

**ATTORNEY GENERAL OPINION**  
**07-5**

The Honorable Andrew Rice  
State Senate, District 46  
State Capitol, Room 521  
Oklahoma City, Oklahoma 73105

February 23, 2007

Dear Senator Rice:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

- 1. The Oklahoma Housing Finance Agency (“OHFA”) requires applicants for real estate developments to present a resolution of local support as a part of the process to award Affordable Housing Tax Credits. If a proposed development is to be located exclusively within the geographic boundaries of the Capitol-Medical Center Improvement and Zoning District (“District”), is the Capitol-Medical Center Improvement and Zoning Commission (“Commission”) the proper entity to issue the resolution of local support pursuant to 73 O.S. 2001, § 83.2 and the OHFA’s rules?**
  
- 2. If the resolution of local support contemplated in the first question were issued not by the Commission but by another governmental subdivision, could the OHFA accept that resolution as valid under its rules?**

**BACKGROUND**

The Oklahoma Housing Finance Agency (“OHFA”) is a state-beneficiary public trust. 62 O.S. 2001, § 695.3(4)(h). The OHFA offers nine housing programs to help Oklahomans rent or buy homes, using federal funds and other authorizations to make housing affordable. About OHFA – Who We Are & What We Do, <http://www.ohfa.org/OHFA/new/About/About.htm> (last visited Feb. 15, 2007).

You specifically ask about the Affordable Housing Tax Credit Program offered through the OHFA. “The Housing Tax Credit is a housing subsidy program for rental housing created within Section 42 of the federal tax code. . . . Each state receives \$1.75 per capita annually in low-income housing tax credits to allocate to affordable-housing rental projects within its borders.” Affordable Housing Tax Credit Goals, Basic 101, p.4, <http://www.ohfa.org/housingdev/TaxCredits20051.htm> (last visited

Feb. 15, 2007). These tax credits provide a source of capital to construct new rental housing or rehabilitate existing units. *Id.*

The OHFA has promulgated administrative rules governing its award of tax credits to project development applicants. *See* OAC 330:36-1-1 – 36-8-11. Among the many requirements to qualify for the tax credits, applicants must supply a “Resolution of local support.” OAC 330:36-4-2(b)(4). According to the OHFA’s rules, a resolution of local support consists of documentation of official local support for the project, issued “by the jurisdiction within which the proposed Development is to be located, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body.” *Id.*

According to your question, the developer of a proposed housing project seeks to qualify for the OHFA’s housing tax credits. The housing project is to be located in Oklahoma City, but wholly within the boundaries of the Capitol-Medical Improvement and Zoning District (“District”). The District’s boundaries are defined by statute, 73 O.S. 2001, § 83, and zoning matters therein are regulated by the Capitol-Medical Improvement and Zoning Commission (“Commission”). 73 O.S. 2001, §§ 82.1, 83.2. In essence you ask, from whom may the OHFA accept the required resolution of local support – the city or the Commission? The answer, according to the OHFA’s rules, is the Local Governing Body, defined as “the jurisdiction within which the proposed Development is to be located.” OAC 330:36-4-2(b)(4). To determine whether the Commission or the city is the “Local Governing Body,” we will examine what the statutes provide regarding the relationship between these two entities.

#### **THE POWERS AND AUTHORITY OF THE COMMISSION OVER PROPERTY WITHIN ITS DISTRICT**

The Legislature created the Commission in 1953<sup>1</sup> and gave it authority over an “improvement and comprehensive community zoning district to be known as the ‘Capitol-Medical Center Improvement and Zoning District.’” 73 O.S. 2001, § 83. The purpose of the act creating the District and its Commission is “to provide a comprehensive plan for the orderly development of the district surrounding the State Capitol and the Medical Center of the University of Oklahoma *under direct supervision of the state itself, rather than by its governmental subdivisions*[.]” *Id.* § 82.1 (emphasis added). As its name implies, the District includes the State Capitol, the University of Oklahoma Medical Center complex, several State office buildings, various commercial businesses, and residential neighborhoods. The Legislature provided that the District would exist “whether or not said land, or any part thereof, shall be within the incorporated limits of any city of the first class.” *Id.* § 83. The District is, in fact, within the incorporated limits of Oklahoma City.

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<sup>1</sup> Originally, two commissions existed: the Medical Center Improvement and Zoning Commission, and the Capitol Improvement and Zoning Commission. 1953 Okla. Sess. Laws tit. 70, ch. 32a, § 2; tit. 73, ch. 2, § 2. The Medical Center commission’s statutes were repealed in 1970, and its district was merged with the Capitol commission’s, which was renamed the Capitol-Medical Center Improvement and Zoning Commission. 1970 Okla. Sess. Laws, ch. 327, §§ 2, 11.

With limited exceptions, the Commission has been granted exclusive authority over zoning matters within its District in pertinent part as follows:

*The . . . Commission*, after adoption of a master comprehensive plan . . . , *shall have exclusive authority over the zoning and regulation of the utilization of all property* in the . . . District *and no planning or zoning commission of any subdivision of the state thereafter shall have any authority or jurisdiction within said area.* The Commission also shall have authority to approve or disapprove the location and design of any improvements hereafter to be placed upon any land within said District, and no improvement hereafter shall be placed upon any land within said District, unless the location and design thereof shall be approved by said Commission. The word “improvements” . . . shall include but not be limited to (1) buildings, including additions to and alterations thereof, (2) highways and thoroughfares, and access facilities thereto, (3) parking lots and facilities, and (4) all other construction or erections whatsoever, except . . . “improvements” shall not include existing municipal streets, alleys or utility services, nor the maintenance or improvement thereof, except insofar as the same serve state buildings or are located upon state land.

73 O.S. 2001, § 83.2 (emphasis added).

Thus, Section 83.2 gives the Commission exclusive authority over the “zoning and regulation of the utilization of all property” in its District (except for certain municipal streets and utility services), and disclaims the authority of any other “planning or zoning commission of any subdivision of the state.”<sup>2</sup> *Id.* This includes the authority “to approve or disapprove the location and design of any improvements” with the District, such as the housing development project you mention. *Id.* While the Legislature has authorized and directed the Commission to enter into agreements with Oklahoma City “for mutual cooperation and joint regulation within the District,” those agreements “may not cede the Commission’s final authority and responsibility over the matters entrusted to it by law.” 73 O.S. 2001, § 83.3(b). Because the Commission has the sole power to approve or disapprove the design, location and construction of buildings within its District, we conclude it is the “Local Governing Body” for purposes of the OHFA’s rules requiring a resolution in support of a proposed housing development.

#### CONCLUSION

As was stated earlier, OAC 330:36-4-2(b)(4) requires applicants for tax credits to supply a “Resolution of local support” consisting of documentation of official local support for a proposed housing development issued “*by the jurisdiction within which the proposed Development is to be*

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<sup>2</sup> Like all municipalities, Oklahoma City is a “subdivision of the state.” 73 O.S. 2001, § 83.2; *In re De-Annexation of Certain Real Prop.*, 102 P.3d 120, 126 (Okla. 2004).

*located*, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body.” *Id.* (emphasis added). If, as your question says, the proposed housing development is “located exclusively within the geographic boundaries” of the Commission’s jurisdiction, then the “Local Governing Body” is not Oklahoma City, but the Commission. It is the Commission that will decide whether the proposed project meets the zoning requirements for the District and ultimately approve or disapprove its construction. Because Oklahoma City has no jurisdiction over zoning matters for property within the Commission’s District, any resolution issued by Oklahoma City for a proposed project to be located in the District is not responsive to the OHCA rule’s requirements.

**It is, therefore, the official Opinion of the Attorney General that:**

- 1. The Capitol-Medical Center Improvement & Zoning Commission (“Commission”) has sole authority over zoning matters within its District (“District”) pursuant to 73 O.S. 2001, § 83.2, and is therefore the proper entity to issue a resolution of local support as required by the Oklahoma Housing Finance Agency’s (“OHFA”) rules.**
  
- 2. A resolution of local support issued by a governmental body other than the Commission does not meet the requirements of the OHFA’s rules, as the Commission is the District’s “Local Governing Body” and the District is the “jurisdiction within which the proposed Development is to be located.” OAC 330:36-4-2(b)(4).**

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