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August 15, 1994

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

SJS  
FILE # ML-28274-94  
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RQ-733

Re: Request for Letter Opinion

Dear General Morales:

Our office has been asked by the Williamson County Judge to request your opinion by letter on the following two questions:

- (1) May Williamson County assess a dedicated tax pursuant to § 62.001, Texas Human Resources Code, for the operation of a juvenile detention facility within the county? and
- (2) May the revenues generated by such a tax be used to fund a contract with a private facility operator for the detention of children within the county?

It is our opinion that the answer to both questions is "Yes," but the County Judge wishes us to fortify our opinion with a Letter Opinion from you. Accordingly, we have attached our Proposed Opinion. We look forward to your reply.

Sincerely yours,

Eugene D. Taylor,  
County Attorney

cc: John Doerfler, County Judge  
Williamson County Commissioners' Court  
Williamson County Juvenile Board

Opinion prepared by:

Dale A. Rye,  
1<sup>st</sup> Assistant

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# Proposed Opinion

## Fact Situation

Williamson County is facing a crisis situation due to the inadequate size of its existing juvenile detention facilities. They are barely adequate as a place of pretrial detention for the most violent offenders. The facilities have no space at all for rehabilitation programs to address the longer-term needs of youth who require temporary removal from their homes. The Juvenile Board and Commissioners' Court have been investigating alternative solutions to this crisis. One suggestion is that the County levy a special tax under the authority of § 62.001, Texas Human Resources Code, to finance the establishment and maintenance of detention homes and parental schools. Another suggestion is that the revenue from the special tax could be used to contract for detention services with a private provider. However, the County Judge wishes to be certain that these suggestions are legally possible.

## Question One

May Williamson County levy a dedicated tax pursuant to § 62.001, Texas Human Resources Code, for the operation of a juvenile detention facility within the county? Subsection (c) of this statute plainly says that a county may levy the tax for either of two situations: (A) to establish and maintain a detention home or parental school, or (B) to pay for the care and training of juveniles. The concern of our County Judge is that the phrase in Subsection (c) "as provided by Subsection (b)" might be construed to apply to situation (A) as well as to situation (B), thereby preventing the use of these monies for establishing homes or schools within the county. However, there is no authority granted under Subsection (b) to establish or maintain schools in any location. It is therefore clear that the reference to situation (A) in Subsection (c) must be to the authority granted under Subsection (a). The reference in Subsection (c) to Subsection (b) must apply only to situation (B). Consequently, we have no difficulty in concluding that § 62.001 gives authority to a Texas county to levy the special tax to establish and maintain detention homes and parental schools within the county.

## Question Two

May the revenues generated by such a tax be used to fund a contract with a private facility operator for the detention of children within the county? Subsection (a) of § 62.001(c), Human Resources Code, allows a county to "establish, equip, and maintain detention homes and parental schools for the juveniles of the county," and Subsection (c) allows the county to levy a tax "to establish and maintain a detention home or parental school." The County Judge is concerned that these provisions

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*might be construed to require the county to directly operate the homes or schools, and to prohibit the use of special tax revenues to contract with a private provider. The question of county authority to contract for detention services has been presented in at least four prior Attorney General's Opinions: O-6125 (1944), O-7102 (1946), M-843 (1971), and H-392 (1974). Each Opinion held that the predecessor statutes to § 62.001 permitted a county to enter into such contracts, and did not require the county to operate the facilities directly. Although there seem to be no cases or opinions construing Subsection (c) or its predecessors, it appears clear that the authority to tax under (c) is co-extensive with the authority to spend under (a) and (b). Consequently, we also have no difficulty in concluding that § 62.001(c), Human Resources Code, allows the use of the proceeds from the special tax to fund a contract for the provision of detention homes or parental schools to be operated by a private person or corporation.*

**Conclusions**

A Texas county may levy a special tax under § 62.001(c), Human Resources Code, to establish and maintain detention homes and parental schools within the county. The proceeds of the tax may be used by the county either to directly provide such homes and schools, or to fund a contract for the provision of homes and schools to be operated by a private person or corporation.