

**NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.**

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OF COUNSEL

July 19, 2010

***Via Facsimile No. 972.231.3445  
and Via First Class Mail***

Richard B. Tanner  
Attorney at Law  
Suite 901, 100 North Central  
Richardson, Texas 75080

Re: City of Richardson

Dear Mr. Tanner:

Please be advised the undersigned is the City Attorney for the City of Richardson, Texas.

The City has been provided a copy of your letter dated July 9, 2010, addressed to the Mayor, City Council and City Manager for the City of Richardson regarding alleged violations of the Richardson City Charter. We are also aware of your public comments at the Richardson City Council on July 12, 2010.

Your allegations and public statements are not only incorrect, they are also misleading to the public. We suggest that before you make such allegations, or public statements related to such matters, you review the applicable law so that your statements are factually and legally accurate and avoid publicizing misstatements of the law. This could have been easily avoided if you, or your client, had reviewed the applicable law and taken the time to communicate with the City staff or our office before issuing the letter dated July 9, 2010, and making the public statements on July 12, 2010.

Additionally, we draw your attention to the ethical standards that govern attorneys, which include, *inter alia*, a requirement that during the course of representation of a client a lawyer not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party, or is authorized by law to do so. In this instance, you currently represent a client in pending litigation against the City regarding the City Charter. Although the Court of Appeals in that case has ruled in favor of the City, the courteous, appropriate, and ethical action would be to communicate with our Firm about this matter, or least to provide us with a copy of your letter. You failed to even extend the courtesy of sending us a

copy of your letter, even though you are well aware that we represent the City of Richardson. Accordingly, please direct any further communication regarding this matter to the undersigned.

We have reviewed the allegations of your letter dated July 9, 2010, as well as the City Charter and applicable state law. This letter will serve to respond to your factually and legally baseless allegations. Said allegations are based on misrepresentations and misinterpretations of the City Charter, and are simply incorrect. Consequently, there is no need for the City Council to take any corrective action.

The City currently is in the process of issuing debt consisting of: \$81,445,000 general obligation refunding and improvement bonds, \$6,105,000 general obligation taxable refunding bonds, and \$18,305,000 combination tax and revenue certificates of obligation. The "improvement" portion of the \$81,445,000 issue represents the \$66,000,000 the voters of Richardson recently approved. The refunding portion of the debt to be issued represents the refunding of the City's outstanding certificates of obligation issued in 2001, and voter-approved general obligation bonds also issued in 2001. The taxable refunding portion refunds the outstanding taxable certificates of obligation issued in 2000. The various refundings will result in a savings to Richardson citizens because of currently lower interest rates. For the reasons set forth herein, the Richardson voters were not required by the City Charter or by state law to approve the refunding portion of the debt issuance.

Article 2 of the City Charter provides the following:

“ARTICLE 2. POWERS OF THE CITY

Section 2.01. Specific powers.

The city shall have all powers that now are or hereafter may be granted to municipalities by the Constitution or laws of the State of Texas, and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, and when not prescribed therein, in such manner as may be provided by ordinance or resolution of the city council of the City of Richardson.

Section 2.02. General powers adopted.

The enumeration of particular powers in the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof the city shall have and may exercise all other powers which, under the Constitution and laws of the State of Texas, it would be competent for the Charter specifically to enumerate. The City of Richardson shall have and exercise all powers conferred upon cities by what is known as the Home Rule Amendment to the Constitution of the State of Texas and the enabling Act relative thereto, and all other laws passed by the Legislature of the State of Texas

relating thereto or which may hereafter be passed by said Legislature in relation to such matters.”

The City Charter, as indicated above, grants the City, among other powers, "... all powers conferred upon cities by what is known as the Home Rule Amendment to the Constitution of the State of Texas and the enabling Act relative thereto, and all other laws passed by the Legislature of the State of Texas relating thereto or which may hereafter be passed by said Legislature in relation to such matters." Although the City Charter is silent as to the authority to issue certificates of obligation as well as other types of obligations the City may desire to issue to raise capital for permanent public improvements such as (i) contractual obligations authorized under the Public Property Finance Act (subchapter A of Chapter 271 of the Texas Local Government Code), tax notes authorized under Chapter 1431 of the Texas Government Code, (ii) lines of credit the City may enter into under the authority of Chapter 1371 of the Texas Government Code, or (iii) other debt instruments that the Legislature may hereafter authorize, Article 2 of the City Charter and cited state law expressly authorize the City to issue such debt instruments.

Cities incorporated under the Home Rule Amendment to the Texas Constitution may issue certificates of obligation under the authority of Subchapter C of Chapter 271 of the Texas Local Government Code notwithstanding any City Charter provision to the contrary. The City Charter does not prohibit the issuance of certificates of obligation without voter approval. Even though the City Charter does not address the authority to issue various types of debt specifically, the City has reserved that authority through the provisions of City Charter Section 2.02. In addition, the City has that authority under the laws of the State of Texas regardless of the City Charter provision as long as the state laws authorize it and do not otherwise restrict the authority. Those types of limitations are not present in the City Charter or in the statutes relating to certificates of obligation, general obligation bonds or refunding bonds that may refund outstanding obligations of the City, including general obligation bonds and outstanding certificates of obligation. The distinction between taxable and tax exempt offerings, for purposes of this discussion, is not germane. That distinction is rooted in federal income tax law and not the state law provisions discussed herein. The City has the legal authority to issue both taxable and tax exempt obligations, depending on the circumstances surrounding the particular issuance.

The City debt issuance recently authorized is entirely within the scope and authority of the City Charter. Section 19.01 of the City Charter provides:

“Section 19.01. Bond limit.

The City of Richardson shall have the right and power to borrow money on the credit of the city, in accordance with the Constitution and Statutes of the State of Texas, for permanent public improvements or for any other legitimate municipal purpose, as may be determined by the city council and to issue bonds of the city therefor, to bear interest, payable semi-annually at such places as may be designated; provided that the total indebtedness of the city, payable from the ad valorem taxes, shall never exceed the sum equal to fifteen (15) percent of the

assessed value of taxable property according to the tax roll of the city, and to be determined by the assessed value of such taxable property as shown by the tax rolls as of January first for the preceding year.

The City of Richardson shall have authority to issue bonds, payable from the ad valorem taxes, when authorized by the qualified voters of the city, for any purpose for which a city may issue bonds under the Constitution and the laws of this state.

No bonds shall be issued to fund any overdraft or indebtedness incurred for current expenditures of the city government or any subdivision thereof.

The city shall have the right to refund any outstanding bonds by the issuance of bonds in lieu thereof, at the same, higher or a lower rate of interest, and may apply thereto the sinking fund belonging to any series of bonds so refunded and may pay and retire any bond by using the sinking fund therefor.”

The second paragraph of Section 19.01 of the City Charter authorizes the City to issue bonds payable from ad valorem taxes for any purpose for which a city may issue bonds under the Constitution and laws of this State when authorized by the qualified voters of the City. The City also has the ability to issue refunding bonds to refund any outstanding bonds. This is authorized both by the fourth paragraph of Section 19.01 of the City Charter and Chapter 1207 of the Texas Government Code. Section 1207.002 of the Government Code specifically states that "An issuer may issue refunding bonds under this chapter to refund all or any part of the issuer's outstanding bonds, notes or other general or special obligations." The refunding bonds in the process of issuance are being issued to refund obligations of the City within the meaning of this quoted language. As it relates to the fifteen percent (15%) ratio referred to in Section 19.01 above, the remaining capacity for the City to issue bonds payable from ad valorem taxes is approximately \$1,230,587,720. Finally, in those instances where the City Charter is in conflict with state law, the state law regarding the issuance of debt controls.

The City Charter provisions are consistent with the laws of the State of Texas and, when read in conjunction with the laws of the State of Texas, authorize the issuance of the types of obligations currently being issued by the City. If this were not the case, the Attorney General of the State of Texas, who approves virtually all debt issued by public bodies like the City, would not issue an approving opinion. Thus, there is no need to amend Section 19.01 or 19.02 of the City Charter. The underlying legal requirement is that the City must find specific authorization, whether the City Charter or other laws of the State of Texas, to be able to issue debt. The refunding and improvement bonds, the refunding bonds, and the certificates of obligation are clearly within this parameter.

Finally, in regard to the issue related to the independent annual audit, Section 11.11 of the City Charter requires the City to provide for an independent annual audit of all city accounts and other evidences of the financial transactions of the City. The comprehensive annual financial report, also referred to as the financial statement, is a representation of the City accounts and

other evidences of the financial transactions of the City. Pursuant to Section 11.11 of the City Charter, the City Council may, without requiring any competitive bids, designate an accountant or accounting firm to prepare the annual audit. The City may select an accountant or accounting firm on an annual basis or may award a contract for such services for a period not to exceed five (5) years. Section 11.11 of the City Charter does not prohibit the City from annually appointing the same accountant or accounting firm to prepare the annual audit for periods in excess of five (5) years.

The City selection of KPMG to perform the independent annual audit has been done on an annual basis. Accordingly, the engagement of KPMG to prepare the independent annual audits for the City is consistent with applicable state law and Section 11.11 of the City Charter. Moreover, as the Independent Auditor's report indicates, KPMG has conducted the annual audits according to the auditing standards generally accepted by the United States of America, and the standards applicable to the financial audits contained in the Government Auditing Standards issued by the Comptroller General of the United States. If you question the competence of KPMG or the Independent Audits, we suggest you directly contact KPMG accordingly.

We trust this answers any questions that you have. If any litigation is filed by any party or by you as legal counsel for a party, which challenges the matters addressed in your letter dated July 9, 2010, or our response herein, the City will seek relief under Texas Rules of Civil Procedure, Rule 13 including sanctions and any other available remedies if such action is in violation of such Rule. That Rule provides that the signatures of the attorneys or parties constitute a certificate by them that they have read the pleadings and that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Clearly, an action brought by a party or you as legal counsel for such party will be in violation of this Rule.

Thank you for your attention to this matter.

Very truly yours,

**NICHOLS, JACKSON, DILLARD  
HAGER & SMITH, L.L.P.**

By:   
Peter G. Smith

PGS:tlo

cc: Mayor Gary Slagel  
Mayor Pro Tem Bob Townsend  
Councilman Mark Solomon

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Councilman John Murphy  
Councilman Bob Macy  
Councilman Steve Mitchell  
Councilman Amir Omar  
Bill Keffler, City Manager  
Kent Pfeil, Director of Finance