



WHAT THE HECK IS A LOCAL GOVERNMENT CORPORATION AND WHY WOULD MY CITY EVER WANT TO CREATE ONE?

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TEXAS TRANSPORTATION CORPORATION ACT

- Enacted in 1984 during Second Called Session of 68th Texas Legislature
- Enacted to “encourage donations of right of way for state highways, and donations of funds for preliminary planning and design for those highways...”
- Intended to provide “a presently unavailable vehicle for private citizens to contribute property and money for the development of roadways, including contributions for feasibility, and new alignment studies as well as right of way acquisition.
- Authorized creation of Texas non-profit corporation to act on behalf of Texas Transportation Commission
- Subject to Open Meetings and Public Information Acts
- Limited to the promotion and development of public transportation facilities and systems.

Birth of Local Government Corporations

- ❖ HB 125 Enacted in 1989 by 71st Texas Legislature Creating Article 1529I of the Texas Civil Statutes
- ❖ Codified in 1995 as Subchapter D of Chapter 431, Transportation Code
- ❖ Reason for enacting laws authorizing local government corporations not very clear other than desire to provide cities and counties additional vehicle to do public/private partnerships for transportation projects



What is a Local Government Corporation (and What is it NOT)?

Texas Non-Profit Corporation subject to Ch. 22, Business Organizations Code

BUT

- ✓ Must comply with Open Meetings Act
- ✓ Must comply with Public Information Act
- ✓ Property of LGC is tax exempt, and LGC is exempt from payment of sales and franchise tax
- ✓ Deemed to be a “governmental unit” for purposes of the Texas Tort Claims Act
- ✓ All acts of the LGC are deemed to be “governmental”...No Proprietary Acts

Is a Local Government Corporation a Governmental Entity?

MAYBE !

“...by providing that local-government corporations are “governmental units” performing governmental functions, and by imbuing them with “nature, purposes, and powers,” it is clear the legislature intended such corporations to be *separate and discrete political subdivisions* from those they act on behalf of and aid.”

Fort Bend County Toll Rd. Auth. v. Olivares, 316 S.W.3d 114, 128 (Tex. App.—Houston [14th Dist.] 2010, no pet.

What is the Purpose and Authority of a Local Government Corporation?

Texas Transportation Code §431.101

- a. A local government corporation may be created to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments.
- b. A local government corporation has the powers of a transportation corporation authorized for creation by the Texas Transportation Commission, which among other powers, includes the power to issue bonds and notes.
- c. A local government has the powers of a non-profit corporation under the Texas Business Organizations Code.

Some Current Uses for Existing Local Government Corporations



Dallas Convention Center
Development Corporation

North Texas Emergency
Communications Center, Inc.



Farmers Branch Local
Government Corporation



Dallas Area Rapid Transit Bus Service LCG



Harris County Sports and
Convention Corporation



Who Can Create a Local Government Corporation?

- Municipalities
- Counties
- A navigation district, hospital district, or hospital authority
- A regional transportation authority governed by Chapter 452, Transportation Code (e.g., Dallas Area Rapid Transit and Fort Worth Transportation Authority)
- A rapid transit authority governed by Chapter 451, Transportation Code (e.g., Metropolitan Transit Authority of Harris County, VIA Metropolitan Transit Authority (San Antonio) and Capital Metropolitan Transportation Authority (Austin))
- A coordinated county transportation authority governed by Chapter 460 (e.g. Denton County Transportation Authority)



Creating a Local Government Corporation

Interlocal Agreement Regarding LGC Creation if Multi-Entity LGC

- MOU or ILA
- Define purpose for the LGC
- Governance structure
- Rights of the governmental entities to terminate participation and funding
- Division of costs for creating the LGC
- How transfer of current city employees will be
- Amounts and divisions of startup funding each is willing to pay
- Division of assets on dissolution, etc.



Creating a Local Government Corporation

- **Determine the Name of the Proposed LCG and its Availability**
 - Check either Westlaw/LexisNexis or Texas Secretary of State *SOSDirect*
- **Prepare Certificate of Formation**
 - Generally must meet same requirements as normal Texas Non-Profit Corporation
 - Requires 3 incorporators who are registered voters of creating entity (other non-profit corporations only require 1 incorporator)
 - Include reference to approval by entity (ordinance or resolution)
- **Prepare Bylaws**
- **Obtain Approval of the Creating Entity or Entities**
- **File Certificate of Formation with Texas Secretary of State (two originals...\$25 fee)**



Creating a Local Government Corporation

➤ Hold Organizational Board Meeting

- Select temporary board chairman
- Adopt Bylaws
- Election of the corporation officers
- Establish official location for Board meetings
- Set schedule for regular board meetings
- Set location for where meeting notices will be posted per Open Meetings Act (must be posted at on official posting locations for the creating cities as a minimum)
- Approve initial agreements and/or policies related to operation of the LGC



Creating a Local Government Corporation

- **Obtain a Federal Employer Identification Number**
- **File for Exemption Certificate with Texas Comptroller of Public Accounts**
- **Determine Who is Going to Handle Administrative Services**
- **Adopt Operational Policies**
- **Determine How Records Management and Retention Will Be Handled**
- **Employee Benefit Plans**
- **Liability and Fire and Casualty Insurance**
- **Bank and Investment Accounts**
- **Sales Tax Certificate**



Why Create a Local Government Corporation?

Governance

- Directors can be appointed by governing bodies
- May be councilmembers (watch out for Open Meetings Act issues)
- Can be any number of directors
- Majority of board must be residents of city
- Great flexibility in setting of selection process
- When more than one creating entity, can create separate board with structure that can prevent one entity from controlling



Why Create a Local Government Corporation?

Contracting and Purchasing for Goods, Services, and Real Estate

- Generally, state purchasing statutes do not apply to require competitive bidding
- No restrictions relating to purchase and sale of real property
- Must follow state law regarding design and construction of “projects” (which are not defined)



Why Create a Local Government Corporation?

Insulation from Liability

- Separate legal entity from City...Therefore, the acts of the LGC not acts of the City
- LGCs have immunity granted by statute
- Limited waiver of immunity under the Texas Tort Claims Act like that of counties
- All acts are governmental...no proprietary
- Debts of the LGC not debts of its creating entity



Issues with Multi-Jurisdictional LGC's

Brazos Valley Solid Waste Management Agency, Inc.
(BVSWMA, Inc.)

VS

North Texas Emergency Communications Center, Inc.
(NTECC)



Reason for Creation

BVSWMA, Inc.

- Created by Cities of Bryan and College Station
- Replacement for agency operated under ILA since 1990 that operated landfill
- Result of lawsuit mediation
- Needed means to ensure unbiased treatment of the Cities relating to capital and operational costs, ownership of assets, and use of surplus revenues.

NTECC

- Created by Addison, Carrollton, Coppell, and Farmers Branch
- New entity to manage and operate regional public safety dispatch and communications center
- Evolved from earlier agreement to jointly purchase and operate new radio system
- Also wanted to ensure unbiased treatment of owner Cities and protection from changes in council makeups in future



Governance

BVSWMA, Inc.

- 7 member board
- Each city selects 3 directors
- At least one council member from each city is director
- Directors select 7th member
- If cannot agree on 7th member, directors from each city each pick one name and then flip a coin to determine who is director
- No issues to date relating to board make-up

NTECC

- 4 member board
- Directors are the 4 sitting city managers
- Occasional issue with Open Meetings Act because of small board (thus smaller quorum) and frequency that Cities cooperate on other projects, requiring joint discussions



Protecting Existing Employees During Transition

- Goal: Preserve as much as possible current wages and benefits of employees moving from employment with city to employment with LGC.
- Challenge: Employees of LGCs not eligible for TMRS
- Challenge: Each creating city had different vacation, sick leave accrual policies
- Challenge: Each city had different health and medical benefits
- Challenge: Each city had different personnel policies



Protecting Existing Employees During Transition

BVSWMA, Inc.

- Used “borrowed employment” agreement with cities.
- Employees remain city employees, supervised city department manager employee, who receives “work scope” from BVSWMA, Inc. executive director
- Employees disciplined under city policies
- BVSWMA, Inc. Exec. Director unable to discipline city employees...must refer to city manager
- BVSWMA, Inc. reimbursed cities for employee costs
- Agreement would eventually end as city employees quit, retired, were terminated, reassigned to another city job, or became a BVSWMA, Inc. employee
- Borrowed employee agreements terminated early after first dispute between BVSWMA, Inc. management and city management over discipline/reassignment of a borrowed employee

NTECC

- No borrowed employee agreement
- Employees who want to become NTECC employees were transferred on date when NTECC ready to assume management over dispatching cities
- Employees subject to discipline by NTECC management once hired by NTECC
- Paid all accrued vacation and sick leave on switch to zero out city unfunded liability
- Paid a retention bonus to incentivize employees to move to NTECC



Protecting Existing Employees During Transition Benefits

BVSWMA, Inc.

- Retirement: ICMA plan in lieu of TMRS
- Pay: Did not cut anyone's pay when becoming BVSWMA, Inc. employee...many cases, pay went up
- Purchased health benefits plan that was similar and/or better than what was provided by the cities
- By time the borrowed employee agreements were terminated, most employees of both cities had already voluntarily become BVSWMA, Inc. employees

NTECC

- Retirement: TCDRS allowed enrollment by NTECC employees
- Pay: Pay plan based on current market, but did not cut pay of any city employee becoming an NTECC employee
- Health benefits: Same as BVSWMA, Inc.



Operational and Financial Oversight

- Both have senior city officials required to be on the board of directors
- Both require submission of budgets to city council for review (which can be part of city's annual process)
- Both have limits on ability to issue debt, which can only be authorized by all city councils
- Both place \$\$\$ limits on what executive director can authorize in contract without approval of board of directors



Surplus Income and Disposition of Assets on Dissolution

Income after paying all expenses of an LGC may be distributed to the local governments which created the LGC. Likewise, in dissolution, the assets of the LGC are to be distributed to the creating local governments...but Ch. 431 does not say how.

BVSWMA, Inc.

- Credit surplus revenues equitably to Cities charges for disposal from Cities' solid waste collection
- Assets to be distributed equally on dissolution

NTECC

- Not a revenue generator, so generally not applicable. But in just in case, income split based on percentage of capital contribution to the project
- Assets split in accordance with percentage of original capital contribution and later capital contributions



Was Using Local Government Corporation Good Choice? BVSWMA, INC.

- ❖ BVSWMA, Inc. took control of operation of landfill operations on 10/1/10.
- ❖ No outward appearance of continuing distrust or claims of unequal treatment among the parties.
- ❖ If Bryan or College Station were ever to have disagreements, BVSWMA, Inc. board room provides regularly scheduled forum to work it out, with a neutral 7th director to break the tie.
- ❖ BVSWMA, Inc. employees the entire landfill operations workforce. Though past employment may create some continuing loyalty to former employing city, as time passes, bias toward any one city is reduced by fact that paychecks come from BVSWMA, Inc.
- ❖ Operations Agreement, along with Certificate of Formation and Bylaws, provide means for on-going oversight and accountability of BVSWMA, Inc. to its creating cities.



Was Using Local Government Corporation Good Choice?

NTECC

- ❖ Purchasing systems, such as CAD (computer-aided dispatch), RMS (records management system), furniture systems, etc. have been expedited and resulted in cost savings by not having to comply with normal city process.
- ❖ Board meetings provides forum for the four cities, through city managers as directors, air grievances and give collective comments and directions to NTECC Executive Director
- ❖ All dispatchers and dispatch supervisors are now NTECC employees.
- ❖ Biggest issue is not corporate structure but merging the cultures of departments from four different cities under four different management styles. So far so good!



QUESTIONS OR COMMENTS