



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

November 23, 1993

Honorable Keith Oakley  
Chair  
Committee on Public Safety  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2548

Letter Opinion No. 93-104

Re: Ballot language to be used by a city for an election on the same ballot on the imposition of a sales and use tax under article 5190.6 V.T.C.S. and the reduction of the rate of a previously adopted additional sales and use tax under Tax Code section 321.101(b) (ID# 21039)

Dear Representative Oakley:

You ask about the ballot language to be used by a city for an election on the imposition, under article 5190.6, section 4A, V.T.C.S., of a sales and use tax of one-fourth of one percent for economic development, where the city wishes at the same time to have an election on the reduction of its previously adopted additional sales and use tax for the reduction of property taxes under Tax Code section 321.101(b) from a rate of one-half of one percent to one-quarter of one percent. Section 4A(p) provides that the combined rate of the additional sales and use taxes for economic development under article 5190.6 and for reduction of property taxes under Tax Code section 321.101(b) may not exceed one-half of one percent. Therefore in order to impose a new sales and use tax for economic development at a rate of one-fourth of one percent, the city must reduce the existing additional sales and use tax for the reduction of property taxes from the current rate of one-half of one percent to a rate of no more than one-quarter of one percent.

We believe that section 4A(p) contemplates within its scope an election simultaneously to impose a sales and use tax for economic development and to change the rate of an additional sales and use tax previously imposed under section 321.101(b). Section 4A(p) reads in part:

A city that is authorized by this section to impose, reduce, increase or abolish the tax under this section may, at the same time and on the same ballot, impose, reduce, increase or abolish the additional sales and use tax imposed under Section 321.101(b), Tax Code, if the city is authorized by Chapter 321, Tax Code, to impose, reduce, increase, or abolish the additional sales and use tax. The combined rate of the tax under this section and the additional sales and use tax imposed under Section 321.101(b), Tax Code, may not

exceed one-half of one percent. . . . The city must follow, in relation to the imposition, reduction, increase, or abolishment of the additional sales and use tax imposed under Section 321.101(b), Tax Code, the procedures of that chapter, *except that in an election to impose, reduce, increase, or abolish the tax under this section and the additional sales and use tax the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of \_\_\_\_\_ of one percent (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate) and the adoption of an additional sales and use tax within the city at the rate of \_\_\_\_\_ of one percent to be used to reduce the property tax rate" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).*

V.T.C.S. art. 5190.6, § 4A(p)(emphasis added).

You say that the city proposes to use the following ballot language at the election in question:

The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-quarter (1/4) of one percent and the adoption of a sales and use tax for the reduction of property tax rate at the rate of one-quarter (1/4) of one percent, *and abolishing the previously approved sales and use tax of one-half (1/2) of one percent for the reduction of property tax.* [Emphasis added.]

Where the legislature statutorily prescribes specific ballot language for an election, the statute should be strictly complied with. Attorney General Opinion DM-218 (1993), (citing *Wright v. Board of Trustees of Tatum Indep. Sch. Dist.*, 520 S.W.2d 787 (Tex. Civ. App.--Tyler 1975 (writ dismissed w.o.j.)). We believe that if the city intends to submit the imposition of the article 5190.6 tax and the reduction of the section 321.101(b) tax in the same proposition, it must use the proposition language set out in section 4A(p) of article 5190.6, quoted above.

The concern which underlies the city's wish to add the language regarding "abolishing the previously approved sales and use tax of one-half (1/2) of one-percent for the reduction of property tax" appears to be its construction of the proposition language set out in section 4A(p), quoted above--regarding "adoption of an additional sales and use tax . . . to be used to reduce the property tax rate"--as providing for a new imposition or increase of that tax, but not for its reduction to a lower rate, which is what the city has in mind here. Evidently, the city is concerned that additional language proposing the abolition of the already existing sales and use tax is necessary in combination with the

statutory language providing for the "adoption" of a rate for that tax in order to make the proposition language *in toto* reflect that the net result of the proposition's passage on the additional sales and use tax rate will be a reduction thereof from one-half of one-percent to one-quarter of one percent (*i.e.*, abolishing the entire tax and reimposing it at a lower rate).

From a reading of the provisions of article 5190.6, however, we conclude that the legislature intended that the language of the proposition set out in section 4A(p), "adoption of an additional sales and use tax . . . at the rate of \_\_\_\_\_," was to be used for not only the imposition of a new tax, but also the increase or reduction of a previously adopted rate of such tax. This intent is, we think, reflected not only in the language of subsection (p) of section 4A--where the proposition wording using "adoption" is prescribed for cases where "imposition," "reduction," or "increase"<sup>1</sup> of the subject taxes are sought--but also in, *e.g.*, subsections (o) and (m). Subsection (o) directs that propositions for reducing or increasing the rate of a previously adopted sales and use tax for business enterprise be set out in the manner of the proposition prescribed under subsection (m), which latter reads: "The *adoption* of a sales and use tax . . . [etc.]." Thus, in a reduction election, the ballot would be printed to provide for the "adoption" of the tax at the rate to which it is to be reduced.

Accordingly, we advise that for a simultaneous election on the imposition, under section 4A, V.T.C.S. article 5190.6, of a sales and use tax of one-fourth of one percent for economic development and the reduction of its previously adopted additional sales and use tax for the reduction of property taxes under Tax Code section 321.101(b) from a rate of one-half of one percent to one-quarter of one percent, the city should use the proposition language set out in section 4A(p), as follows:

The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of one-fourth of one percent and the adoption of an additional sales and use tax within the city at the rate of one-fourth of one percent to be used to reduce the property tax rate.<sup>2</sup>

---

<sup>1</sup>We concede that the ballot language set out in subsection (p) would not appear to be appropriate for an election to *abolish* the tax. However, as you do not ask about an election to abolish, we do not address here what language to use in such an election.

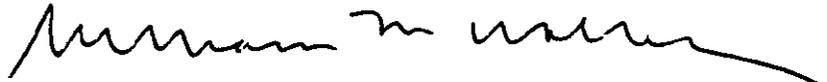
<sup>2</sup>If the city is concerned lest voters misunderstand the effect of the prescribed ballot language, we suggest that it may communicate to the public by newspaper notice or other lawful means the effect passage of the measure would have. The city may not, of course, in an official communication for which public funds are spent, "advocate passage or defeat of the measure." See Elec. Code § 255.003.

**S U M M A R Y**

For a simultaneous election on the imposition, under section 4A, V.T.C.S. article 5190.6, of a sales and use tax of one-fourth of one percent for economic development and the reduction of its previously adopted additional sales and use tax for the reduction of property taxes under Tax Code section 321.101(b) from a rate of one-half of one percent to one-quarter of one percent, the city should use the proposition language set out in section 4A(p), as follows:

The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of one-fourth of one percent and the adoption of an additional sales and use tax within the city at the rate of one-fourth of one percent to be used to reduce the property tax rate.

Yours very truly,



William M. Walker  
Assistant Attorney General  
Opinion Committee