



ORI T. WHITE

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February 16, 2001

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Honorable John Cornyn
Attorney General of the State of Texas
C/O Liz Robinson
Chair-Opinions Committee
P.O. Box 12548
Austin, TX 78711

RECEIVED

FEB 26 2001

OPINION COMMITTEE

RQ-0355-JC

FILE # 12-41898-01

I.D. # 041898

Re: **Opinion Request**

Dear Attorney General:

As District Attorney for the 112th Judicial District of Texas, by this letter and attached memo, I am requesting an Attorney General's Opinion of the topic set out in the attached memo.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ori White".

Ori White
District Attorney

Enclosure

xc: Elizabeth Wallace, City Attorney
City of Sonora
201 NE Main
Sonora, TX 76950

MEMO

**TO: JOHN CORYN
ATTORNEY GENERAL, STATE OF TEXAS**

**FROM: ORI WHITE
DISTRICT ATTORNEY**

RE: ALLOWABLE USE OF 4B SALES TAX REVENUE

DATE: FEBRUARY 19, 2001

QUESTION: Whether the Industrial Development Corporation of the City of Sonora, Texas (the "development corporation") may expend Article 5190.6, Section 4B tax proceeds to fund a project that would be a tourism related improvement, specifically a nature/birding center or public park, when this use of the tax proceeds was not stated on the ballot, but notice of the proposed use was published and no petition was received by the governing body.

FACTS: On May 2, 1998, the voters of the City of Sonora ("City") approved the adoption of a one-half of one percent sales and use tax pursuant to Article 5190.6, V.A.T.C.S., Section 4B, that specifically set out the following uses of the tax proceeds:

1. public facility improvements
 2. commercial facilities
 3. infrastructural improvement
 4. new and expanded business enterprises and other related improvements
 5. facilities to furnish water to the general public
 6. sewage and solid waste disposal facilities; and
 7. maintenance and operating costs associated with all of the above projects.
- (See ballot attached as Exhibit "A")

On 8/9/99, the development corporation presented a proposed project to the City Council, which consisted of the purchase of approximately 35 acres of land. On 10/19/99, a public hearing was held, with notice of such public hearing published. There was no public comment and no petition from voters. The city council approved the project on 11/16/99.

LAW: Article 5190.6, Section 4B specifically permits tax proceeds to be used for *parks and related public space improvements, tourism and entertainment facilities.*

Subsection(a-2) further requires that certain procedural steps be followed before 4B tax proceeds be expended. This section requires publishing notice of the proposed use, and then an election on the proposed use, if the governing body of the city receives a petition from more than 10% of the registered voters of the city if an election is requested in the petition. The law requires the election is not required if the citizens have previously approved the costs of project.

ANALYSIS: Letter Opinion 98-062 provides that if the ballot does not expressly provide for "maintenance and operating costs" of a project that was specifically stated on the ballot, the governing body is required to follow the procedural steps of subsection (a-2) and publish notice of the proposed use. If the proposed use is challenged by a petition, an election must be held.

However, in our case, the proposed project was not previously approved on the ballot, but the governing body followed the procedural steps of subsection (a-2), and there was no challenge to the project.

While there does not appear to be statutory authorization for broadening the uses of Section 4B tax, if a proposed use is not challenged by citizens, is the use allowed?