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OPINION COMMITTEE

March 1, 2004

The Honorable General Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43550-04
I.D. # 43550

RQ-0202-GA

Dear Attorney General Abbott:

In 2002, Llano County called for an election for an emergency services district (ESD), which did not pass because the citizens did not want more ad valorem taxes. Many voters have stated that they would vote for an ESD funded with one cent sales and use tax because it is a fair tax paid by all and not just the property owners. Llano County has a population of approximately 17,500. Approximately 75% of the population live in the unincorporated areas of eastern Llano County along Lake Buchanan, Inks Lake and Lake LBJ. One ESD in the Horseshoe Bay area has already been approved by the voters.

Numerous organizations, including the Llano County Commissioners Court, would like to establish another emergency services district pursuant to Chapter 776 of the Health and Safety Code. The purpose of the creation of the new ESD is to fund the emergency medical services (EMS). Before this can proceed, the following question needs to be answered: "Can the Commissioners Court call for an election to create an emergency service district (ESD) and at the same time call for an election for a sales and use tax not to exceed one percent (1%) in the emergency service district boundaries?" Health and Safety Code, Section 776.019 states that the Commissioners Court shall order an election to confirm the ESD's creation and authorize the levy of a tax not to exceed the rate allowed by Section 48-e, Article III, Texas Constitution. This section of the Texas Constitution states that laws may be enacted to provide for the establishment and creation of special districts to provide emergency services and to authorize the Commissioners Court to levy a tax on the ad valorem property situated in said district not to exceed 10 cents on the one hundred dollar (\$100) valuation for the support thereof. Health and Safety Code, Section 776.019 and the Constitution refer to the levying of ad valorem taxes only, not sales and use taxes.

Pursuant to Section 776.0751 of the Health and Safety Code, once a district is established, the district may adopt a sales and use tax. Section 776.0752 sets forth the procedures necessary to adopt this type of tax. It states that an election of this type is called by the adoption of the resolution of the board. The board refers to the board of the newly established emergency service district.

The citizens that have asked me to write this request feel that the sales and use tax election can occur simultaneously with the election to establish the emergency service district itself. It is my opinion that just from looking at the table of contents of Chapter 776 of the Health and Safety Code, that the Legislature intended this to be at least a two-step process. Subchapter B of Chapter 776 is called "Creation of District", then once the district is created, Subchapter C refers to the "Organization Powers and Duties" of the district. Subchapter E deals with "Finances and Bonds" and this is where the sales and use tax provisions are contained. It is my opinion two different elections must occur, one to first create the district, and then once the district is created and a governing board of the ESD is appointed, the board then can call for the sales and use tax election. Pursuant to Section 776.0752 of the Health and Safety Code, an election for sales and use tax is called by adoption of a resolution by the board. You do not have a board until the district itself is created.

It is rumored around Llano County that this type of election has been held in another county in the past and that it was approved by the State Comptroller. I have asked people to show me this documentation, but it has never been forthcoming, therefore, I can only presume this is incorrect information or just because it was one time approved, does not mean it was done according to the statutes. I have told local citizens that my answer to their question is no, it must be two different elections, this is why these individuals requested this opinion from you.

Llano County Commissioners Court also have asked if the Commissioners Court can call for an election with the petition for the creation of the ESD containing the following wording "The ESD will provide for emergency medical service within the district. The district is to be created and is to operate under Article III, Section 48-e, Texas Constitution with a levy on the ad valorem property situated in said district not to exceed zero cents (0) on the One Hundred Dollars (\$100) valuation for the support thereof; provided that no tax shall be levied in support of said district until approved by vote of the qualified voters residing herein." "Said district is to be created and is to operate under the adoption of a not to exceed one cent (1) sales and use tax." Zero cents (0) is not more than Ten Cents (10) as set forth in Section 48-e of the Texas Constitution therefore zero cents on ad valorem taxation should be acceptable. Apparently the proponents of the ESD want the ESD to operate on sales and use taxes and not on ad valorem taxes because they feel that the creation of the ESD will not be approved by the voters if another ad valorem tax is to be assessed.

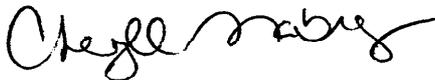
Llano County citizens have also considered the creation of a county health services sales and use tax pursuant to Chapter 324 of the Tax Code. I feel that this chapter applies to the entire county and not just certain areas. Pursuant to Section 324.021 of the Tax Code, the county may not adopt a tax under this section if as a result of the adoption of the tax, the combined rate of all sales and use taxes imposed by the county and other political subdivisions of this state having territory in the county would exceed two percent (2%) at any location in the county. Due to taxes already established in the City of Llano, can the remainder of Llano County (excluding the City of Llano) be included in the sales and use tax authorized by Chapter 324 of the Tax Code? In my opinion, Llano County cannot create a tax pursuant to this chapter because the City of Llano would exceed two percent (2%).

Llano County is trying to find alternative methods to provide health services for our citizens. My suggestion has been to follow the procedures as outlined in the table of contents of Chapter 776 of the Health and Safety Code, first, have an election to create the district which would hopefully be approved by the voters, next have the Commissioners Court appoint a board for the ESD, then have the board call for the sales and use tax election.

Time is of the essence, which is why various individuals are trying to combine the sales and use tax election with the election for the creation of the district.

I thank you for your time. If you require any further information, please do not hesitate to contact me and I look forward to receiving a written response from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Mabray". The signature is fluid and cursive, with the first name "Cheryl" being more prominent than the last name "Mabray".

**Cheryll Mabray
Llano County Attorney**

CM:sr