



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

January 25, 1996

The Honorable Garry Mauro
Commissioner
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

Letter Opinion No. 96-008

Re: Whether the Houston Metropolitan
Transit Authority may provide buses for use
during the 1996 Olympic Games in
Atlanta (ID# 38134)

Dear Commissioner Mauro:

You request our opinion "as to whether state constitutional prohibitions against grants of public money prevent the Houston Metropolitan Transit Authority . . . from providing buses for use during the 1996 Olympic Games in Atlanta, Georgia."

You indicate that the Atlanta Committee for the Olympic Games ("ACOG") "anticipates using 2,000 buses to meet the transportation needs during the Olympic Games." The Federal Transit Administration (the "FTA") "has requested that transit agencies across the nation provide transportation assistance to ACOG to help make hosting these Olympic Games a national success." ACOG and the FTA "have asked Houston METRO to assist by providing approximately 75 liquefied natural gas . . . fueled buses." Transit authorities in Austin, Dallas, and San Antonio "have also pledged the use of some of their natural gas buses and, together with the Houston buses, they comprise a significant portion of ACOG's planned natural gas fleet for the Olympics."

You further explain:

The FTA . . . would fund the transportation costs of the buses to and from Atlanta. ACOG would maintain and care for the buses while in the Atlanta area. Therefore, aside from staff time expended in working out the transaction details, Houston METRO should incur no other expenditures. The agreement would require ACOG to pay METRO a nominal fee per vehicle. Additionally, ACOG would agree to provide publicity for METRO regarding the use of the buses during the Olympics. Houston METRO would receive promotional material and support that directly link it with the Olympic Games. ACOG would also work with Houston METRO to promote its partnership with the Olympic Games through press releases and press conferences.

The 1996 Olympic Games provide an unprecedented platform for a transit authority to showcase itself and its buses. It is estimated that sixty percent of the world's population will watch the Olympic Games on television. As a result, substantial benefits would derive from publicity associated with the use of the buses. The publicity would highlight Houston METRO's leadership in advancing alternatively fueled transportation technology... The resultant positive publicity would, like any advertisement, be a very tangible benefit for METRO... [Footnote omitted.]

Article III, section 52, Texas Constitution, provides in part that

the 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, association or corporation whatsoever

Houston METRO "is a public political entity and corporate body." Transp. Code § 451.052. You indicate that the governing board of METRO has expressed concern that furnishing its buses to ACOG might contravene the "grant [of] public money or thing of value" prohibition of article III, section 52.

This office has on numerous occasions stated that the "expenditure or grant" provision of article III, section 52, and its equivalent for state entities, article III, section 51,

are not violated when public funds are expended for the achievement of a public purpose, when the public receives adequate consideration in return, and when the governmental body retains control over the use of the funds to ensure that the public purpose is achieved.

Attorney General Opinion JM-1030 (1989). Although the test has been stated differently in the various opinions, its basic components are (1) whether the expenditure or grant promotes a public purpose of the particular governmental body, (2) whether the governmental body receives an adequate quid pro quo¹ in exchange for its expenditure or grant, and (3) whether the governmental body maintains controls over the transaction sufficient to ensure that its public purpose will be accomplished. See Attorney General Opinions DM-317 (1995), DM-256 (1993), DM-67 (1991), DM-66 (1991), JM-1146 (1990), JM-1091, JM-1030 (1989), JM-324 (1985), JM-220, JM-157 (1984); Letter Opinion Nos. 94-036 (1994), 94-008 (1994), 93-93 (1993), 93-11 (1993), 92-71 (1992), 90-97 (1990). These decisions have also emphasized that the determination of these factors must be left, in the first instance, to the sound discretion of the governmental body, subject to judicial review. Attorney General Opinion DM-317 (1995).

¹A "quid pro quo" may include any "thing of value." Tex. Const. art. III, § 52.

We believe that these principles are equally applicable to the situation you have described. In order for Houston METRO to donate the use of its buses to ACOG without contravening the prohibitions of article III, section 52, METRO's governing board should determine that the transaction will serve one or more public purposes of METRO, as articulated by the board, and that, under its terms, METRO will receive an adequate quid pro quo in exchange for making its buses available. Furthermore, METRO must make certain that, during the period of the transaction, it maintains sufficient controls to ensure that the articulated public purposes will be accomplished.

S U M M A R Y

The governing board of the Houston Metropolitan Transit Authority ("METRO") may, without contravening article III, section 52, Texas Constitution, furnish buses to the Atlanta Committee for the Olympic Games for use during the 1996 Olympic Games, *provided* the governing board of METRO determines that the transaction will serve one or more public purposes of METRO, as articulated by the board, and that METRO will receive thereby an adequate quid pro quo. The governing board must also make certain that, during the period of the transaction, it maintains controls sufficient to ensure that such public purposes will be accomplished.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee