



Office of the Attorney General
State of Texas

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December 12, 1996

The Honorable Debra Danburg
Chair, Committee on Elections
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-134

Re: Creation of alcohol-free school
zones (ID# 38781)

Dear Representative Danburg:

You have requested our opinion regarding the creation of alcohol-free school zones. Section 109.33 of the Alcoholic Beverage Code provides, in relevant part:

(a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

(1) 300 feet of a church, public school, or public hospital; or

(2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code.

You first ask whether the term "public school" as used in subsection (a)(1) of section 109.33 includes schools that are not operated by "conventional public school districts," such as "private and parochial schools, charter schools, preschool programs operated by churches and day care centers, colleges, universities and special education facilities that provide alternative programs for students with disabilities."

The term "public school" is not defined in either the Alcoholic Beverage Code or the Education Code. It is defined in the Government Code "as an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds." Gov't Code § 821.001(12). Furthermore, the Education Code declares that it is applicable "to all educational institutions supported in whole or in part by state tax funds unless specifically excluded by this code." Educ. Code § 1.001.

In Attorney General Opinion M-749, this office held that, under the predecessor statute to section 109.33, article 666-25a, V.T.C.S., the University of Houston was a

“public school.” The opinion said that a “public school” was to be “distinguished from a private, parochial, sectarian, or denominational school,” and that a school’s proper classification “is to be determined by its control.” Attorney General Opinion M-749 (1970) at 2. The opinion declared that

[i]t is evident from the use of the term “public school” as used throughout the [Education] Code that it is meant to include tax-supported educational institutions, which are not necessarily confined to elementary and secondary education but to higher state-supported institutions as well.

Id. at 3.

In Letter Opinion No. 89-55, this office considered whether a “community school” was a “public school” for purposes of section 109.33. Letter Opinion No. 89-55 (1989). The opinion concluded that such a school was not embraced within the statute because it was not “government-funded.” *Id.* at 2. In accordance with Attorney General Opinion M-749 and Letter Opinion No. 89-55, we believe it may fairly be said that an institution is a “public school” for purposes of section 109.33(a)(1) of the Alcoholic Beverage Code if it is supported, in whole or in part, by public funds. Attorney General Opinion M-749 (1970) at 3; Letter Opinion No. 89-55 (1989) at 1. A determination of whether any particular institution is a “public school” would require the resolution of factual matters not properly addressed in the opinion process. A commissioners court or a municipal governing body is the appropriate body to make that determination, however, and, with respect to any institution properly denominated a “public school,” a commissioners court or a municipal governing body may, on its own initiative, prohibit the sale of alcoholic beverages within 300 feet thereof.

You also ask what constitutes a “public school” under subsection (a)(2) of section 109.33. Section 38.007 of the Education Code provides:

(a) The board of trustees of a school district shall prohibit the use of alcoholic beverages at a school-related or school-sanctioned activity on or off school property.

(b) The board of trustees of a school district shall attempt to provide a safe alcohol-free environment to students coming to or going from school. The board of trustees may cooperate with local law enforcement officials and the Texas Alcoholic Beverage Commission in attempting to provide this environment and in enforcing Sections 101.75, 109.33, and 109.59, Alcoholic Beverage Code. Additionally, the board, if a majority of the area of a district is located in a municipality with a population of 900,000 or more, may petition the commissioners court of the county in which the district is located or the governing board of an incorporated city or town in

which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

Although the term "public school" may, in general, be sufficiently broad to encompass all of the institutions to which you refer, its scope in subsection (a)(2) of section 109.33 of the Alcoholic Beverage Code, and section 38.007 of the Education Code, is necessarily circumscribed by the context of the statute. Section 38.007 is a general directive to *all* school district boards of trustees with regard to the use of alcoholic beverages. Both statutes authorizing the adoption of 1000-foot zones under the specific and limited circumstances described were enacted in 1995. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 260, §§ 1, 7, 1995 Tex. Gen. Laws 2207, 2369, 2472 (enacting Educ. Code § 38.007, Alco. Bev. Code § 109.33(a)(2)). Those provisions clearly contemplate only the kind of "public school" that is operated by the "board of trustees of a school district" located "in a municipality with a population of 900,000 or more." In our opinion, only a school that is operated by such a "district" is eligible to be included within a 1000-foot zone.

S U M M A R Y

A "public school" for purposes of subsection (a)(1) of section 109.33 of the Alcoholic Beverage Code is any institution supported, in whole or in part, by public funds. With respect to any such institution, a commissioners court or the governing body of a municipality may, on its own initiative, designate a 300-foot "alcohol-free zone." However, for purposes of subsection (a)(2) of section 109.33 of the Alcoholic Beverage Code, and section 38.007 of the Education Code, only a school operated by a "school district" located in a municipality of 900,000 or more is eligible to be included within a 1,000-foot "alcohol-free zone."

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee