OFFICE OF THE
HARRIS COUNTY ATTORNEY
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Office of the Attorney General
Attention: Opinion Committee
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Via email: opinion.committee@oag.texas.gov

Introduction

I submit this letter brief in aid of the Attorney General's analysis of Senator Paul Bettencourt's request for an Attorney General opinion regarding guaranteed basic income programs (RQ-0529-KP). That request is prompted in part by Harris County's new pilot program to test the efficacy of guaranteed income programs to support low-income residents of the county. Sen. Bettencourt asks whether counties have the authority to institute and fund guaranteed income programs, and whether such programs would violate the Texas Constitution's (Art. III, § 52(a)) prohibition on the gift of public funds.

As a threshold matter, this Office should decline to respond to Sen. Bettencourt's request and follow its long-standing practice and refrain from issuing an opinion on a question pending in litigation. The Attorney General is currently litigating fundamental questions underlying the request in the Texas Supreme Court. If any request ever warranted abstention, this is it.

On the merits, Harris County's pilot program is authorized by at least three statutes and is further permitted by the Texas Constitution. Your Office has repeatedly held that it is for commissioners courts to determine, in the first instance, whether an expenditure satisfies statutory and constitutional purposes and requirements. It should do so again here.

Background

A. Uplift Harris

Uplift Harris is a pilot program for guaranteed income that allows participating households to receive $500 per month for 18 months. Similar programs across the country have shown that direct cash assistance programs deliver wide-ranging social and economic benefits for participating families and the broader community and economy. Multiple studies demonstrate that

lower income families are very likely to use cash assistance in ways that directly boost the economy—paying expenses rather than reducing debt or increasing savings.[1]

Uplift Harris will provide $500 monthly cash payments to 1,928 Harris County residents for 18 months.[2] App. A, Harris County, *Harris County Recovery Plan: State and Local Fiscal Recovery Funds 2023 Report* at 98 (*2023 Report*). The program's purpose is to assist the economic recovery of residents disproportionately impacted by the pandemic. *Id.* at 98-99.

Two cohorts of applicants will be eligible for Uplift Harris funds:

- Geographic cohort: Eligibility is based on income and geography. Applicant's household income must be below 200% of the federal poverty line (FPL) and reside in one of the ten identified high-poverty ZIP codes.

- ACCESS Harris: Active participants of Accessing Coordinated Care and Empowering Self Sufficiency (ACCESS) Harris are qualified to apply through their participation in ACCESS Harris and having a household income below 200% FPL. These participants can reside anywhere in Harris County.

Uplift Harris will be evaluated by a third party throughout the program's duration to assess effectiveness, understand families' experiences throughout the pilot, and build on its success. Uplift Harris is funded with $20.5 million from the federal American Rescue Plan Act (ARPA), specifically the "State and Local Fiscal Recovery Funds" (SLFRF). 42 U.S.C. §§ 802–03.

Argument

I. This Office Should Decline to Render an Opinion Because the State Is Currently Litigating the Fundamental Questions in the Supreme Court.

This Office should follow its long-standing practice and refrain from issuing an opinion on a question pending in litigation. Sen. Bettencourt's request raises a fundamental question at the heart of a pending Supreme Court case being litigated by the Attorney General. *See* App. B (Brief for Petitioner the State of Texas, *Borgelt v. Austin Firefighters Ass'n*, No. 22-1149 (Tex. Sept. 7, 2023)). Oral argument in that case is set for February 21, 2024. For that reason, this Office should either refrain from issuing an opinion or defer until after the pending litigation has ended.

"Declining to answer a question that is the subject of pending litigation is a long-standing policy of this agency." Tex. Att'y Gen. No. KP-0118 (2016) at 2-3; *accord* Tex Att'y Gen. Op. Nos. GA-457 (2006) at 4 ("This office's long-standing policy is 'to refrain from answering questions pending in the courts.'") (quoting Tex. Att'y Gen. Op. No. JM-600 (1986) at 1); GA-

[1] *E.g.*, U.S. Bureau of Labor Statistics, *Receipt and use of stimulus payments in the time of the Covid-19 pandemic* (Aug. 2020), https://www.bls.gov/opub/btn/volume-9/receipt-and-use-of-stimulus-payments-in-the-time-of-the-covid-19-pandemic.htm?view_full;

[2] Participants can use the money however they see fit to meet their needs, except: To buy or support anything that would harm the safety and security of other participants in the Uplift Harris Guaranteed Income Pilot and/or other community members; for the promotion of and/or engagement in any criminal or illegal activities; to support any entities or individuals relating to terrorism. Such activities will lead to removal from the pilot.

0502 (2007) at 3-4; GA-0399 (2006) at 3 n.5; MW-205 (1980) at 1; V-291 (1947) at 5-6. As this Office has explained, the policy is rooted in our constitutional structure. *See* Tex. Att'y Gen. Op. No. KP-0118 (2016) at 2-3 ("Answering a specific question through an attorney general opinion that is pending with a court would usurp this constitutional structure. Consequently, when a legal matter is being litigated, the courts are generally the appropriate forum for resolving the issue, rather than this office through an advisory opinion.").

This rationale applies even more forcefully when the Attorney General is a party to the pending litigation, as he is here. In *Borgelt*, the State asserts that "the Texas Constitution's Gift Clauses, Tex. Const. art. III, §§ 50, 51, 52(a); *id.* art. XVI, § 6(a), prohibit gratuitous grants of public money or things of value . . . ." App. B at xi. *Borgelt* focuses on the proper test for a violation of the Gift Clauses and the application of that test. *See, e.g.*, App. B at 17-19 (summarizing the State's arguments). The State asks the Supreme Court ***to change the law*** by altering the test for compliance with the Gift Clauses announced by its key precedent, *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 777 (Tex. 2002). *See* App. B at 21-24. There is an inherent conflict of interest in the Office's opining on an issue in a suit that the Attorney General is currently litigating.

Given the active litigation on a fundamental issue underlying Sen. Bettencourt's request, especially litigation involving the Attorney General, this Office should follow its long-standing policy and decline to render an opinion. Tex. Att'y Gen. Op. No. KP-0118 (2016) at 2-3.

II. Several Statutes Authorize Guaranteed Income Programs Like Uplift Harris.

If this Office nevertheless determines to issue a written opinion, that opinion should conclude that guaranteed income programs are authorized by both statute and permitted by the Texas Constitution.

A "commissioners court's power is limited to that which is expressly delegated to it by the Texas Constitution or Legislature, or necessarily implied to perform its duties." *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003); *see* Tex. Const. art. V, § 18(b). Multiple statutes provide authority to counties to implement guaranteed income programs like Uplift Harris.

A. Local Government Code § 381.003 authorizes guaranteed income programs.

Local Government Code § 381.003(a) grants a county the authority to administer community and economic development projects authorized by federal law. The Legislature enacted this law in 1985 to "resolve any legal questions relating to the statutory authority of counties to engage in" "community and economic development projects" supported by federal funds. App. C (House Cmte. on County Affairs, Bill Analysis: SB 446 (Apr. 2, 1985)).

This Office has recognized the § 381.003 grants "broad authority" for counties to pursue federally funded "community [] and economic development programs." Tex. Att'y Gen. Op. No. KP-0219 (2018) at 3. It is a "far-reaching law" that permits commissioners courts to participate "in any federal law" creating community and economic development programs. 36 Tex. Prac. § 29.11 (2d ed.). Whether any individual program qualifies as a community and economic project or whether it is "authorized under any . . . federal law creating community and economic

development programs" will depend on the facts of that particular program, which are beyond this Office's remit.

Here, Uplift Harris is covered by § 381.003. Uplift Harris is plainly a community and economic development project, and it is authorized by ARPA, which is a federal law creating community and economic development programs.

1. APRA and SLFRF authorize Uplift Harris

The Treasury Department has made clear that uses of the funds need not be explicitly enumerated in the SLFRF final rule to be permitted under the federal program.[3] In any event, cash assistance is identified as an "eligible use" within the category of responses to the "negative economic impacts of the pandemic."[4] The agency further explains:

> 2.4. **May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households?** Yes. Cash transfers, like all eligible uses in the public health and negative economic impacts category, must respond to the negative economic impacts of the pandemic on a household or class of households. Recipients may presume that low- and moderate income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.[5]

In turn, "low- and moderate income" means up to 300% of the household's federal poverty level. 31 C.F.R. § 35.3 (definitions). Because Uplift Harris does not provide cash assistance to any household with income in excess of 200% of the federal poverty line, it is authorized under APRA and SLFRF.

2. Cash assistance to low- and moderate-income households authorized under ARPA and SLFRF is a community and economic development program.

ARPA and SLFRF created a program that provides for county-directed cash assistance to low- and moderate-income households. That program funds Uplift Harris, which provides cash assistance to low- and moderate-income households. "Community and economic development" does not appear to be a term of art. But Local Government Code Section 381.003(a) expressly references Title I of the Housing and Community Development Act of 1974, which informs its meaning.

Congress enacted the Housing and Community Development Act to address problems arising from, for instance, "the concentration of persons of lower income in central cities." 42 U.S.C. § 5301(a)(1). And by "development," Congress meant "the establishment and maintenance

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[3] U.S. Dep't of Treasury, *State and Local Fiscal Recovery Funds: "Final Rule: Frequently Asked Questions"* at FAQ 2.1 (Nov. 2023) https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf.

[4] *See id.* at FAQ 2.2.

[5] *Id*. at FAQ 2.4.

of viable urban communities as social, economic, and political entities, which required, among other things, "systematic and sustained action by Federal, State, and local governments . . . [to] improve the living environment of low- and moderate-income families," including by "expanding economic opportunities, principally for persons of low and moderate income." *Id.* § 5301(b)(1).

This Office has adopted this understanding that under Section 381.003, "housing programs that qualify under federal law as community and economic development programs" are "generally programs that address the housing needs of persons with low and moderate income." Tex. Att'y Gen. Op. No. KP-0219 (2018) at 4.

ARPA and SLFRF, as well as Uplift Harris, respond to severe economic dislocation resulting from a natural disaster, and likewise seek to assist low-income areas and households through sustained federal, state, and local government action to improve the living environment and economic opportunities of low- and moderate-income families in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits. *See* 31 C.F.R. 35.6(b); 88 Fed. Reg. at 64986; App. A, *2023 Report* at 98-99. Thus, SLFRF's cash assistance component is a community and economic development program and that Uplift Harris is a community and economic development project.

B. Local Government Code § 381.004 authorizes guaranteed income programs like Uplift Harris.

Neighboring § 381.004 provides similar authority for counties to develop and administer programs for economic development, but without the need for a federal connection.

Section 381.004(b) provides: "To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program . . . for state or local economic development" or "to stimulate, encourage, and develop business location and commercial activity in the county." Tex. Loc. Gov't Code § 381.004(b)(1), (3). Counties may "contract with another entity for the administration of the program"; "use county employees or funds for the program"; and "accept contributions . . . or other resources to develop and administer the program," such as SLFRF funds. *Id.* § 381.004(c)(3)-(4). And a program under § 381.004 may include "making . . . grants of public money." *Id.* § 381.004(h).

Notably, the Legislature added what is now subsection (h) in response to an Attorney General Opinion concluding that the original law did not authorize counties to grant money. *Compare* Tex. Att'y Gen. Op. No. JC-0092 (1999), *with* Act of May 17, 2001, 77th Leg., R.S., ch. 1154 § 1, 2001 Tex. Gen. Law 2560, 2560. This Office has recognized that "neither that statute nor the state constitutional provisions at issue impose durational or amount restrictions" on "grants made for economic development under subsection 381.004(h)." Tex. Att'y Gen. Op. No. KP-0261 (2019) at 4. That subsection "leaves the duration and amount of economic development . . . grants to the commissioners court's budgetary discretion in the first instance, subject to the constitutional limitations" of *Texas Municipal League*. *Id.*

Further, as this Office recognizes, whether a specific project "serves one or more of [the] purposes [in § 381.004(b)] will depend on the particular facts and therefore cannot be resolved in

an attorney general opinion. Rather, under section 381.004, the commissioners court must determine in the first instance, subject to judicial review, whether a particular program serves a purpose authorized by the statute" and the associated constitutional requirements set out in *Texas Municipal League.* Tex. Att'y Gen. Op. No. KP-0116 (2016) at 2-3 (quoting Tex. Att'y Gen. Op. No. KP-0091 (2015) at 2 (stating that "[f]act finding is beyond the scope of an attorney general opinion")), 5.

Thus, counties have the discretion to determine in the first instance whether any particular project, including a guaranteed income program like Uplift Harris, satisfies the requirements of § 381.004 and the Texas Constitution.

C. Local Government Code § 81.027 authorizes guaranteed income programs.

Uplift Harris is also authorized by Local Government Code § 81.027, which permits a county to "provide for the support of paupers, residents of their county, who are unable to support themselves." While the Legislature and courts have not provided much guidance as to the meaning of this statute, numerous Attorney General Opinions have concluded that counties have broad discretion to determine who qualifies for support and the nature and extent of that support. Texas Rule of Civil Procedure 145(d) and contemporaneous dictionaries also support the conclusion that § 81.027 authorize a guaranteed income program like Uplift Harris.

Though this statute and its predecessors stretch back to the dawn of the Republic of Texas, Texas courts and the Legislature have not provided much guidance as to its meaning. The statutory term "support" was recognized in 1886 to have a broad meaning: "Counties are required to provide for the 'support' of their paupers. 'Support,' as here used, means more than supplying them with food and clothing and a house to stay in. It means all that is necessary to bodily health and comfort, and especially does it include proper care, attention and treatment during sickness." *Monghon v. Van Zandt County*, 1886 WL 4550, at *1 (Tex. Ct. App. 1886, no writ). This Office has embraced this understanding of "support" in several opinions. Tex. Att'y Gen. Op. Nos. MW-33 (1979) (quoting *Monghon*); JM-425 (1986) (quoting *Monghon*); JM-637 (1987) (citing *Monghon*). In another context, the Commission of Appeals reached a similar conclusion: "Support is a very flexible term and includes something more than the bare necessities of life. It includes also the ordinary comforts and conveniences which are reasonably appropriate to the parties' station in life." *Lumbermen's Reciprocal Ass'n v. Warner*, 245 S.W. 664, 665–66 (Tex. Comm'n App. 1922). This Office cited *Lumbermen's* in construing the statute. Tex. Att'y Gen. Op. No. H-892 (1976).

No court has authoritatively defined who is covered by the statute. As the Fifth Circuit recognized: "there is no authoritative statement from the state courts or legislature defining who may qualify as a pauper." *Mireles v. Crosby County*, 724 F.2d 431, 433-34 (5th Cir. 1984); *Stephens v. Bowie County.*, 724 F.2d 434, 436 (5th Cir. 1984) (same). In both *Mireles* and *Stephens*, the Fifth Circuit held that abstention was appropriate, so did not interpret the statute itself. No court appears to have interpreted the statute since then.

In light of the lack of legislative guidance, several Attorney General Opinions have concluded that counties retain significant discretion to determine how to implement the statute and

provide aid to the poor. A thorough Attorney General Opinion from 1987 supports the conclusion that a county's guaranteed income program designed to support the poor is authorized by § 81.027. Tex. Att'y Gen. Op. No. JM-815 (1987). There, this Office quoted the Fifth Circuit decisions mentioned above in *Mireles* and *Stephens*, then considered the questions left unanswered by those decisions. The Opinion observed:

> A version of what is now article 2351(11) was adopted by the Texas legislature in 1876. . . . Most attorney general opinions that have discussed article 2351(11) have considered whether it authorizes certain expenditures rather than whether it requires certain expenditures . . . .

Id. at 4. This Office then opined that the details are left up to counties:

> A number of those opinions make clear, however, that it is left to the discretion of each county to determine how to meet its obligation to the poor. In other words, section 2351(11) has been interpreted by this office as a directive to counties to take some action to provide for indigents, ***but it has never been interpreted as itself requiring a particular level of care for a defined group of persons***.
>
> Article 2351(11) requires counties to make some provision for paupers. The ***legislature, however, does not provide guidelines and has left it to the counties to determine the nature and extent of their provision for paupers.***

Id. at 4-7 (emphases added). The same Opinion concluded that it would be constitutional for a county to provide for the support of the indigent.

> The question, then, is whether support of paupers is a proper public purpose. The Texas Constitution itself makes clear that the support of paupers is a public purpose. *See* Tex. Const. art. XVI, § 8 (allowing counties to provide a poor house and farm). *See also Housing Authority of City of Dallas v. Higginbotham*, 143 S.W.2d 79, 89 (Tex. 1940) (providing housing for low-income families serves a public purpose). Therefore, expenditure by a county for the support of paupers does not violate article III, section 52, of the Texas Constitution.

Id. at 8. Thus, this Office has concluded that the statute does not require "a particular level of care for a defined group of persons" and that the Legislature has left it to counties "to determine the nature and extent of their provisions for" the indigent. A guaranteed income program designed to support low-income residents falls within this broad discretion.

Another key opinion from this Office held that counties may determine who is covered by the statute. *See* Tex. Att'y Gen. Op., No. M-605 (1970) (finding that Harris County was authorized under the pauper statute to enter into a contract with the federal government for a training program contractually limited to "the paupers, the indigent, the needy, and the poor who are unemployed or underemployed, and who are residents of a highly selected unemployment area in Houston"). The Opinion analyzed "whether the job training program embraced in the contract in question constitutes 'support' and whether the citizens for whose benefit the program is established

constitute 'paupers,' within the meaning of the statute." *Id.* at 4. After considering a broad and flexible definition of "support" from a legal encyclopedia, the opinion concludes:

> The ***direct cash income*** received by the job trainees ***clearly would constitute "support."*** In our opinion, the benefits of job training and job placement also would constitute "support. " . . . ***We believe that the recipients of the support above defined may be properly considered as paupers.***
>
> . . . [I]t seems clear that the indigent citizens involved in the project in question may be properly classified by the Commissioners Court as "paupers" and that the project constitutes "support" within the meaning of Article 2351.

Id. at 5-6 (emphasis added). As noted above, the contract defined the recipients broadly to include not only paupers but also the "indigent," "needy," and "poor who are unemployed or underemployed." This conclusion therefore supports a broad reading of the term "paupers" and the obvious conclusion that "direct cash income" qualifies as support.

Supporting a pilot program like Uplift Harris, Opinion No. M-605 also recognized that counties have authority to hire personnel to determine individuals' eligibility for aid and to investigate the facts: "We further held that the Commissioners Court had authority (necessarily implied by said statute) to employ necessary personnel to properly sift out those entitled to such relief and to investigate and ascertain the extent and amount of need.'" *Id.* at 8-9 (quoting Op. No. O-2217). Here, Uplift Harris is a pilot program to investigate and ascertain the extent and amount of need and the efficacy of the aid that Harris County provides to its low-income residents.

And in Tex. Att'y Gen. Op., No. JH-703 (1975), this Office considered a constitutional provision requiring a hospital to provide medical care to "needy inhabitants." *Id.* at 1-2. The Attorney General opined: "In our view a translation of indigency into precise income levels involves factual matters." *Id.* at 2. The Opinion then locates responsibility for those factual determinations with the local government: "[W]e believe that in the first instance a hospital district should reasonably determine this figure." *Id.* This conclusion reinforces that local governments receive significant discretion to determine the precise contours of local aid to the needy.

Thus, numerous Attorney General Opinions support broad discretion for counties in determining the support provided to low-income residents and determining who qualifies for such support.

III. The Constitution Permits Guaranteed Income Programs Like Uplift Harris.

This Office has repeatedly explained that the "commissioners court must determine in the first instance, subject to judicial review, whether an expenditure, . . . meets . . . constitutional requirements." Tex. Att'y Gen. Op. Nos. KP-0116 (2016) at 5; KP-0435 (2023) at 3 ("It is for the county commissioners court to determine in the first instance whether a proposed expenditure satisfies the three-part test [in *Texas Municipal League*], subject to judicial review."); KP-0261 (2019) at 3 (same); KP-0235 (2019) (same). Thus, this Office should once again conclude that it is for counties to determine, in the first instance, whether expenditures on guaranteed income programs are permitted by the Texas Constitution.

The Texas Constitution contains some restrictions on legislative power, including a handful that prohibit making or authorizing gratuitous payments of public funds—the "Gift Clauses," which are all original to the 1876 Constitution:

Art. III, § 51:	The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual . . . ; provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity.
Art. III, § 52(a):	[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of[] or to any individual . . . .[6]

"Generally speaking, both sections are intended to prevent the application of public funds to private purposes; in other words, to prevent the gratuitous grant of such funds to any individual, corporation, or purpose whatsoever." *Edgewood ISD v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995) (quotation marks omitted). As noted above, whether an expenditure "serves a county purpose is for the commissioners court to determine in the first instance, subject to judicial review for abuse of discretion." Tex. Att'y Gen Op. GA-0604 (2008); *accord* Tex. Att'y Gen. Op. WC-0474 (1965) ("[T]he determination of the legislative body of the matter has been held to be not subject to be reversed except in instances where such determination is palpably and manifestly arbitrary and incorrect.").

A. Uplift Harris passes the *Texas Municipal League* test.

In *Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission*, 74 S.W.3d 377 (Tex. 2002), the Texas Supreme court set out the current limitations on public spending imposed by the Gift Clauses. The Supreme Court held that § 52 "means that the Legislature cannot require *gratuitous* payments to individuals, associations, or corporations." *Tex. Mun. League*, 74 S.W.3d at 383. But the Court also made clear that payments are not gratuitous if "such payments: (1) serves a legitimate public purpose; and (2) affords a clear public benefit received in return." *Id.* The then Court applied a "three-part test" to "determin[e]" if a law "accomplishes a legitimate public purpose": (a) the law's "predominant purpose is to accomplish a public purpose, not to benefit private parties"; (b) the law "retain[s] public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment"; and (c) the law "ensure[s] that the political subdivision receives a return benefit." *Id.* at 384-85. Only "sufficient—not equal—return consideration" is required. *Id.* at 384.

Uplift Harris meets the *Texas Municipal League* test. Uplift Harris's economic development predominates over any private interest, particularly given the program's ultimate role as a study to inform future economic policies. So does the program's pauper assistance purpose. The program's public benefit has already been discussed above. And the program has sufficient controls in the form of eligibility requirements that track its purposes. *See, e.g.*, Tex. Att'y Gen.

[6] *See also* Tex. Const. art. III, §§ 50, 55; *id.* art. XI, § 3; *id.* art. XVI, § 6(a).

Op. JC-0244 (2000) (requiring proof of residency and financial need were sufficient controls for scholarships for architectural examination applicants).

B. Uplift Harris serves constitutionally expressed public purposes.

Aside from the generally applicable test described by *Texas Municipal League*, the Constitution sets forth various endeavors that are legitimate public purposes, either expressly or by necessary implication, including (1) responding to public calamity, (2) fostering economic development, (3) county care for poor residents, and (4) participating in federal assistance programs. Uplift Harris serves them all.

1. Responding to public calamity

After setting forth its prohibition, Article III, § 51 ends with a proviso:

> [T]he provisions of this Section shall not be construed so as to prevent the grant of aid in cases of *public calamity*.

That proviso expresses the people of Texas's judgment that providing aid in response to "a state-wide calamity" is "a proper function of state government." *City of Aransas Pass v. Keeling*, 247 S.W. 818, 820 (Tex. 1923); *accord* Tex. Att'y Gen. Op. No. WW-1248 (1962) (endorsing constitutionality of expenditures in response to natural disasters); Tex. Gov't Code ch. 418 (authorizing numerous programs to respond to disasters).

It follows that "[t]he use of . . . counties as agents of the state in the discharge of the state's duty is in no wise inhibited by the Constitution." *City of Aransas Pass*, 247 S.W. at 820. A county program granting aid in response to a public calamity, therefore, serves a public purpose.

The pandemic surely qualifies as a public calamity—Governor Abbott issued a disaster proclamation on March 13, 2020, certifying that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas, and renewed that declaration monthly through June 2023. *See* Governor of the State of Tex., COVID-19 Disaster Declaration May 2023, 48 Tex. Reg. 2639, 2645-46 (2023). "Disaster" is synonymous with "public calamity." Tex. Gov't Code § 418.004(1). Governor Abbott has also expressly connected the "economic recovery from COVID-19" to the state of disaster. 48 Tex. Reg. at 2646.

2. Economic development

The Constitution expressly endorses economic development as a public purpose:

Art. III, § 52-a:

> Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of . . . grant of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, . . . or the development or expansion of . . . commerce in the state. . . . .

Section 52-a makes clear that expenditures aimed at economic development serve a public purpose. As then-Attorney General Abbott explained in 2003, "In essence, section 52-a establishes that economic development is a legitimate public purpose for public spending." Tex. Att'y Gen. Op. GA-0071 (2003) (citing *Tex. Municipal League*, 74 S.W.3d at 383. Indeed, the opening of § 52-a shows that the Gift Clauses (and thus the *Texas Municipal League* test) do not even apply: "***Notwithstanding any other provision of this constitution***." Thus, § 52-a's text shows it relieves the need to independently show that economic development programs are not gratuitous.[7]

Uplift Harris serves an economic development purpose—particularly "to increase employment among participants." App. A, *2023 Report* at 99. Cash assistance under ARPA helps recipients return to economic life. And studies show that those with low to moderate income are the most likely to turn cash assistance immediately into commerce, for example by paying expenses for basic needs. *See* Bureau of Labor Statistics, *supra* n.1. Economic development also offers an obvious benefit to the public.

3. County care for the poor

Counties "are the means whereby the powers of the State are exerted through a form and agency of local government for the performance of those obligations which the State owes the people at large." *Linden*, 220 S.W. at 763. Among those obligations, the State uses counties "for the collection of taxes, for the diffusion of education, for the construction and maintenance of public highways, *and for the care of the poor*." *Id.* (emphasis added); *accord Cummings v. Kendall Cnty.*, 26 S.W. 439, 440 (Tex. App. 1894).

The Constitution explicitly codifies counties' responsibility to the poor:

Art. IX, § 14:

> Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

[7] *See also* App. D, House Cmte. On Science and Technology, Bill Analysis: CSHJR 5 (Mar. 25, 1987) (specifically mentioning the provisions of article III, §§ 51 and 52 as constitutional impediments that section 52–a was intended to overcome); *Ex parte City of Irving*, 343 S.W.3d 850, 855 (Tex. App.—Dallas 2011, judgment vacated w.r.m.) (rejecting Attorney General's argument that § 52-a did not create an exception to other constitutional requirements).

The clause's accompanying commentary explains its origin:

> Prior to the Civil War, the indigent in Texas had been conceived of as the problem of the church or private charities, and relief was given to the poor by these organizations largely in their own homes. With the sharp rise in indigency following the war, there was the growing recognition that in many cases private charity was insufficient, and with it grew the idea that some governmental unit should be responsible for the care of the poor. The most logical unit in an agrarian civilization was the county . . . .

Tex. Const. art. IX, § 14, interpretive commentary.

At the time § 14 was written, "poor" could broadly include those who were "needy." Noah Webster, *A Dictionary of the English Language* 325 (1867). It was often synonymous with "indigent." *Webster's Complete Dictionary of the English Language* 1012 (1880). The term could be "applied to persons who are not entirely destitute of property, but who are not rich." *Id.*

Citing § 14, Attorney General B.F. Looney concluded that a drought relief bill authorizing counties to loan to farmers money for the purchase of seed and feed was constitutional: "The care of poor and indigent inhabitants is recognized by the Constitution of this State as a proper subject for the expenditure of public funds"; and, "By the express wording of the Constitution, it is entirely clear that the fundamental law regards the relief of the poor as a public purpose, for which public money may be expended." Tex. Att'y Gen. Op. (To Hon. E. A. Decherd, Jr., Mar. 4, 1918), 1916-1918 Tex. Att'y Gen. Biennial Rep. 851, 852. *See also* Tex. Att'y Gen. Op. No. GM-2474 (1940) (endorsing constitutionality of county program making monthly cash payments to persons employed in Works Progress Administration sewing rooms); Tex. Att'y Gen. Op. No. CM-0782 (1971) (endorsing expenditure of federal grant funds to assist needy population).

These conclusions find further support in the Supreme Court's eminent domain jurisprudence: "The words 'public purposes' are no narrower than the words 'public use'" in the eminent domain context. *Davis*, 326 S.W.2d at 709. The Supreme Court has held in the eminent domain context that "construction and operation of a low rent housing project" serves a public purpose, which "is to eliminate slums, from which the entire community derives a benefit through the elimination of conditions giving rise to crime and disease." *Hous. Auth. of City of Dallas v. Higginbotham*, 143 S.W.2d 79, 81, 85 (Tex. 1940).

Applying that reasoning to the expenditure of public funds, the Court later held that money spent on "urban renewal" was "for public purposes." *Davis*, 326 S.W.2d at 709. In its eminent domain decision, the Court explained that its precedent "adopted a liberal view concerning what is or is not a public use," and that the Court would overrule the Legislature only if it could "say as a matter of law" that the use did not benefit the public. *Higginbotham*, 143 S.W.2d at 84-85; *accord Young v. Houston*, 756 S.W.2d 813, 814 (Tex. App.—Houston [1st Dist.] 1988, writ denied) ("Determining a public purpose is primarily a function of the legislature, and it should be upheld unless it is manifestly arbitrary and incorrect.").

Guaranteed income programs like Uplift Harris accomplish the public purpose of county support for the poor, as it targets persons whom the government recognizes lack the means to regularly cover all necessary expenses without assistance. It also provides a clear benefit to the public—assisting the poor in rising economically so that they are less likely to need public services in the future.

4. Federal financial assistance

In 1933, the Texas Constitution was amended to add Article III, § 51-a, which originally permitted the state to borrow twenty million dollars "to be used in furnishing relief and work relief to needy and distressed people and in relieving the hardships resulting from unemployment." S.J.R. No. 30 (1933). Section 51-a was amended in 1935 to allow the Legislature to expend funds subject to federal matching through the Old Age Assistance program. Since then, § 51-a has been amended multiple times since to keep up with federal programs and now provides:

Art. III, § 51-a:

> (a) The Legislature shall have the power . . . to provide . . . for assistance grants to needy dependent children and the caretakers of such children, needy persons who are totally and permanently disabled because of a mental or physical handicap, needy aged persons and needy blind persons.
>
> (b) The Legislature may provide by General Law for medical care, rehabilitation and other similar services for needy persons. . . .
>
> (c) . . . the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such federal matching money will be available for assistance and/or medical care for or on behalf of needy persons.

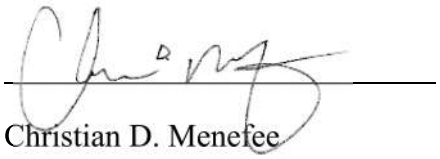
Section 51-a may be read as supporting the proposition that offering aid that complies with and is funded by federal aid programs accomplishes a public purpose—the public purpose here being endorsed by the federal legislation providing the funding.

As spending fully covered by federal funds and endorsed by the federal agency administering those funds, Uplift Harris also accomplishes the public purpose of disbursing federal aid to county residents.

Conclusion

For these reasons, the Attorney General should decline to issue an opinion in response to the request. Alternatively, the Attorney General should issue an opinion that counties' guaranteed income programs are authorized both by statute and the Constitution.

Respectfully submitted,



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