



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1998

The Honorable Jerry Patterson
Chair, Committee on Veteran
Affairs & Military Installations
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 98-062

Re: Whether the Industrial Development Corporation of the City of League City may expend article 5190.6, section 4B tax proceeds to fund the maintenance and operating costs of a project (RQ-1129)

Dear Senator Patterson:

You ask whether the Industrial Development Corporation of the City of League City (the "development corporation") may expend article 5190.6, section 4B¹ tax proceeds to fund the maintenance and operating costs of a project.² We conclude that subsection (a-2) of section 4B precludes the development corporation from expending section 4B tax proceeds for that purpose unless the City of League City (the "city") follows certain procedural steps, including publishing notice. Given that the voters of the city have not approved the use of section 4B tax proceeds for maintenance and operating costs of a project at an election, the city must hold an election to approve the use of section 4B tax proceeds for this purpose if it receives a petition from more than 10 percent of the voters.

Subsection (a-2) of section 4B provides in pertinent part as follows:

The costs of a publicly owned and operated project that is purchased or constructed under this section include the maintenance and operating costs of the project, and the proceeds of taxes may be used to pay the maintenance and operating costs of a project, unless within 60 days after first publishing notice of this specific use of the proceeds of the taxes the governing body of the city receives a petition from more than 10 percent of the registered voters of the city where the petition requests that an election be held before the proceeds of taxes imposed under this section may be used to pay the maintenance and operating costs of a project. An election is not required to be held after the submission of a petition if the qualified citizens of the city

¹V.T.C.S. art. 5190.6, § 4B.

²See *id.* §§ 2(10), 4B(a)(2) (defining "project").

have previously approved that the costs of a publicly owned and operated project purchased or constructed under this section include the maintenance and operating costs of the project and that the proceeds of taxes may be used to pay the maintenance and operating costs of a project, at an election called for that purpose by the governing body of the city or in conjunction with another election required to be held under this section.

We are not aware of any judicial or attorney general opinion construing this language. We believe that subsection (a-2) allows for the possibility that section 4B proceeds may be used to pay for maintenance and operating costs of a development corporation project, but only if the city follows certain procedural requirements and, in certain circumstances, obtains voter approval. First, the city must publish notice that section 4B tax proceeds will be used to pay for maintenance and operating costs of a project. Second, the city must submit the proposed use to the voters if “within 60 days after first publishing notice of this specific use of the proceeds of the taxes the governing body of the city receives a petition from more than 10 percent of the registered voters of the city”³ that requests that “an election be held before the proceeds of taxes imposed under this section may be used to pay the maintenance and operating costs of a project.”⁴

The final sentence of subsection (a-2) provides that a city that receives a petition is not required to hold an election

if the qualified citizens of the city have previously approved that the costs of a publicly owned and operated project purchased or constructed under this section include the maintenance and operating costs of the project and that the proceeds of taxes may be used to pay the maintenance and operating costs of a project, at an election called for that purpose by the governing body of the city or in conjunction with another election required to be held under this section.⁵

This language is silent with respect to how one determines whether the voters approved maintenance and operating cost expenditures at a prior election. We believe, however, that if a city receives a petition requesting a special election on use of section 4B sales tax proceeds for maintenance and operating costs, the city will be required to call such an election unless a proposition in a prior election *expressly provided* that section 4B tax proceeds would be used for maintenance and operating costs of a project. The purpose of subsection (a-2) is to ensure that voters receive specific prior notice that section 4B tax proceeds will be used for maintenance and operating costs and to ensure that the voters specifically approve such use in an election. Any other reading of the final

³*Id.* § 4B(a-2).

⁴*Id.*

⁵*Id.*

sentence of subsection (a-2) would be inconsistent with this purpose. Thus, a city that receives a petition for an election on maintenance and operating cost expenditures is excused from holding an election only if the voters approved a proposition expressly providing for such expenditures at a prior election.

You inform us that the proposition presented to the voters of the City of League City in 1994 regarding the development corporation provided as follows:

Shall the City of League City, Texas, be authorized to levy a sales tax of one-fourth (1/4) of one percent within the City as authorized by Section 4B, Tex. Rev. Civ. Stat. Ann. art. 5190.6, as amended, for the benefit of an industrial development corporation of the City to be created, for the promotion and development of amateur sports facilities, including the costs of amateur sports facilities and the payment of the principal of, interest on, and other costs related to the bonds or other obligations issued by the industrial development corporation to pay the costs of amateur sports facilities

As you note, this proposition does not make any specific mention of maintenance and operating costs. Nor does it appear that the voters of the city have approved the use of section 4B tax proceeds for maintenance and operating costs in a subsequent election. Again, we construe the last sentence of subsection (a-2) to require that a prior proposition presented to the voters expressly provide that section 4B tax proceeds will be used for maintenance and operating costs of a project in order to excuse the city from holding an election if it receives a petition. Accordingly, the voters of the city have not "previously approved that the costs of a publicly owned and operated project purchased or constructed under this section include the maintenance and operating costs of the project and that the proceeds of taxes may be used to pay the maintenance and operating costs of a project."⁶ For this reason, if, after publishing the requisite notice, the city receives a petition from more than 10 percent of the voters challenging the use of section 4B proceeds for maintenance and operations costs, it will be required to hold an election.⁷

⁶*Id.*

⁷You quote language from the Petition for Creation of an Industrial Development Corporation of the City of League City, from the city ordinance relating to the formation of the development corporation, and from the development corporation's bylaws. We do not believe that these documents are relevant to your question. Section 4B(a-2) provides that a subsequent election on use of section 4B tax proceeds for maintenance and operating costs is not necessary if that use has already been approved at "an election called for that purpose by the governing body of the city." We believe that subsection (a-2) requires us to evaluate the 1994 proposition on its face; we do not believe that the documents you cite are relevant to determining whether the voters have previously approved the use of section 4B tax proceeds for maintenance and operating costs of a project. Nor do we believe that these documents constitute the kind of specific, published notice of use of tax proceeds contemplated by subsection (a-2).

In sum, under section 4B(a-2), section 4B tax proceeds may not be used to pay for maintenance and operating costs of a project unless the city publishes notice of this proposed use. If the proposed use is challenged by a petition of more than 10 percent of the voters within 60 days of the notice, the city will be required to hold an election to obtain voter approval of the proposed use.

S U M M A R Y

Under V.T.C.S. article 5190.6, section 4B(a-2), section 4B tax proceeds may not be used to pay for maintenance and operating costs of a project unless the city publishes notice of this proposed use. If the proposed use is challenged by a petition of more than 10 percent of the voters within 60 days of the notice, the City of League City will be required to hold an election to obtain voter approval of the proposed use because such use has not been approved in a prior election.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee