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**FLORENCE SHAPIRO**

Texas State Senator  
District 8

President Pro Tempore  
2005

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**FEB 20 2008**

**OPINION COMMITTEE**

February 15, 2008

FILE # ML-45558-08

I.D. # 45558

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

**RQ-0677-GA**

**ATTN: Opinions Committee**

**RE: Request for an Attorney General's Opinion regarding the validity of collecting the transit authority sales and use tax of a Regional Transportation Authority at different rates in Subregions with different levels of membership service.**

Dear General Abbott,

Regional Transportation Authorities (RTA) are authorized and regulated by Chapter 452, Texas Transportation Code. Subchapter I grants RTAs the authority to levy a sales and use tax at differential tax rates, however, "an authority may not adopt a sales and use tax rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by other political subdivisions of the state having territory in the authority exceeds two percent in any location in the authority." (Sec 452.403) The RTA's executive committee is authorized "to direct the comptroller to collect the authority's sales and use tax *at different rates in different subregions of the authority*, but a rate may not be higher than the maximum rate approved by voters." (Sec. 452.406)

Subchapters N and O of Chapter 452 provide for the governance of Subregions which may be created, among others, by a municipality. Subchapter P, which governs the addition of territory to an RTA, contains two sections providing for the addition of municipalities by election. Section 452.602 provides that, pursuant to an election ordered by a municipality's governing body, voters may sanction participation in an RTA and the collection of a transit sales and use tax at a specified rate. Section 452.6025 applies to the addition of a municipality that levies a special sales and use tax such that the addition of a transit sales tax would exceed a total tax rate of more than two percent. In order to join an RTA, municipalities subject to Section 452.6025 are required, in addition to taking the other actions necessary for participation, to reduce the rate of any special sales

and use tax to a level that will allow the transit sales and use tax to be levied within the two percent cap.

Allowing the RTA's executive committee by order to direct the comptroller to collect the authority's sales and use tax in different Subregions at different rates no higher than the maximum approved by the voters furthers two rational, legitimate and important government policies:

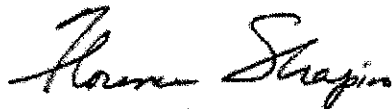
- (1) providing needed flexibility for an RTA to maximize access to available sales tax revenues to support the development and provision of regional transportation services, and
- (2) preserving the longstanding policy that the aggregate total of local sales tax rates in any location may not exceed two percent.

Seemingly, pursuant to the above authority, a municipality, with voter approval, could form a Subregion to participate in an RTA and authorize the collection of a transit sales and use tax within the Subregion at a rate that would not cause the total local rate to exceed two percent. The RTA's executive committee in turn could instruct the comptroller to collect the transit sales and use tax at the voter-approved rate within the Subregion and harmonize the level of services provided pursuant to the Subregion's service plan with the tax rate levied.

The result would be that within an RTA various municipalities could participate at separate levels of service at different tax rates. Question has arisen as to whether such an arrangement would violate the "Taxation shall be equal and uniform" provision in Article 8, Section 1(a), Texas Constitution.

I hereby respectfully request an Attorney General's Opinion as to the validity of collecting an RTA's sales and use tax at different levels in separate Subregions within the authority. More specifically, is the constitution's "equal and uniform" requirement satisfied if the transit sales and use is collected at a uniform voter-approved rate within a Subregion of an RTA but at different rates in different Subregions, all of which receive different approved levels of service that take into account their disparate tax levels?

Very truly yours,



Florence Shapiro