



JOSÉ R. RODRÍGUEZ
COUNTY ATTORNEY

EL PASO COUNTY, TEXAS
COUNTY COURTHOUSE
500 E. SAN ANTONIO, ROOM 203
EL PASO, TEXAS 79901

(915) 546-2050
FAX: (915) 546-2133

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Opinion Committee

FILE # ML-39793-97
I.D. # 39793

September 10, 1997

RO-1003

The Honorable Dan Morales
Attorney General, State of Texas
Attn: Opinion Committee Chairperson
P.O. Box 12548
Austin, Texas 78711-2548

**RE: Socorro Independent School District (El Paso County, Texas);
Request for Attorney General's opinion:**

Does Article 37.122 of the Education Code prohibit 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?

Dear Attorney General Morales:

This is a request on behalf of the Socorro Independent School District ("School District") in El Paso County, Texas for an Attorney General's opinion regarding the interpretation of Article 37.122 (specifically, subparagraph (1)) of the Texas Education Code in those instances where a School District-owned Student Activities Complex ("SAC") is leased to a private enterprise and alcoholic beverages are sold. In those instances, the School District and none of its schools would sponsor or participate in the activity proposed under the lease terms. Specifically, is the SAC considered "on the grounds or in a building of a public school."

Statement of Facts

Socorro Independent School District owns what is referred to as a Student Activities Complex, which is basically a stadium designed to accommodate many activities, including football and track

events. No classrooms are located on the premises, however, some administrative offices are located within the complex.

The SAC is remotely located from any actual school campus. In fact, the closest public school is Sierra Vista School, which is approximately 1.3 miles away (aerial map attached).

The SAC is highly attractive to major road shows, professional soccer, etc. In an effort to supplement the revenues of the School District, leasing of the facility for non-school related or sponsored events has proven financially successful. The facility becomes more attractive and could produce considerable more income if the lessees were permitted to sell alcoholic beverages. The SAC can accommodate approximately 10,000 seated persons.

To prohibit the sale and consumption of alcoholic beverages under the circumstances addressed in this request could deprive the School District of significant revenue. Since the School District is often classified as a "poor school district," this means of additional revenue could ease some of the burden on taxpayers, without interfering with the schooling of students.

Discussion

Section 37.122 of the Texas Education Code reads as follows:

"§ 37.122. Possession of Intoxicants on Public School Grounds

"(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.

"(b) An officer of this state who sees a person violating this section shall immediately seize the intoxicating beverage and, within a reasonable time, deliver it to the county or district attorney to be held as evidence until the trial of the accused possessor.

"(c) An offense under this section is a Class C misdemeanor."

The subsection that requires interpretation is subsection (1). This subsection needs to be examined in order to determine whether functions held at the Student Activities Complex are considered "on the grounds or in a building of a public school."

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We believe, however, that the language of subsection (2) when read in conjunction with subsection (1) supports the conclusion that we set forth at the end of this request for opinion. We are unable to locate any definition of "public school" to assist in analyzing the issue. It is the School District's impression, however, that the statute refers only to actual school campuses, but not to remote facilities such as the SAC, provided the event held at the SAC is not a school-sponsored event.

The Texas Association of School Boards' ("TASB") legal division previously prepared an opinion regarding the issues involved in this request. A copy of the TASB opinion is attached. In that opinion, Debra Moritz, the author, referred to Article 4.22 of the Education Code, prior to recodification by Senate Bill One. Article 4.22 read: "the possession of any intoxicating beverage for consumption, sale, or distribution while on the grounds or in a building of a public elementary, junior high, or senior high school or while entering any enclosure, field, or stadium where an athletic event sponsored or participated in by a public elementary, junior high, or senior high school as being unlawful." That opinion argued that "the previous law envisioned that alcohol would be prohibited only in areas or situations where students were present." We concur with that analysis, but we believe that with respect to a stadium or other non-school campus premises, such as the SAC, the critical issue is whether the event being held at the stadium is sponsored by the School District or one of its schools.

The plain meaning of the word "school" would seem to indicate that the Legislature intended for the language "on the grounds or in a building of a public school" to apply to only the actual educational facilities where students would be "schooled." Furthermore, the language "or while entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by any public school is being held" of the present Education Code § 37.122 and the language in the former Education Code § 4.22 indicates that an event not sponsored or participated in by the school district or one of its schools is not intended to come within the prohibition of Education Code § 37.122.

Thus, because the remote SAC is not a facility where students are "schooled," and the events in question will not be sponsored or participated in by the School District or its schools, the prohibition of Education Code § 37.122 should not be applicable.

Summary/Conclusion

When read in the context of the statute's purpose, i.e., preventing the possession of intoxicants where students are present and being "schooled," the language "on the grounds or in a building of a public school" should be read to apply only to actual school buildings, not to facilities that can serve non-school purposes, such as entertainment and recreational facilities, where the event is not

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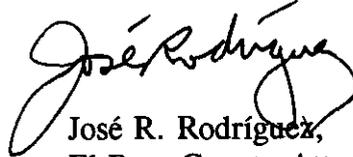
sponsored or participated in by the school district or any of its schools. This conclusion is supported by the language of the present Education Code § 37.122(a), which reads, "A person commits an offense if the person possesses an intoxicating beverage for consumption, sale, or distribution while: (1) 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.*" (emphasis added)

The emphasized language would lead one to believe that any enclosure, field, or stadium should be viewed as not being within the language "on the grounds or in a building of a public school." In addition, the emphasized language would seem to contemplate that an enclosure, field, or stadium where an event is not sponsored or participated in by the school district or any of its schools falls outside of the prohibition of Education Code § 37.122.

Since many commercial production companies continue to express an interest in leasing the SAC, time is of the essence in obtaining your opinion. Therefore, any expedited handling of this request would be appreciated.

Thank you for your attention to this matter.

Very truly yours,



José R. Rodríguez,
El Paso County Attorney

Enclosures