

MAKING PUBLIC-PRIVATE PARTNERSHIPS WORK

Texas City Attorney's Association
 Ronald D. Stutes
 Potter Minton
 Tyler, Texas

What is a "Public-Private Partnership?"

- A Public-Private Partnership is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.

POTTER MINTON

What is a "Public-Private Partnership?"

A continuum can be constructed:

- Outsourcing
- Public Private Partnerships
- Privatization

POTTER MINTON

Tools in Texas

Chapter 380

Chapter 431, Subchapter D - Transportation Code

Chapter 311 Tax Code - Tax Increment Financing



Six Keys to Success

- Statutory and Political Environment
- Public sector ongoing commitment
- Detailed business plan
- Guaranteed revenue stream
- Stakeholder support
- Choose the right partner



The Texas State Railroad Experience

History



Saving the Railroad

The Interlocal Agreement

- Create "agency"
- Joint effort of 2 cities



POTTER MINTON
A Professional Corporation

The Contract

- The railroad is leased to the private operator for 5 years;
- The operator pays 2% of gross revenue to the agency;
- Twenty percent of ownership of railroad is transferred annually to private operator if threshold is met, but there are restrictions against diverting assets, and reversion if failure to operate;
- The Agency will loan the operator \$500,000 for operating capital, contingent on state funding;
- A capital improvement plan must be submitted;
- The operator must make monthly, quarterly, and annual reports, and an operator liaison must attend all agency board meetings;
- The entire agreement is contingent on receiving \$12,000,000 in state funding for capital improvements;
- The operator is required to operate a minimum number of trains on a weekly basis;

POTTER MINTON
A Professional Corporation

The Statute

- Create local agency
- Transfer railroad from state to local agency for 99 year lease
- Provide for transfer of ownership to private entity so long as there is reverter
- Provide for funding

POTTER MINTON
A Professional Corporation

**Keys to Success
(cliches)**

- Eyes on the prize
- Trust but verify
- Think outside the box

POTTER MINTON
A Professional Corporation

Ronald D. Stutes

500 Plaza Tower
110 N. College
Tyler, Texas 75702

(903) 597-8311 - phone
(903) 593-0846 - fax
ronstutes@potterminton.com
