



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1998

The Honorable José R. Rodríguez
El Paso County Attorney
County Courthouse
500 East San Antonio, Room 203
El Paso, Texas 79901

Letter Opinion No. 98-002

Re: Whether article 37.122 of the Education Code prohibits the sale of alcoholic beverages at non-school events held at a student activities complex owned by an independent school district (RQ-1003)

Dear Mr. Rodríguez:

You have requested our opinion as to whether article 37.122 of the Education Code "prohibit[s] the sale of alcoholic beverages at an independent school district-owned Student Activities Complex (football and track facility) when such a facility is leased for non-school related or sponsored events." You indicate that the Socorro Independent School District owns a 10,000-seat stadium that is located at some distance from any public school.¹ No classrooms are located on the stadium grounds, but some administrative offices are housed thereon. In order to supplement its revenues, the district would like to lease the facility to private operators for non-school related or sponsored events, and to make the lease terms more attractive, permit the sale of alcoholic beverages at those events.²

Section 37.122 of the Education Code provides, in pertinent part:

(a) A person commits an offense if the person possesses an intoxicating beverage for consumption, sale, or distribution while:

(1) on the grounds or in a building of a public school; or

(2) entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by a public school of this state is being held.

¹You state that the nearest public school, Sierra Vista School, is approximately 1.3 miles from the stadium.

²An independent school district is authorized to permit school property to be used for private purposes so long as such use does not affect its use as school property. *Royse Indep. Sch. Dist. v. Reinhardt*, 159 S.W. 1010 (Tex. Civ. App.—Dallas 1913, writ ref'd). See also Attorney General Opinions O-167 (1939) (district may charge fees for use of school gymnasium as public skating rink); O-2350 (1940) (district may open swimming pool to public during summer months and charge fee for its use).

You suggest that a "public school" under subdivision (1) of subsection 37.122(a) should not be read to include an "enclosure, field, or stadium," because, otherwise, subdivision (2) would be redundant. But that is not the case. The intent of subdivision (2) may be simply to prohibit the sale of alcoholic beverages at school-related events taking place at sites that are not owned by the district, such as the Houston Astrodome, the San Antonio Alamodome, or Texas Stadium in Irving. Nevertheless, we believe that the stadium you have described to us does not fall within the ambit of a "public school" in subdivision (1).

Neither "school" nor "public school" is defined in the Education Code.³ In *Rodgers v. Texas Liquor Control Board*, 449 S.W.2d 292 (Tex. Civ. App.--Corpus Christi 1970, no writ), however, the court considered a provision of the Penal Code that prohibited the sale of beer within 300 feet of any "church, public school, or public hospital."⁴ The district court had denied a beer retailer's application for an off-premises license, on the ground that the proposed location was 196 feet from a school bus depot and 219 feet from the gate of the high school stadium, and thus, within 300 feet of a "public school." The court reversed, holding that "the distance [to] the nearest school building (a library) was 758 ½ feet," and that "the depot and stadium are not public schools within the meaning of the statute."⁵

In our opinion, *Rodgers* is dispositive of your inquiry. In that case, the liquor license applicant's place of business was less than 800 feet from an acknowledged "school building," while in the situation you pose, it is almost ten times that distance. Furthermore, the legislative intent of preventing the sale of alcoholic beverages at the stadium for all school-related or school-sponsored events will be amply served by subdivision (2) of subsection 37.122. We conclude, therefore, that subsection 37.122 does not prohibit the sale of alcoholic beverages at the Student Activities Complex owned by the Socorro Independent School District except during an athletic event sponsored or participated in by a public school of this state.

³See Letter Opinion No. 96-134 (1996).

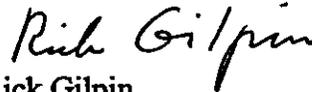
⁴See Alco. Bev. Code § 109.33(a).

⁵*Rodgers*, 449 S.W.2d at 294. In a subsequent Colorado case, the court distinguished *Rodgers* in construing a statute that prohibited the sale of liquor within "500 feet from the nearest property line of 'the land used for school purposes.'" *La Loma, Inc. v. City and County of Denver*, 572 P.2d 1219, 1220 (Colo. App. 1977).

S U M M A R Y

Subsection 37.122 of the Education Code does not prohibit the sale of alcoholic beverages at the Student Activities Complex owned by the Socorro Independent School District except during an athletic event sponsored or participated in by a public school of this state.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee