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OPINION COMMITTEE

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Attorney at Law

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**RQ-0618-GA**

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September 4, 2007

FILE # ML-45343-07  
I.D. # 45343

The Honorable Greg Abbott  
Attorney General of Texas  
Opinions Section  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711

CERTIFIED MAIL 7003 1680 0000 5599 4807  
RETURN RECEIPT REQUESTED

Re: Request for Opinion Regarding Whether, Pursuant to Chapter 334 of the Local Government Code, Terrell County May Borrow Funds To Pay for Construction of a Venue Project To Be Repaid with Venue Tax Funds.

Dear Attorney General Abbott:

I hereby request an opinion from you regarding the questions listed below that relate to Terrell County's venue project under Chapter 334 of the Texas Local Government Code. The County Judge has posed those questions to me. I note that I previously submitted Opinion Request RQ-0156 with respect to Terrell County's Venue Tax, which was addressed in Opinion No. GA-0156.

Factual Background

The 75<sup>th</sup> Legislature passed House Bill 92, effective September 1, 1997, which gives counties authority to finance venue projects through sales and use taxes. See Texas Local Government Code, Chapter 334. Chapter 334 was amended by the 76<sup>th</sup> Legislature and the 77<sup>th</sup> Legislature.

On September 11, 2000, the Commissioners Court of Terrell County, Texas adopted a resolution calling for a county election for the purpose of imposing a sales and use tax in the amount of one-half of one cent for the purpose of financing venue projects and related infrastructure. See Exhibit A. Terrell County sent a copy of the resolution to the Comptroller, who determined

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(pursuant to Texas Local Government Code Section 334.022) that the approval of the resolution would have no significant negative impact on state revenue.

On November 7, 2000, the voters of Terrell County approved (by a vote of 248 in favor to 154 against) the resolution. See Exhibit B hereto.

Since the effective date of the sales tax approved by the resolution, the tax proceeds have been collected and deposited in a venue project fund maintained by the Terrell County. After receiving Opinion No. GA-0156, Terrell has proceeded with its venue project in accordance with that opinion.

The County Judge has asked whether the county may borrow funds to pay for construction of the convention center facility, which is part of the venue project. The purpose for borrowing the funds is to lower the ultimate construction costs of the facility and to expedite its completion. The contemplated loan is deemed desirable because it will add substantial costs and greatly complicate the construction of a facility in a remote rural location if the construction timetable is dictated by the availability of funds on a monthly basis from the tax proceeds.

The loan will be paid off from the venue tax proceeds as they are collected. It is contemplated that this repayment scheme would be recognized by the terms of the loan documents.

#### Request for Opinion

Please provide an opinion on the following question: Is Terrell County authorized by Chapter 334 of the Texas Local Government Code to borrow funds, to be repaid from the venue tax proceeds, to pay for the construction of the convention center facility?

Your opinion on this question is greatly appreciated. Please contact Doug Sigel, who is assisting the Terrell County with respect to this request, if you have

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any questions or need any additional information regarding this request. His phone number is 512-495-6305. Please also copy him on any correspondence regarding the request.

Sincerely,

A handwritten signature in cursive script that reads "Marsha Monroe".

Marsha Monroe  
Terrell County Attorney

cc: Doug Sigel  
Scott, Douglass & McConnico, L.L.P.  
600 Congress Avenue, Suite 1500  
Austin, Texas 78701-2589

**TERRELL COUNTY RESOLUTION NO. 2001**

**A RESOLUTION OF TERRELL COUNTY, TEXAS, AUTHORIZING COMMUNITY VENUE PROJECTS IN ACCORDANCE WITH PROVISIONS OF THE LOCAL GOVERNMENT CODE, CHAPTER 334; PROVIDING FOR A COUNTY ELECTION FOR THE IMPOSITION OF A SALES AND USE TAX, SUBJECT TO PRIOR APPROVAL BY THE TEXAS STATE COMPTROLLER; PROVIDING METHODS OF FINANCING AND REFINANCING FOR THE CONSULTING, PLANNING, ACQUISITION, ESTABLISHMENT, DEVELOPMENT, CONSTRUCTION AND RENOVATION OF VENUE PROJECTS AND RELATED INFRASTRUCTURE; PROVIDING FINANCING FOR THE CONTINUOUS MAINTENANCE, OPERATION AND IMPROVEMENTS TO THE TERRELL COUNTY VISITOR CENTER, COUNTY PARKS AND RECREATIONAL FACILITIES, AND ANY ON-SITE AND OFF-SITE INFRASTRUCTURE THAT RELATES TO AND ENHANCES THE USE OF THE VENUE.**

WHEREAS, Terrell County desires to promote economic development through the enhancement of public-use facilities including areas for recreation, public gatherings, and other civic endeavors; and,

WHEREAS, the 75th Legislature of the State of Texas amended the Texas Local Government Code by adding Chapter 334 which provides for the creation of community venue projects, which by definition means a venue and related infrastructure that is planned, acquired, established, developed, constructed or renovated; and,

WHEREAS, Chapter 334 of the Texas Local Government Code allows the governing body of Terrell County to designate methods of financing for each proposed community venue and related infrastructure; and,

WHEREAS, tourism is a major industry in Sanderson, a gateway community for state and national recreation areas; and,

WHEREAS, hotel/motel occupancy fees are insufficient to finance the proposed community venues; and,

WHEREAS, Chapter 334 of the Texas Local Government Code authorizes Terrell County to conduct an election for the purpose of the imposition of a sales and use tax in the amount of one-half of one cent, subject to the approval of the State of Texas Comptroller and the citizens of Terrell County.

**NOW, THEREFORE, BE IT RESOLVED BY THE TERRELL COUNTY COMMISSIONER'S COURT:**

That the matters set out in the preamble are found to be true and correct and are adopted as part of this resolution.

That the Commissioner's Court does hereby adopt this Resolution to provide for the planning, design, acquisition of land, development, establishment, acquisition and renovation, or construction of structures for various segments of a venue project as described herein and to provide for the financing thereof by the imposition of a sales and use tax, upon approval by the voters of Terrell County at the November 2000 General Election.

That the PARKS AND RECREATION SYSTEM VENUE PROJECT as authorized by Chapter 334 permissible projects is hereby designated as a Venue Project which the Commissioner's Court desires to finance under authority of Chapter 334:

That a County election is authorized for the purpose of imposing a sales and use tax in the amount of one-half of one cent, in compliance with the provisions of the Texas Local Government Code, Chapter 334.

That revenues from the proposed sales and use tax be used to finance the venue project and related infrastructure.

That the PARKS AND RECREATION SYSTEM VENUE PROJECT provide for improvements to the existing parks and for acquisition and development of land and improvements for additional public use to include a covered pavillion, restrooms, and other improvements that relate to and enhance the use, value, or appeal of the public-use areas, including expenditures for environmental remediation. Proposed new public-use sites include:

#### The EAST GATE ENTRANCE PARK

The Venue Project will provide for acquisition of land and improvements to include automobile parking; road, street, water, or sewer facilities; and other on-site improvements or off-site improvements that relate to and enhance the use, value, or appeal of this mini-park, including expenditures for environmental remediation.

#### The OLD TOWN PLAZA

The Venue Project will provide for a public plaza adjacent to or near the proposed Depot/Museum Project which will promote new or expanded business enterprises and will include reimbursement of financing for the consulting, planning, design, acquisition and development of the plaza; for acquisition of land and renovation or construction of a Visitor Center; for acquisition of land, buildings, or other facilities for the purpose of leasing the land, building, or other facilities for public use or for use in other commercial activity; and for other on-site or off-site improvements that relate to and enhance the use, value, or appeal of the plaza, including expenditures for related infrastructure and environmental remediation.


#### The JAVELINA HILL SCENIC OVERLOOK

The Venue Project will provide for reimbursement of financing for the consulting, planning, design, acquisition of land, construction of nature trails and other on-site or off-site improvements that relate to and enhance the use, value, or appeal of the Scenic Overlook, including expenditures for related infrastructure and environmental remediation.

#### SEVERABILITY

If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

PASSED, APPROVED and ADOPTED this 11<sup>th</sup> day of Sept. 2000.

  
Terrell County Judge



The Commissioners Court of Terrell County, Texas

Canvassing Report

Name of Office/ or Proposition	Name of Candidate	Total Votes Received
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**PROPOSITION**

Authorizing Terrell County, Texas to provide for improvements to all existing parks and for acquisition and development of land and improvements for additional public use and other improvements that relate to and enhance the use, value, or appeal of the public use sites designated as the East Gate Entrance Park, located on Highway 90 on the east side of Sanderson, adjacent to the Budget Inn, the Old Town Plaza, located near the Union Pacific Depot and Bunkhouse on Downie Street; and the Javalina Hill Scenic Overlook, located at the northwest corner of the intersection off Wilson Street and U.S. Highway 90; and to impose a sales and use tax at the rate of one-half (1/2) cent for the purpose of financing the venue project described herein.

FOR — ¼ CENT SALES AND USE TAX

248

AGAINST — ¼ CENT SALES AND USE TAX

153

DATED, this 14<sup>th</sup> day of November, 2000

Rudley Harrison  
Presiding Officer

I, Martha Allen, TERRELL County Election Official do hereby certify the returns as shown on the official canvass statement are true and correct as certified by the TERRELL County Commissioners Court.

Martha Allen

Exhibit B

Nov. 14, 2000