



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 13, 1996

The Honorable Fred Hill  
Chair  
Committee on Urban Affairs  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-063

Re: Whether a municipality may impose a "user fee" on the grant of building permits and donate the fees collected to a school district to build schools within the city limits (RQ-851)

Dear Representative Hill:

A member of the board of trustees of the Plano Independent School District has proposed that the City of Plano impose a "user fee" on the grant of building permits and donate the fees collected to the school district to spend on the construction of new schools within the city limits. On behalf of the City of Plano, you inquire about the legality of implementing this proposal.

Article III, section 51 of the Texas Constitution prohibits the legislature from granting or authorizing the grant of public funds "to any individual, association of individuals, municipal or other corporations whatsoever." Article III, section 52 of the Texas Constitution provides, with certain exceptions not relevant to your question, 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 . . . .

Tex. Const. art. III, § 52(a).

These provisions do not prevent a city from spending its funds to carry out a municipal purpose, even if another entity also benefits from the expenditure. *Barrington v. Cokinos*, 338 S.W.2d 133 (Tex. 1960); see *State ex rel. Grimes County Taxpayers Ass'n v. Texas Mun. Power Agency*, 565 S.W.2d 258 (Tex. Civ. App.--1978, writ *dism'd*). However, since funding the construction of buildings for a school district is not a municipal purpose, Attorney General Opinion JM-1255 (1990) at 7, the proposed transfer of funds from the City of Plano to the Plano Independent School District would be a gift of the city's public funds to the school district in violation of article III, sections 51 and 52. See *San Antonio Indep. Sch. Dist. v. Board of Trustees of the San Antonio Elec. & Gas Sys.*, 204 S.W.2d 22, 25 (Tex. Civ. App.--San Antonio 1947, writ *ref'd n.r.e.*) (city

may not donate tax collections to school district); *City of El Paso v. Carroll*, 108 S.W.2d 251, 257 (Tex. Civ. App.--El Paso 1937, writ ref'd) (city of El Paso could not lend public funds to school district of which the city had assumed control); Attorney General Opinion JM-1255 (1990) at 4 (city may not use revenue bond powers to assist school district to acquire a school building); *see also Edgewood Indep. Sch. Dist. v. Meno*, 893 S.W.2d 450, 473 (Tex. 1995) (school district's transfer of funds outside of district pursuant to public school financing legislation was not an unconstitutional grant of public funds). Accordingly, the City of Plano may not donate public funds to the Plano Independent School District to be spent on the construction of school buildings.

### S U M M A R Y

The City of Plano may not donate public funds to the Plano Independent School District to be spent on the construction of school buildings. The transfer of funds would constitute a gift to the school district in violation of article III, sections 51 and 52 of the Texas Constitution.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee