



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 12, 1996

The Honorable Stephen H. Smith
District Attorney, 119th Judicial District
124 West Beauregard
San Angelo, Texas 76903

Letter Opinion No. 96-136

Re: Whether a county may use a five cent surcharge on the sale of items from vending machines in the county courthouse for an employee benefit fund (ID# 38943)

Dear Mr. Smith:

You ask whether the use of a fund accrued from a five cent surcharge on purchases from vending machines in the county courthouse to buy "small gifts, plaques, or flowers for funerals, weddings, or retirement of county employees" would violate article III, section 52 of the Texas Constitution. In our view, it would not.

As you explain the situation, "Many County Courthouses have vending machines on their premises. Often, the only benefit of the machines is employee convenience. Some counties, however, receive an extra five cents per item sold and use these funds for the sole purpose of buying small gifts, plaques or flowers for funerals, weddings, or retirements of county employees."¹

Article III, section 52 of the Texas Constitution reads, in relevant part, "[T]he Legislature shall have no power to authorize any county . . . to grant public money or thing of value . . . to any individual . . ." You ask whether the use of the fund you describe for the purposes you describe falls afoul of this section.

You suggest that article III, section 52 may not apply because of "the insignificant value of five cents per item sold." We disagree. First, it is the disbursement rather than the collection of the fund which would arguably violate section 52. Second, there is in any event no *de minimis* exception in the constitutional language.

However, we agree that the increase in employee morale likely to flow from the practice you describe does serve a public purpose. This office has repeatedly considered the question of whether improvement of employee morale constituted such a public purpose. In Attorney General Opinion JM-1156, we held that leasing state-owned space for child care facilities at less than fair market value did not violate article III, section 51, the analogous constitutional provision dealing with state property, because "improv[ing] employee performance is a public purpose." JM-1156 (1990) at 5. In Letter Opinion No. 88-94, we held that the inclusion of a single guest for each employee at an

¹You do not describe how and under what authority the counties collect this surcharge. Accordingly, we will assume for the purpose of this question, but we do not decide, that the county has authority to collect such a surcharge.

employee awards banquet paid for by county funds did not violate article III, section 52. Our conclusion in that case was:

If the county determines that the goal of boosting employee morale and providing recognition to employees will best be accomplished by allowing each employee to invite one guest, we cannot say as a matter of law that a public purpose is not served.

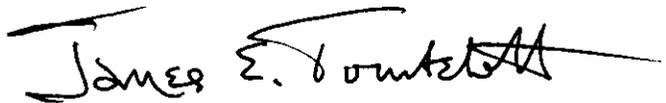
Letter Opinion No. 88-94 (1988) at 1.

It is for the county to determine whether the provision of such inexpensive perquisites as those you describe will serve the public purpose of increasing employee morale and employee productivity. Should the county make such a determination, we do not believe that a court would find it to have violated article III, section 52.

S U M M A R Y

A county may use the proceeds of a five cent surcharge on vending machines in the county courthouse to purchase small gifts, plaques, or flowers for funerals, weddings, or retirements of county employees if the county determines that such use will enhance employee morale. Such an expenditure would not as a matter of law violate article III, section 52 of the Texas Constitution.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee