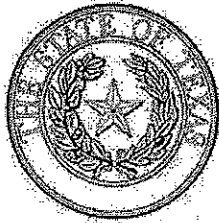


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COMAL COUNTY CRIMINAL DISTRICT ATTORNEY
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FILE # ML-45241-07
I.D. # 45241

June 19, 2007

Via CMRRR # 7004 2510 0007 5867 0808
The Honorable Gregg Abbott
Attorney General of the State of Texas
Attn: Nancy Fuller
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

Re: Authority of a County Judge to issue to a Promoter a single Mass Gathering Permit for multiple similar Mass Gathering events.

Dear Attorney General Abbott:

On behalf of the Comal County Judge, I am respectfully requesting an Attorney General Opinion as to whether the Texas Mass Gathering Act authorizes a County Judge to issue to a Promoter a Mass Gathering Permit that would cover multiple similar mass gathering events?

The Texas Mass Gathering Act requires a promoter of a "mass gathering" to apply to a County Judge for a permit prior to a mass gathering event occurring. TEX. HEALTH & SAFETY CODE ANN. §§ 751.001, 751.003 (Vernon 1989). A *mass gathering* is defined as "a gathering:

- (A) that is held outside the limits of a municipality;
- (B) that attracts or is expected to attract:
 - (i) more than 2,500 persons; or
 - (ii) more than 500 persons, if 51 percent or more of those persons may reasonably be expected to be younger than 21 years of age and it is planned or may reasonably be expected that alcoholic

beverages will be sold, served, or consumed at or around the gathering; and

(C) at which the persons will remain:

- (i) for more than five continuous hours; or
- (ii) for any amount of time during the period beginning at 10 p.m. and ending at 4 a.m. TEX. HEALTH & SAFETY CODE ANN. § 751.002(1) (Vernon 2005).

By defining *mass gathering* as a singular event, this statute potentially limits the County Judge's authority to issue a mass gathering permit for multiple similar events. Likewise, Section 751.003 again refers to a mass gathering as a singular event. TEX. HEALTH & SAFETY CODE ANN. § 751.003 (Vernon 1989) (stating that "[a] person may not promote a mass gathering without a permit issued under this chapter").

Looking to the Code Construction Act for guidance in this area, adds only more confusion in reconciling Sections 311.011 and 311.012. TEX. GOV'T CODE ANN. §§ 311.011, 311.012 (Vernon 1985). Section 311.012 deals with deciphering numbers, i.e. plural and singular, and states that "[t]he singular includes the plural and the plural includes the singular." TEX. GOV'T CODE ANN. § 311.012 (Vernon 1985). This section leads one to believe that the limited definition of *mass gathering* would not preclude the County Judge from granting a permit covering multiple *mass gathering events*. However, when coupling Section 311.012 with Section 311.011 confusion arises again in that Section 311.011 states that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." TEX. GOV'T CODE ANN. § 311.011 (Vernon 1985). This section appears to limit the County Judge's authority to grant a permit for multiple mass gathering events.

The purpose behind the Texas Mass Gathering Act is government involvement in large scale events by means of a required permit prior to a mass gathering event in order to ensure that the promoter has sufficient financial and logistical support so the mass gathering will be held under safe and sanitary conditions. When looking to the specific requirements in the application for a permit requested under this Act, all references to the event are stated in the singular form. TEX. HEALTH & SAFETY CODE ANN. § 751.004 (Vernon 1989).¹ Furthermore, the application,

¹ Section 751.004. Application Procedure

- (a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.
- (b) The application must include:
 - a. The promoter's name and address;

investigation², hearing³, and permit process⁴ all refer to a singular event. Additionally, Section 751.008 authorizes the County Judge to revoke a mass

- b. A financial statement that reflects the funds being supplied to finance **the** mass gathering and each person supplying the funds;
- c. The name and address of the owner of the property on which **the** mass gathering will be held;
- d. A certified copy of the agreement between the promoter and the property owner;
- e. The location and a description of the property on which **the** mass gathering will be held;
- f. The dates and times that **the** mass gathering will be held;
- g. The maximum number of persons the promoter will allow to attend **the** mass gathering and the plan the promoter intends to use to limit attendance to that number;
- h. The name and address of each performer who has agreed to appear at **the** mass gathering and the name and address of each performer's agent;
- i. A description of each agreement between the promoter and a performer;
- j. A description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during **the** mass gathering;
- k. A description of all preparations being made to provide traffic control, to ensure that **the** mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend **the** mass gathering;
- l. A description of the preparations made to provide adequate medical and nursing care; and
- m. A description of the preparations made to supervise minors who may attend **the** mass gathering.

TEX. HEALTH & SAFETY CODE ANN. § 751.004 (Vernon 1989).

² Section 751.005. Investigation

- (a) After a permit application is filed with the county judge, the county judge shall send a copy of the application to the county health authority, the county fire marshal or the person designated under Subsection (c), and the sheriff.
- (b) The county health authority shall inquire into preparations for **the** mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county health authority shall submit to the county judge a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.
- (c) The county fire marshal shall investigate preparations for **the** mass gathering. If there is no county fire marshal in that county, the commissioners court shall designate a person to act under this section. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county fire marshal or the commissioners court designee shall submit to the county judge a report stating whether the fire marshal or designee believes that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders will be maintained.
- (d) The sheriff shall investigate preparations for **the** mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the sheriff shall submit to the county judge a report stating whether the sheriff believes that the minimum standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.
- (e) The county judge may conduct any additional investigation that the judge considers necessary.
- (f) The county health authority, county fire marshal or commissioners court designee, and sheriff shall be available at the hearing prescribed by Section 751.006 to give testimony relating to their reports. TEX. HEALTH & SAFETY CODE ANN. § 751.005 (Vernon 1999).

gathering permit if he "finds that preparations for **the** mass gathering will not be completed by the time **the** mass gathering will begin or that the permit was obtained by fraud or misrepresentation." TEX. HEALTH & SAFETY CODE ANN. § 751.008 (Vernon 1989). Due to the fact that the permit can be revoked prior to the mass gathering event, it is our current opinion that a mass gathering permit can only be issued for a singular mass gathering event.

³ Section 751.006. Hearing

- (a) Not later than the 10th day before the date on which a mass gathering will begin, the county judge shall hold a hearing on the application. The county judge shall set the date and time of the hearing.
- (b) Notice of the time and place of the hearing shall be given to the promoter and to each person who has an interest in whether the permit is granted or denied.
- (c) At the hearing, any person may appear and testify for or against granting the permit. TEX. HEALTH & SAFETY CODE ANN. § 751.006 (Vernon 1989).

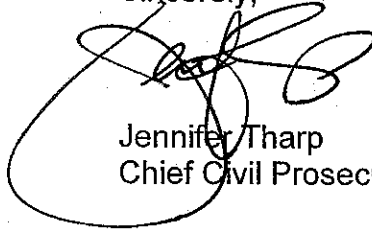
⁴ Section 751.007. Findings and Decision of County Judge

- (a) After the completion of the hearing prescribed by Section 751.006, the county judge shall enter his findings in the record and shall either grant or deny the permit.
- (b) The county judge may deny the permit if he finds that:
 - (1) the application contains false or misleading information or omits required information;
 - (2) the promoter's financial backing is insufficient to ensure that **the** mass gathering will be conducted in the manner stated in the application;
 - (3) the location selected for **the** mass gathering is inadequate for the purpose for which it will be used;
 - (4) the promoter has not made adequate preparations to limit the number of persons attending **the** mass gathering or to provide adequate supervision for minors attending the mass gathering;
 - (5) the promoter does not have assurance that scheduled performers will appear;
 - (6) the preparations for **the** mass gathering do not ensure that minimum standards of sanitation and health will be maintained;
 - (7) the preparations for **the** mass gathering do not ensure that **the** mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;
 - (8) adequate arrangements for traffic control have not been provided; or
 - (9) adequate medical and nursing care will not be available.TEX. HEALTH & SAFETY CODE ANN. § 751.005 (Vernon 1989).

Our County has recently received permit applications from a promoter who has a permanent outdoor music arena and who plans on holding several similar music events throughout the summer. So far, this promoter has properly complied with the requirements of the Texas Mass Gathering Act, but has requested our County issue a permit that would cover multiple similar events. We are seeking an Advisory Opinion that would clarify the County Judge's authority to issue a mass gathering permit for multiple similar mass gathering events under the Texas Mass Gathering Act.

Your attention in this regard is greatly appreciated. Please do not hesitate to contact myself if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer Tharp', is written over a large, loopy circular scribble.

Jennifer Tharp
Chief Civil Prosecutor

cc: Danny Scheel, Comal County Judge
Jan Kennady, Comal County Commissioner Precinct 4
Bob Holder, Comal County Sheriff
Dorothy Overman, M.D., Comal County Health Authority
Lin Manford, Comal County Fire Marshal
Geoffrey Barr, Comal County Criminal District Attorney