at 2 [hereinafter Smith Request Letter] (*available* at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)).
2. See 43 Tex. Admin. Code § 15.2(15) (2010) (Tex. Dep't of Transp., Definitions) (defining "Metropolitan planning organization policy board" as the "forum and committee structure (e.g., Regional Transportation Council, Steering Committee, Policy Advisory Committee) established under Section 134 of Title 23, U.S. Code, Section 5303 of Title 49, U.S. Code, and the Governor's Designation as the group responsible for giving an MPO overall transportation guidance").
3. Brief from RTC at 1 (Aug. 4, 2010) [hereinafter RTC Brief] (copy on file with the Opinion Committee).
4. You do not provide any information regarding the ownership of the transit station property. See Nelson Request Letter at 1; Smith Request Letter at 1-2. *But see* Tarrant County Appraisal Records, Property Data Search (indicating the Fort Worth Transportation Authority owns the transit station property), *available* at <http://www.tad.org/Datasearch/datasearch.cfm> (last visited Jan. 21, 2011) (searching under Real Estate and giving "Fort Worth" as the owner).
5. Section 452.659 supplies the following formula: the "total financial obligation of a withdrawn unit of election to the authority is an amount equal to: (1) the unit's apportioned share of the authority's outstanding obligations; and (2) the amount, not computed in Subsection (a)(1), that is necessary and appropriate to allocate to the unit because of financial obligations of the authority that specifically relate to the unit." Tex. Transp. Code Ann. § 452.659(a)(1)-(2) (West 2007). It further defines the authority's outstanding obligations and the unit's apportioned share of those obligations. *See id.* §§ 452.659(b) (supplying manner by which to determine "authority's outstanding obligations"), 452.659(d) (supplying manner by which to determine "unit's apportioned share").

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The Senate of the State of Texas

Jane Nelson  
 Senate District 12

Committees:

HEALTH AND HUMAN SERVICES, CHAIR  
 TEXAS LEGISLATIVE COUNCIL  
 GOVERNMENT ORGANIZATION  
 NOMINATIONS  
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OPINION COMMITTEE

**RQ-0901-GA**  
 FILE # ML-46526-10  
 I.D. # 46526

July 14, 2010

The Honorable Greg Abbott  
 Attorney General  
 Office of the Attorney General  
 P.O. Box 12548  
 Austin, Texas 78711-2548

Attention: Stacey Napier

RE: The authority of the Regional Transportation Council over transit related projects located in Richland Hills

Dear General Abbott:

At the request of the Richland Hills City Council, I respectfully seek your opinion regarding questions that have arisen surrounding the city's potential withdraw from the Fort Worth Transportation Authority, commonly known as The T.

Specifically, if Richland Hills voters decide to opt out of The T:

- 1) Does the Regional Transportation Council have the authority to close the Trinity Railway Express train station which is inside the city limits of the City of Richland Hills?
- 2) Does the Regional Transportation Council have the authority to collect repayment by the City of Richland Hills for federal and local air quality funds spent on improvements to roads and sidewalks in the City of Richland Hills related to the transit station?

I appreciate your attention to this request, and please do not hesitate to contact my office if I can be of any assistance in this matter.

Very truly yours,

Senator Jane Nelson

HOUSE of REPRESENTATIVES

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TODD SMITH  
DISTRICT 92

*RQ-0901-GA*  
*FILE # ML-46527-10*  
*I.D. # 46527*  
*(combined w/ 46526)*

July 15, 2010

The Honorable Greg Abbott  
Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Attention: Opinions Committee

- RE: (1) Does the Regional Transportation Council have the authority to close the Trinity Railway Express train station which is inside the city limits of the City of Richland Hills?
- (2) Does the Regional Transportation Council have the authority to demand repayment by the City of Richland Hills for Federal and Local Air Quality funds spent on improvements to roads and sidewalks in the City of Richland Hills?

Dear General Abbott:

Please continue to advise me from your office as to whether the Regional Transportation Council has the authority to close the Trinity Railway Express train station which is inside the city limits of the City of Richland Hills. And (2) whether the Regional Transportation Council has the authority to demand repayment by the City of Richland Hills for Federal and Local Air Quality funds spent on improvements to roads and sidewalks in the City of Richland Hills?

In 1992, the citizens of the City of Richland Hills voted to join the Fort Worth Transportation Authority (The T) to establish public transportation in the City of Richland Hills. A one half cent sales tax has been collected every year since 1992 by the State of Texas and passed on to The T. In October 2009, the Richland Hills City Council called for an election to be held in November of 2010 to allow the citizens of the city to choose whether to remain in the agreement with The T or not.

Committees:  
Elections, Chair; Transportation; Redistricting

The Honorable Greg Abbott  
July 15, 2010  
RE: City of Richland Hills  
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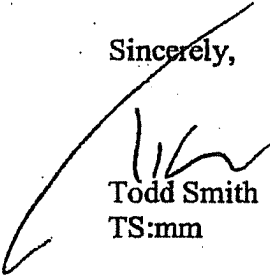
Because it is the desire of the City Council of Richland Hills to get a clear understanding of the rights, privileges and responsibilities of all the parties involved with public transportation within the City of Richland Hills, both surface streets and rail.

On behalf of the City of Richland Hills and State Representative Kelly Hancock, I respectfully request your office to answer the following questions:

- (1) Does the Regional Transportation Council have the authority to close the Trinity Railway Express train station which is inside the city limits of the City of Richland Hills?
- (2) Does the Regional Transportation Council have the authority to demand repayment by the City of Richland Hills for Federal and Local Air Quality funds spent on improvements to roads and sidewalks in the City of Richland Hills?

The election for the citizens of Richland Hills is less than four months away, so I thank you for your timely attention to this matter. Please do not hesitate to contact my office should you have any questions or need further information.

Sincerely,



Todd Smith  
TS:mm

CC: The Honorable Kelly Hancock  
City of Richland Hills, City Council  
Mr. Robert Parmelee, Chairperson for the Fort Worth Transportation Authority  
Mr. Michael Morris, Transportation Director for the North Central Texas Council of Governments