C|A
B|K
Chalmers, Adams, Backer & Kaufman, LLC

2180 NORTH LOOP W. SUITE 255
HOUSTON, TX 77018
(281) 404-4696
jnajvar@chalmersadams.com

March 18, 2025

The Hon. Ken Paxton
Office of the Attorney General
PO Box 12548
Austin, TX 78711

RE: San Antonio's illegal plan to fund "bus rapid transit"

Dear General Paxton:

I write on behalf of my client, Friends of the San Antonio Family Association ("Friends of SAFA").[1] The Saint Anthony Family Association (d/b/a San Antonio Family Association or SAFA) is a 501(c)(3) that has been active since 2011 protecting, defending, and promoting the family, the building block of society.[2] Because governments that overstep their legitimate bounds invade the natural and critical prerogative of family, SAFA and Friends of SAFA (its political committee) advocate sound fiscal policy and, from time to time, must oppose wasteful or illegal expenditures of tax dollars. We write to invite your office to intervene to stop San Antonio's plan to illegally transfer tax revenues to VIA Metropolitan Transit in relation to a radical and destructive public transportation boondoggle . The proposed transfers will violate the Transportation Code and San Antonio's own Charter.

Background

San Antonio is working with VIA Metropolitan Transit (VIA), a metropolitan transit authority created under Chapter 451 of the Transportation Code, on a "bus rapid transit" system. Like other massively expensive attempts by agitated activists to re-order Texans' transportation preferences, nobody wants this system and nobody will use it even if it is built. Houston's barely-used light rail and bus rapid transit lines are prime examples. Such facts, of course, have not soured San Antonio officials' enthusiasm. Construction on the so-called "Green Line" (along San Pedro Avenue, a major North/South thoroughfare) is slated to begin first, with preparations to move

[1] See TexasFamilyAction.com.

[2] See SanAntonioFamilyAssociation.com.

public utilities currently underway. While we suspect that General Paxton may share our misgivings about projects such as these, we are not inviting the Office of the Attorney General to intervene merely due to political opposition. Apart from being bad policy that will reduce vehicle lanes and severely disrupt flow of traffic in lanes that remain, San Antonio's plans to fund the bus rapid transit project violate the Transportation Code and sever political accountability for the City's stewardship of tax dollars.

In November 2004, San Antonio voters approved creation of an Advanced Transportation District ("ATD") for supposed mobility enhancement and advanced transportation, and authorized the ATD's imposition and collection of a sales and use tax at a rate of 1/4 of 1%, the proceeds of which, pursuant to statute, are allocated 50% to VIA, 25% to the City of San Antonio, and 25% to be used as the local share of state and federal grants. Tex. Transp. Code §§ 451.702(f), (g), (i), respectively. This initial tax is referred to in City documents as "ATD I."

On November 3, 2020, City planners proposed, and voters approved, a 1/8 of 1% increase of the ATD local sales and use tax rate, such that the new tax rate devoted to the project is now 3/8 of 1%. Collection of the additional (1/8) tax will begin on January 1, 2026. The 1/8 of 1% increase is referred to as "ATD II."

<u>San Antonio Throws Taxpayers Under the Bus Through Illegal Interlocal Agreement with VIA</u>

The Transportation Code expressly requires that "the governing body of the [Advanced Transportation D]istrict shall remit one-fourth of the proceeds of the sales and use tax to each participating unit in proportion to the amount of the sales and use tax proceeds that were collected in that participating unit." § 451.702(g). Accordingly, San Antonio is entitled to receive its proportionate share of this 25% of all proceeds collected from the sales and use tax. The clear purpose and effect of the subsection is to ensure that each participating territory's political leadership retain control over how this portion of the collected funds are spent. While the statute limits the use of these funds—stating that the proceeds must be used "only for advanced transportation or mobility enhancement purposes" in San Antonio territory, it ensures local control and accountability for at least a portion of the sales and use tax collected. It ensures that, here, the San Antonio City Council decide where and how to spend these funds within the City.

San Antonio officials have, however, abdicated this authority and punted responsibility for its proportionate share of the revenue generated by the ATD II tax increase to VIA. City Council has approved an Interlocal Contribution Agreement ("ILA") between the City of San Antonio and VIA, attached as Exhibit A, "through [which] the City will convey to ATD the City's portion of ATD II (essentially 1/4 of the 1/8 increase approved by the voters in November of 2020)." Exhibit A, p. 1, penultimate paragraph. Making it even more explicit, the City agreed "to provide to VIA a monthly payment consisting of the statutorily allocated amount of the

proceeds of the sales and use tax due to the City generated by ATD II, that being the City's one-fourth (1/4) share of the one-eigh[th] (1/8) increase to the ATD tax proceeds." *Id.* ¶4.1. This agreement is to last as long as ATD taxes are collected. *Id.* ¶3.1.

This agreement violates the express terms of Chapter 451 of the Transportation Code. The statute strikes a deliberate scheme for revenue sharing from such taxes, which protects at least some local political accountability (here, on the part of San Antonio elected officials, who must decide how to spend the funds, which, moreover, must be spent "within the territory," *i.e.*, within San Antonio) and prevents the regional transit authority (VIA) from wholly controlling all of the taxes collected. But by agreeing to shovel this money to VIA, San Antonio politicians would be removing the funds from the accountability of San Antonio voters. Even if VIA scrupulously ensures that the funds are spent on the bus rapid transit project, they will be spent in *VIA's* discretion rather than the discretion of the San Antonio City Council. San Antonio voters are supposed to retain at least some control, through their elected officials, in where and what the funds should pay for. Further, the ILA does not obligate VIA to spend San Antonio's gifted funds on improvements *within San Antonio*, as required by § 451.702(g). Accordingly, the ILA violates § 451.702(g)'s plain terms.

This conclusion is buttressed by other provisions of the same chapter. Section 451.702 specifically contemplates and authorizes certain interlocal agreements and revenue transfers, but only one way: *from* the ATD *to* the governing body of the participating unit. Section 451.702(k) provides that the ATD may enter into an agreement to transfer sales and use tax proceeds *to* a local governmental entity "to finance any cost relating to mobility enhancement purposes in the territory of the district." Subsection (l) makes clear that the ATD may enter into an agreement under subsection (k) "by order or resolution, without the necessity of an election specifically concerning the matter." By contrast, the statute does not authorize a municipality or other participating unit to transfer its 25% allocation to be spent in the ATD's discretion.

If chapter 451 were silent as to interlocal agreements and revenue transfers, the City may have had a better foundation for this ILA. But § 451.702 reflects that the Legislature expressly considered such potential arrangements, and authorized an ATD to send revenues by agreement to a participating unit but not vice versa. If the Legislature intended to allow transfers both ways, it would have said so.[3] In requiring that San Antonio's proportional share of 25% of any ATD sales and use tax be remitted to the City, and in its other implied limitations on revenue-transferring agreements, chapter 451 precludes the City Council from abdicating

[3] Moreover, even if such an arrangement were impliedly authorized, it is not within the class of agreements that an ATD can approve itself without an election. Consequently, even assuming, *arguendo*, that § 451.702 leaves the door open for a municipality to hand its revenue over to an ATD, an election would seem to be a pre-requisite.

responsibility for taxpayer funds. *See Burch v. City of San Antonio*, 518 S.W.2d 540, 544-45 (Tex. 1975) (repudiating San Antonio's purported delegation of eminent domain authority to subordinate agency). Accordingly, the plain terms of chapter 451 foreclose the kind of revenue-transferring and accountability-shirking interlocal agreement San Antonio officials have adopted.

But even if the statute were ambiguous on this point, it should be read to foreclose this agreement to avoid serious constitutional infirmities. A home-rule municipality cannot delegate its authority to control the disbursement of public funds within its care. The Charter provides that

> *the Council* shall have and exercise all powers now or later conferred on the City; shall succeed to all powers previously vested in any former governing body of the City; shall have the general care, management and control of the City, *its property and finances*, and shall enact, alter, modify or repeal all ordinances and resolutions not repugnant to this Charter and the Constitution and laws of Texas

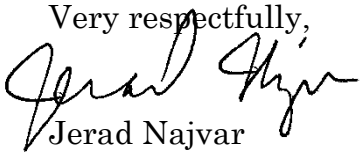
SAN ANTONIO CHARTER art. II, § 4 (emphasis added). "[P]owers are conferred on municipal corporations for public purposes; and, as their powers cannot be delegated, so they cannot be bargained or bartered away." *City of Dallas v. Employees' Retirement Fund of City of Dallas*, 687 S.W.3d 55, 63 (Tex. 2024) (quoting *City of Brenham v. Brenham Water Co.*, 67 Tex. 542, 4 S.W. 143, 149 (1887)). A city's authority and responsibility to spend public funds in its discretion is specifically vested in the city's governing body and cannot be delegated. *See Gulf, C. & S.F. Ry. Co. v. Riordan*, 22 S.W. 519 (Tex. Civ. App. 1893), *error dism'd*, 85 Tex. 511 (discretionary power to decide where to place street lights cannot be delegated outside city council); *see also Burch*, 518 S.W.2d at 545 ("The delegation of the power of eminent domain by the City must be strictly controlled in view of its effect on the rights of the individual citizen."). While the City Council certainly enjoys discretion in how its statutory share of ATD II shall be spent within the City, the foregoing cases hold that this discretion must be exercised by the City Council itself rather than delegated to a separate body.

* * *

We urge the Attorney General's office to intervene in this matter as it has in other recent situations to protect taxpayers from illegal spending. The Attorney General's office recently succeeded in stopping the illegal "Harris Handout" program in Harris County. San Antonio taxpayers are in dire need of similar assistance against a City Council that cares more for pushing a leftist agenda than it does for adhering to the rule of law or stewarding public funds.

I look forward to the opportunity to discuss this matter with your office further.

Very respectfully,



Jerad Najvar

Encl.