



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1996

The Honorable John Sharp
Comptroller of Public Accounts
Office of the Comptroller
State of Texas
P.O. Box 13528
Austin, Texas 78711

Letter Opinion No. 96-110

Re: Whether a city is authorized to combine in a single proposition proposals for voting on adoption of an economic development tax under section 4B, V.T.C.S. article 5190.6 and an additional sales and use tax under Tax Code section 321.101(b) (ID# 34757)

Dear Mr. Sharp:

You question the ballot language used by a city in an election on imposition of an additional sales and use tax under section 321.101(b), Tax Code, and an economic development tax under V.T.C.S. article 5190.6, section 4B. The city presented to the voters in the election a single proposition which read:

The adoption of a sales and use tax within the City of Carthage, Texas, for the promotion and development of new and expanded business enterprises at the rate of one-quarter of one percent (1/4%) (Article 5190.6, Sec. 4B) and the adoption of an additional sales and use tax within the city at the rate of one-quarter of one percent (1/4%) (Chapter 321 of the Tax Code) to be used to reduce the property tax rate.

In our opinion, the city was not authorized to present to the voters as a single proposition the proposals for adopting these two taxes.

Chapter 321, in section 321.404, sets out verbatim the ballot language to be used in an election to adopt an additional sales and use tax under section 321.101(b). While article 5190.6 provides in subsection (p) of *section 4A* ballot language for a single proposition for adopting simultaneously an economic development tax under *section 4A* and a section 321.101(b) additional sales and use tax, there is no provision for voting in one proposition on adoption of a *section 4B* tax and a section 321.101(b) additional sales and use tax.

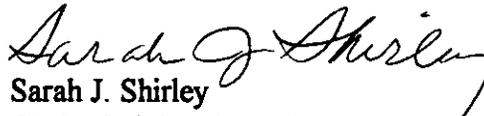
An opinion of our office, Attorney General Opinion DM-218, cited in your request, concluded that under these provisions a city was "not authorized to join a proposal to adopt a combined sales and use tax under section 4A and section 321.101(b) and a proposal to adopt a sales and use tax under section 4B on the ballot as a single

ballot proposition.” Attorney General Opinion DM-218 (1993) at 3. In support of its conclusion, Attorney General Opinion DM-218 cited *Wright v. Board of Trustees of Tatum Independent School District*, 520 S.W.2d 787, 792 (Tex. Civ. App.--Tyler 1975, writ dismissed w.o.j.), for the proposition that where a statute sets out the ballot language for an election, that language must be strictly complied with. *Id.* at 792. We think that this reasoning disposes of your query here as well. Chapter 321 sets out the ballot language for voting on a section 321.101(b) additional sales and use tax and there is no provision for adding to such language in the same proposition a proposal for adoption of an article 5190.6, section 4B economic development tax. Moreover, the fact that the legislature has provided in subsection (p) of section 4A of article 5190.6 for a combined proposition on a section 4A tax and a section 321.101(b) tax reinforces, we think, the conclusion that, given the absence of a similar provision for voting in a single proposition on a section 4B tax and a section 321.101(b) tax, a city is without authority to combine proposals for a section 4B tax and a section 321.101(b) tax in a single proposition.

S U M M A R Y

A city is not authorized to combine in a single proposition proposals for voting on adoption of an economic development tax under section 4B, V.T.C.S. article 5190.6, and an additional sales and use tax under Tax Code section 321.101(b).

Very truly yours,


Sarah J. Shirley
Chair, Opinion Committee