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OPINION COMMITTEE

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April 21, 2003

FILE # ML-43077-03
I.D. # 43077

The Honorable John Cornyn
Texas Attorney General
209 West 14th Street
Austin, Texas 78701

RQ-0048-6A

Re: Request for Opinion on permissible uses of venue tax funds

Dear General Cornyn:

I respectfully request your opinion on issues posed by the County Judge of Terrell County, Texas concerning the permissible uses of venue tax funds generated under Chapter 334 of the Texas Local Government Code

The 75th Legislature passed House Bill 92, effective September 1, 1997, giving cities and counties authority to finance a wide array of economic development projects through venue project taxes. The Act was amended by Acts 1999, 76th Legislature, Chapter 784, Section 1, effective June 18, 1999; and Acts 2001, 77th Legislature, Chapter 1044, Section 1, effective September 1, 2001. The venue project revenue sources that can be utilized include a sales and use tax.

Chapter 334.001(4), Local Government Code, defines "venue" to include park, museum, or facility owned by a municipality or a county, and a municipal parks and recreation system or improvements or additions to a parks and recreation system or an area or facility that is part of a municipal parks and recreation system. Subsection (5) provides that "venue project" means a venue and related infrastructure that is planned, acquired, established, developed, constructed, or renovated under this chapter.

In September, 2000, the Commissioners Court of Terrell County, Texas, adopted a resolution calling for a county election for the purpose of imposing a sales and use tax in the amount of one-half of one cent for the purpose of financing venue projects and related infrastructure. The County sent a copy of the resolution to Carole Keeton Rylander, Comptroller of Public Accounts. Pursuant to Section 334.022, the resolution was reviewed and the Comptroller determined that its approval would have no significant negative impact on state revenue. On November 7, 2000, during the General Election, voters of Terrell County voted for or against the following proposition:

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Authorizing Terrell County, Texas, to provide for improvements to all existing parks and for acquisition and development of land and improvements for additional public use and other improvements that relate to and enhance the use, value, or appeal of the public use areas, and including proposed new public use sites designated as the East Gate Entrance Park, located on Highway 90 on the east side of Sanderson, adjacent to the Budget Inn Motel; the Old Town Plaza, located near the Union Pacific Depot and Bunkhouse on Downie Street; and the Javalina Hill Scenic Overlook, located at the northwest corner of the intersection of Wilson Street and U. S. Highway 90; and to impose a sales and use tax at the rate of one-half ($\frac{1}{2}$) cent for the purpose of financing the venue project described herein.

The proposition was approved by a vote of 248 to 154.

Since the effective date of the tax rate, approximately \$270,000.00 has been collected, and deposited in a venue project fund maintained by the County. No funds have been expended from this account.

The language of the venue tax proposal is unclear; the venue project(s) were not clearly defined. The proposal called for (a. improvements to all existing parks; and (b. acquisition and development and improvements for additional public use including three (3) specified sites. The County Judge has raised a question on whether the venue funds may be used on additional new public use sites, other than the three (3) designated in the proposition.

One proposed venue project consists of major renovation to the county-owned swimming pool located in an existing park. The existing parks are currently maintained and improved by employees of the Road and Bridge Department with County funds generated by ad valorem taxation. Section 334.041(f), Local Government Code, provides that a municipality or county may not use revenue derived from ad valorem taxes to construct, operate, maintain, or renovate a venue that is part of an approved venue project. However, Section 334.042(d), Texas Local Government Code, provides that money in the venue fund may be used to pay the costs of operating or maintaining one or more approved venue project. Again, questions have arisen regarding the use of County equipment and County employees on existing parks, when improvements to the existing parks are part of the venue tax proposition. Another concern is how to specifically define "venue projects".

When all bonds and obligations payable from money in the venue project fund are paid, the venue project sales tax must be abolished. Texas Local Government Code 334.085. Because the wording of the proposition on the ballot included improvements to all existing parks and acquisition and development of land and improvements for additional public use, essentially projects which continue indefinitely, it appears that the only means of terminating the project is by an affirmative vote of the Commissioners Court.

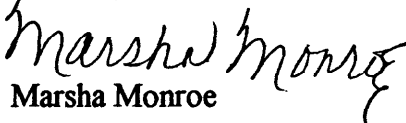
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Your response to the following questions is requested:

- (1. Does the Commissioners Court have the right to construe the language of the proposition posed to the voters to determine what constitutes a specific venue project?
- (2. Can the County use revenue derived from ad valorem taxes to continue maintenance of existing parks if venue funds have been expended for improvements on the existing parks?
- (3. Can the County acquire new public use sites other than the three (3) sites designated in the venue tax proposition?
- (4. Since the venue projects are on-going and may continue indefinitely, is the only method abolishing the venue tax by vote of the Commissioners Court?

Thank you for your attention to this matter. Please advise if I can be of further assistance.

Sincerely,


Marsha Monroe

MM/tm