



RECEIVED

OCT 01 1997

Opinion Committee

STEVEN D. WOLENS  
STATE REPRESENTATIVE

State of Texas  
House of Representatives  
Austin  
September 30, 1997

CAPITOL OFFICE:  
P.O. BOX 2910  
AUSTIN, TEXAS 78768-2910  
(512) 463-0746

DISTRICT OFFICE:  
3102 OAK LAWN AVENUE  
SUITE 700  
DALLAS, TEXAS 75219  
P.O. BOX 223562  
DALLAS, TEXAS 75222-3562  
(214) 528-5566

FILE # ML-39823-97

I.D. # 39803

The Honorable Dan Morales  
Attorney General  
State of Texas  
P. O. Box 12548  
Austin, TX 78711

*RQ-1002*

Re: Referendum on Stadium  
Tax Authorization

Dear General Morales:

The 75<sup>th</sup> Texas Legislature passed House Bill 92 ("Act"), effective September 1, 1997.

Section 7 of the Act provides that a referendum election held before the effective date of the Act in a county or municipality obviates the necessity of a second election to implement the funding of a "sports and community project."

Section 7 appears constitutionally infirm for two reasons: 1) The voters of Harris County, Texas have effectively imposed a tax on themselves without notice in the ballot language (November, 1996 referendum) of what the method of taxation would be and the rate of such taxation; and 2) Harris County residents suffer discrimination because they constitute the only county or municipality in the state that will not be given the opportunity, through a referendum, to approve or disapprove of the method and rate of taxation to fund an authorized sports project.

The Harris County referendum election of November, 1996 posed the following ballot proposition:

\_\_\_\_\_

Note: If the opinion staff refers to LO 96-120 (Nov. 1, 1996), it should be noted that the letter was based on proposed legislation substantially different from H.B. 92 and issued prior to the November referendum in Harris County.

“Authorizing Harris County to establish and operate new or renovated stadiums, arenas, and other facilities for professional baseball and football teams, provided that no county real or personal property taxes are spent to acquire, construct, or equip these facilities.”

Patently, this ballot proposition did not disclose to the voters that a specific tax (auto rentals or hotel room taxes) would be a method of funding.

Texas courts consistently and uniformly have held that ballot language should contain such descriptive language as to fairly portray the main features of the proposition in plain words such that it can be understood by the voters. *Wright v. Board of Trustees*, 520 S.W.2d 787 (Tex. Civ. App. - Tyler 1975, writ dismissed); *Moore v. City of Corpus Christi*, 542 S.W.2d 720 (Tex. Civ. App. - Corpus Christi 1976, writ refused n.r.e.)

Unquestionably the November ballot did not “fairly portray the **main feature** of the proposition” since the method of funding and the taxes to be levied were not disclosed to the voters.

Article 1, §19 of the Texas Constitution provides: “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law.” Requirements of this due process as related to notice in any proceeding where a person might be deprived of property rights are applicable to proceedings for assessment of costs of public improvements. *City of Houston v. Fore*, 412 S.W.2d 35 (Sup. Ct. 1967) and citing U.S.C.A. Constitution, Amendment 14. The levying and collection of taxes directly relate to property rights of citizens. *Eguia v. Thompkins*, 756 F.2d 1130 (CA 5 - 1985).

*Fore, ib.*, stands as well for the principle that the constitutional necessity of notice cannot be proscribed by “legislative grace” (*ib.*, p. 38). Section 7 of the Act cannot validly obviate the constitutional requirements for disclosing to the referendum voter the method and rate of taxation. Due process is a limitation upon arbitrary power and a guarantee against arbitrary legislation. *Nebbia v. New York*, 291 US 502 (1934); *Heiner v. Donnan*, 285 US 312 (1932). Due process of law is secured if the law operates on all persons alike and the individual is not subject to an arbitrary exercise of the powers of government. *Ex Parte Sizemore*, 8 S.W.2d 134 (Tex. Cr. App. - 1928).

Due process reaches those situations where the deprivation of a property right is accomplished by legislation which can, by operating in the future, destroy the enjoyment of this valuable right. *Poe v. Ullman*, 367 US 497 (1961). Section 7 of House Bill 92 constitutes a legislative act which deprives Harris County voters of the right to approve or disapprove of the method and rate of taxation that will take their property via such taxation.

Secondly, the effectuation of Section 7 operates to discriminate against Harris County residents. Equal protection requires that the same means and methods be applied impartially to all constituents of a class – herein statewide voters who must approve or disapprove of funding for local sports projects – so that the law operates equally and uniformly on all persons situated

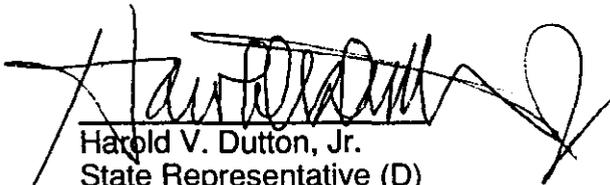
in similar circumstances. (§199 TJ<sub>3</sub>, citing both state and federal authorities.) The application of Section 7 of the Act discriminates against Harris County residents since they are the only citizens of Texas that, by provision of Section 7, do not have the due process right of voting in a referendum where adequate disclosure and notice is given in ballot language of the method and rate of taxation to fund a sports project. Statutory provisions that give a special privilege to one classification of citizens, where a general law could be made applicable, are unconstitutionally discriminatory. *Brown v. M. W. Kellogg Co.*, CA 5 (Tex), 743 F 2d 265 (1984). In *Brownfield v. Toungeate*, 109 S.W.2d 352 (CCA Amarillo - 1937, no writ hist.), the Court declared a classification based on existing or **past** conditions or facts excluding persons, places, things or objects thereafter coming into the same situation or condition is "special" or void. The referendum of November, 1996 and subsequently relied on in the provisions of Section 7, created a classification for Harris County that is void under the mandate of *Brownfield*, *ib.*

Considering the facts and law recited above, we request an opinion of the Attorney General answering the following questions:

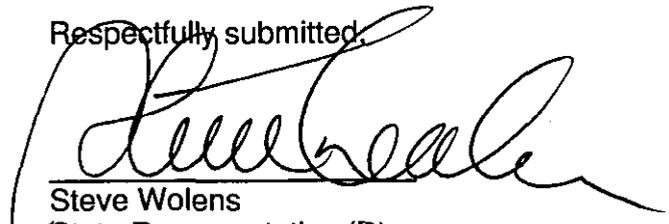
- (1) Is Harris County, irrespective of Section 7 of H.B. 92 (75<sup>th</sup> Legislature), now required to hold a referendum election before it can impose the taxes authorized in H.B. 92?
- (2) Should any Harris County referendum ballot comply with the requirements of disclosure required of other sports or community projects in H.B. 92?
- (3) Is Section 7 of H. B. 92 unconstitutional because it discriminates against the voters of Harris County?

The prompt attention of your Opinion Committee will be greatly appreciated.

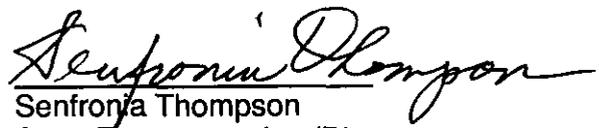
Respectfully submitted,



Harold V. Dutton, Jr.  
State Representative (D)  
District 142



Steve Wolens  
State Representative (D)  
District 103  
Chairman, House State  
Affairs Committee



Senfronia Thompson  
State Representative (D)  
District 141  
Chair, House Judiciary Committee