



Office of the Attorney General  
State of Texas

December 8, 1992

DAN MORALES  
ATTORNEY GENERAL

Honorable John T. Montford  
Chairman  
Finance Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 92-82

Re: Whether a municipality with a transit system created pursuant to article 1118x, V.T.C.S., may extend the system into another municipality (RQ-323)

Dear Senator Montford:

You inform us that the city of Socorro, Texas, has significant public mass transportation needs that cannot be satisfied because the city currently is unable to finance and operate a mass transit system. You ask whether the city of El Paso, which operates a mass transit department pursuant to article 1118z, V.T.C.S., may extend its transit system into Socorro and, if so, what legal procedures are necessary to accomplish this transaction. We conclude that a city that operates a mass transit system under article 1118z may not extend its jurisdiction beyond its corporate boundaries, but it may provide mass transit services by contract to a city which does not provide such services but has legal authority to do so.

Article 1118z authorizes the creation of a mass transit department in an incorporated city or town with a population of at least 56,000 that does not lie within a county that contains a "principal city" as defined by articles 1118x and 1118y, V.T.C.S., if the principal city is included in a transit authority created under either of those statutes. V.T.C.S. art. 1118z, §§ 2(a); 3(a). Article 1118z authorizes the levy and collection of a local sales and use tax to finance the transit system under certain conditions. *Id.* §§ 5; 8. The members of a city council that creates a department serve as members of the board of the department and are responsible for the general administration and operation of the department. *Id.* §§ 3(b); 4(a). A department is authorized to acquire, construct, own, operate, and maintain a transit system within the city or town, and is authorized to make contracts with private corporations and persons, the federal government, state agencies, and political subdivisions of the state. *Id.* § 6(c), (g).

In *City of Corpus Christi v. Continental Bus Systems, Inc.*, 445 S.W.2d 12 (Tex. Civ. App.--Austin 1969), writ ref'd n.r.e. *per curiam* 453 S.W.2d 470 (Tex. 1970), the court held that a home rule city operating a transit system pursuant to article 1118w, V.T.C.S. (discussed below), could operate its bus system outside its limits and suburbs where the legislature had not with unmistakable clarity withheld such authority from the city. However, article 1118z specifically states that the jurisdictional boundaries of the mass transit department are the same as the corporate limits of the city or town that created the department.<sup>1</sup> V.T.C.S. art. 1118z, § 3(c). Furthermore, because article 1118z authorizes the levy and collection of a sales tax in the city and the issuance of revenue bonds and notes to finance the transit department, *see id.* §§ 7, and 8, we believe a city may not "extend" its jurisdiction beyond its corporate boundaries.

Nevertheless, the Interlocal Cooperation Act ("the act"), codified as chapter 791 of the Government Code, may authorize the delivery of mass transit services to a neighboring municipality under these circumstances. The act allows a local government<sup>2</sup> to contract or agree with another local government to perform "governmental functions and services." Gov't Code § 791.011(a). "Governmental functions and services" is defined to mean any of a number of specifically enumerated services. *Id.* § 791.003(3)(A) - (L). The term does not expressly include public transportation services; however, it does include "other governmental functions in which the contracting parties are mutually interested." *Id.* § 791.003(3)(M). A contract to provide a governmental function or service under this act must be for a function or service that each of the contracting parties is authorized to perform individually. *Id.* § 791.011(c)(2). Thus, the answer to your specific question depends on whether the city of Socorro is itself authorized to provide mass transit services within its boundaries.

According to the 1990 decennial census, the population of Socorro is 22,995. SUPERINTENDENT OF DOCUMENTS, U.S. GOV'T PRINTING OFFICE, WASHINGTON, D.C., 1990 CENSUS OF POPULATION: GEN'L POPULATION CHARACTERISTICS OF

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<sup>1</sup>In contrast, article 1118w authorizes a city to operate a street transportation system "within [the] city, its suburbs, and adjacent areas." V.T.C.S. art. 1118w, § 1.

<sup>2</sup>"Local government" is defined as a "county, municipality, special district, or other political subdivision of this state or a state that borders this state" or a combination of those entities. Gov't Code § 791.003(4).

TEXAS, TABLE 1, SUMMARY OF GEN'L CHARACTERISTICS OF PERSONS 13 (1990). It therefore is not eligible to establish a mass transit department pursuant to article 1118z or to levy a sales tax for the purpose of financing a mass transit system under the act. V.T.C.S. art. 1118z, § 2(a) (act applies only to an incorporated city or town that operates a mass transportation system and has a population of at least 56,000). Article 1118w, however, authorizes any city or town to "own, hold, purchase, construct, improve, extend and operate street transportation systems for the carrying of passengers for hire within such city, its suburbs, and adjacent areas." V.T.C.S. art. 1118w, § 1. Section 1b of the statute declares that mass transportation services provided by a city either

*directly or through another entity by lease, contract, or any other manner* are essential governmental functions and not proprietary functions for all purposes, [if performed in accordance with this section]. [Emphasis added.]

Therefore, the city of Socorro is equipped with sufficient statutory authority to provide mass transportation services, which is declared to be a governmental function, within its boundaries. Accordingly, we conclude that the city of Socorro and the city of El Paso may contract for the delivery of mass transit services pursuant to the Interlocal Cooperation Act.

The Interlocal Cooperation Act requires an agreement or contract executed pursuant to the act to be authorized by the governing bodies of each party to the contract. Gov't Code § 791.011(d)(1). The contract must state the purpose, terms, rights, and duties of the parties, and it must specify that payments for services under the agreement are made from current revenues available to the paying party. *Id.* § 791.011(d)(2), (3). Payments made pursuant to a contract must fairly compensate the performing party for the services or functions performed under the contract. *Id.* § 791.011(e). In addition, should both cities agree to enter into a contract for mass transportation services, each must abide by the terms of any applicable city ordinance, home rule charters, or state law.

## S U M M A R Y

A city operating a mass transit department pursuant to article 1118z, V.T.C.S., may provide public mass transportation services within the corporate limits of a city that does not provide such services to its residents, provided such services are

delivered pursuant to a contract executed by the governing bodies of both cities in accordance with the Interlocal Cooperation Act (Gov't Code ch. 791) and any applicable city ordinance, home rule charter provision, or state law.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragón". The signature is fluid and cursive, with a prominent initial "S" and a stylized "A".

Steve Aragón  
Assistant Attorney General  
Opinion Committee