

June 22, 2007

Mr. Adell McCarter, Jr.  
Appeals Officer, Internal Revenue Service  
Appeals Office, MC 8000 NWSAT  
4050 Alpha Road  
Dallas, TX 75244-4201

Re: City Attorney of Henderson, Texas

Dear Mr. McCarter:

The International Municipal Lawyers Association (IMLA) is a non-profit, nonpartisan, professional organization consisting of more than 1,400 members that has been serving local government attorneys since 1935. The membership is comprised of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers; state municipal leagues; and individual attorneys who represent municipalities, counties, and other local government entities.

Since its establishment, IMLA has advocated for the rights and privileges of local governments, and the attorneys who represent them, through its Legal Advocacy Program. IMLA has appeared as *amicus curiae* on behalf of its members before the United States Supreme Court, in the United States Courts of Appeals, and in state supreme and appellate courts.

International Public Management Association for Human Resources IPMA-HR is a nonprofit organization that represents the interests of human resource professionals at the Federal, State and Local levels of government. IPMA-HR members include all levels of public sector HR professionals. IPMA-HR's goal is to provide information and assistance to help HR professionals increase their job performance and overall agency function by providing cost effective products, services and educational opportunities. The IPMA-HR joins IMLA in its position in this matter.

You have before you a matter that raises a critical issue for many local governments throughout the United States. There were 87,576 governmental units in the United States as of June 30, 2002. In addition to the federal government and the 50 state governments, there were 87,525 units of local government. Of these, 38,967 are general purpose local governments—3,034 county governments, and 35,933 subcounty general-purpose governments (including 19,429 municipal governments and 16,504 town or township governments). The remainder, more than half the total number, are special-

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purpose local governments, including 13,506 school district governments and 35,052 special district governments. I believe that you will find that most of these governmental entities provide either statutorily or through charter or by-law for their legal representation.

Slightly less than one-half of all municipalities have fewer than 1,000 inhabitants. In Texas, 437 municipalities have fewer than 1,000 residents and another 454 have fewer than 5,000 residents. The number of municipal governments in each state, by population size group, is attached. Generally, it is these smaller local governments that have attorneys who represent them as part of a private practice. These attorneys, while holding a position characterized as "city attorney," "county attorney," board attorney," etc., represent the local government as they do any other client. Thus, the only distinguishing factor between this form of employment and their representation of private clients exists within the terms of the contract and the fact that their client is a public entity.

IMLA and IPMA-HR respectfully suggest that in these circumstances the designation of these officials as public officers should not in any way affect their status under the Internal Revenue Code to distinguish them as employees instead of independent contractors. Since, the founding of our country, most communities have identified an official to act as its legal representative and like today, most of those officials acted to represent the local government as they would other clients within their private practice. Historically, local government attorneys who represent general purpose local governments or special purpose local governments as part of their legal practice considered themselves acting as independent contractors and their clients considered the relationship similarly. Only under circumstances where the attorney became a full or part time employee within the local government's classification system would the perspective of this relationship change.

IMLA and IPMA-HR are not in a position to analyze the facts of the specific relationship in this case at this time to suggest whether the relationship should be considered one of employer-employee or one involving an independent contractual relationship, but respectfully urge you to recognize that holding a statutory office of "city attorney" cannot reasonably be indicative of whether a person acts as an employee instead of as an independent contractor. IMLA and IPMA-HR believe the determination should be made based on the traditional analysis associated with distinguishing between an employee and an independent contractor.

On behalf of the over 1400 local governments that are members of IMLA and of the some 87,000 local governments generally, IMLA and IPMA-HR

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urge you to abandon from your analysis of this case as a determining factor whether there is a statutorily created office of “city attorney” and make your determination based on whether the relationship fits within the analysis of other employee – independent contractor situations.

Should you believe IMLA or IPMA-HR can provide additional help or insight into the determination of this matter, please do not hesitate to call upon us.

Very truly yours,

Charles W. Thompson, Jr.