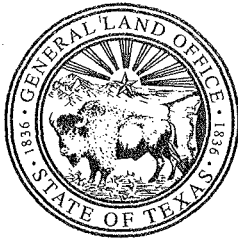


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GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

MAR 01 2012

OPINION COMMITTEE

FILE # ML-46970-12

I.D. # 46970

March 1, 2012

RQ-1043-GA

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 82548
Austin, TX 78711-2548

RE: Request for Opinion as to whether the selection of a site for an event in this state prior to, and without an application by, a local organizing committee, endorsing municipality, or endorsing county, precludes the event from receiving Major Event Trust Fund support

Dear General Abbott:

As Texas Land Commissioner, an office authorized to request your ruling under Government Code § 402.042(b) as head of the General Land Office (GLO) and School Land Board (SLB), I respectfully request your opinion as to whether the selection of a site for an event in this state prior to, and without an application by, a local organizing committee, endorsing municipality, or endorsing county precludes the event from receiving Major Event Trust Fund (METF) support. Tex. Rev. Civ. Stat. Ann. Art. 5190.14 § 5A(b). The GLO manages land dedicated to the Permanent School Fund (PSF), at the direction of the SLB, and the value of a significant tract may be affected by the way in which the Comptroller of Public Accounts (Comptroller) utilizes the METF. The GLO requests your opinion in this matter to resolve uncertainty so that the GLO may better maximize the value of this PSF-dedicated property.

Background

The roots of the METF date to the 76th Regular Legislative Session when the Legislature sought ways to support efforts by local communities to attract the Pan American and Olympic Games. The METF is intended to "provide assurances required by a site selection organization" in support of efforts by local governments, or non-profit groups endorsed by a local government, to attract major events for which there is competition from communities outside the State of Texas. Art. 5190.14 § 2. In 2009, Senate Bill 1515 renamed what had been called the Other Events Trust Fund the METF, and amended the statute governing its use to allow the fund to be used to support a Formula One automobile race.

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On May 25, 2010, Federation Internationale de l'Automobile (FIA), the governing body of Formula One auto racing (F1), announced that it planned to hold the United States Grand Prix in July 2012 in Austin, Texas. A group of private investors announced at that time that it intended to build a facility specifically designed for the new F1 race to be called the Circuit of the Americas (COTA). The COTA facility is currently under construction. On December 7, 2011, the FIA announced the finalized date of the United States Grand Prix, November 18, 2012.

On January 19, 2012, I made requests under the Public Information Act, Chapter 552 of the Government Code, to the City of Austin and Travis County which read, in relevant part, as follows:

I am trying to better understand the role of local governments in bringing the proposed Formula One race to Central Texas and the proposed use of the Major Event Trust Fund (METF) to support it. The statute that created and governs the METF requires that a local municipality, county, or organizing committee submit an application to host the race to Formula One Management Limited or the Federation Internationale de l'Automobile. Please provide me with:

1. A copy of any documentation under your city/county's control that would indicate the existence of any such application;
2. Any information regarding a contract between Formula One Management Limited or the Federation Internationale de l'Automobile and any governmental body in the State of Texas; and
3. Any information regarding a contract between the Comptroller of Public Accounts and a local governmental body related to one or more a Formula One races.

In addition, I requested from the Comptroller:

In the interest of better understanding the process the Comptroller of Public Accounts has followed in attracting the proposed Formula One race to the Austin area, please provide me with:

1. Any information that you have regarding the market area that the Comptroller has identified for the proposed race;
2. Any information identifying who the local organizing committee, endorsing municipality, or endorsing county may be;
3. Any document indicating that such an entity has applied to Formula One Management Limited or the Federation Internationale de l'Automobile to host a Formula One automobile race and identifying that entity;

4. Any information regarding a contract between Formula One Management Limited or the Federation Internationale de l'Automobile and any governmental body in the State of Texas; and
5. Any information regarding a contract between the Comptroller of Public Accounts and a local governmental body related to one or more Formula One races.

All three governmental bodies produced the responsive documents in their possession. The documents provided by Travis County and the City of Austin are attached. None of the three governmental bodies sought to withhold any information as provided under the Public Information Act. No application was released. Inexplicably, the only reference to an application is found in a letter from F1 dated May 11, 2011.¹ The letter does not state that the application was submitted by a local organizing committee, endorsing municipality, or endorsing county. No email, memorandum, correspondence, or other document produced by a local organizing committee, endorsing municipality, or endorsing county referencing the preparation or submission of an application to host the United States Grand Prix was provided in response to these requests. The only reasonable conclusion is that no application, as contemplated by the statute, was ever submitted as a basis for locating the event in Texas.

Questions Presented

1. Does the selection of a site for an event by a Site Selection Organization prior to and without an application by a local organizing committee, endorsing municipality, or endorsing county preclude the subsequent event from eligibility for METF funds?
2. Does the selection of the Austin area for an F1 race by Formula One Management Limited prior to and without an application by a local organizing committee, endorsing municipality, or endorsing county preclude the 2012 United States Grand Prix from eligibility for METF funds?

Discussion

For the reasons stated below, the GLO argues that the selection of a site for an event must be made pursuant to an application by a local organizing committee ("LOC"), endorsing municipality, or endorsing county to be eligible for the use of METF funds. Further, the GLO argues that since no such application was made in the case of the United States Grand Prix, that the planned F1 race is ineligible for METF funds.

¹ Information provided by the Comptroller in response to a previous open records request included a draft of the letter subsequently sent by Bernie Ecclestone, Chief Executive Officer of Formula One Management Ltd. The draft letter includes edits intended to give the appearance that the requirements of TEX. REV. CIV. STAT. ANN. ART. 5190.14 § 5A(b) had been followed. A copy of the draft letter is also attached.

The manner in which the METF may be applied is governed by Art. 5190.14 § 5A. The statute prescribes which entities and events are eligible, the method of initiating the process, the method of determining the incremental tax impact, and the method for distributing the funds. The statute clearly requires that a local entity must initiate the METF process. Specifically, the selection of the site of an event must be made “pursuant to” an application by a local entity in order to trigger possible dispersal of METF funds. “Pursuant to” means “[t]o do in consequence or in prosecution of something.” Black’s Law Dictionary 1237 (6th ed. 1990). In the context of this statute, the phrase requires that the selection of the event site be preceded by and be based upon the application submitted by a local city, county or authorized LOC. This is not permissive. In the chronology of steps required for an event to be eligible for METF funds, the application from a local entity to host the event must come before site selection is announced or any other steps toward funding under the METF are taken. This is the condition precedent that must first be satisfied before any of the remaining steps in the METF process may be performed. All remaining steps, including the ultimate funding support of the event, flow from the initial application made by a local entity to a site selection group. The Comptroller’s involvement is not contemplated by the statute at this stage.

Where the site of an event is selected prior to or without an application from an endorsing municipality, endorsing county, or LOC, it is impossible for the site to be selected pursuant to and based on such an application. Therefore, the Attorney General must conclude that such an event, the site of which was selected without an application from an endorsing municipality, endorsing county, or LOC, cannot be eligible for METF funds. Further, where a site has been selected without such an application, the METF cannot serve its intended purpose, “to provide assurances required by a site selection organization” because in such a case no such assurances are required.

In the case of the United States Grand Prix, the FIA has selected the COTA site. On the date the site was selected, and as recently as January 19, 2012, no application has been submitted by any of the local entities described in the statute. Instead, private, for-profit entities have secured the scheduled F1 race without an application from any local government, or non-profit entity endorsed by a local government. The site of the United States Grand Prix cannot, therefore, have been selected “pursuant to an application by a local organizing committee, endorsing municipality, or endorsing county” Art. 5190.14 § 5A(b). Granting tax incentives to F1 for previously selecting the Austin/COTA site without prior solicitation by any authorized local entity, is not offering an METF tax “incentive” for F1 to locate in Austin, it is merely giving F1 a gift of tax dollars. Accordingly, the Attorney General must also conclude that the United States Grand Prix is ineligible for METF funds.

Conclusion

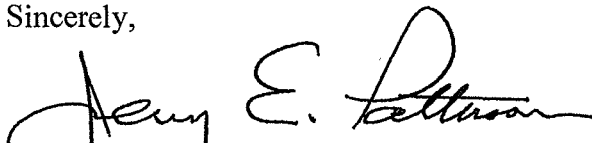
The METF is not permitted to be used at the sole discretion of the Comptroller; it may only be implemented where a local government entity has initiated the process. This is a logical safeguard against the abuse of the State’s tax revenue collection system. Only by

requiring an application on the local level is public involvement in the decision-making process guaranteed because it is only at this level that such a decision would be made in an open meeting. See Tex. Gov't Code §§ 551.001-551.146. By ignoring the process prescribed by the enabling statute, the Comptroller has taken sole authority over the use of METF fund. Allowing the Comptroller to circumvent the process required by the statute would encourage further abuses of the METF by allowing the Comptroller exclusive discretion over the use of the METF.

Furthermore, the selection of the COTA for the United States Grand Prix was made without the request or involvement of any authorized local entity as required by the governing statute. Art. 5190.14 § 5A. It is not, therefore, necessary for the Comptroller to forego tax revenue in order for the FIA to be sufficiently assured as to holding the United States Grand Prix in Texas. Thus, the Comptroller's decision to grant METF funds to the United States Grand Prix is made without benefit to the State of Texas. Such a transfer of funds would constitute an impermissible gift that violates Article III, section 51 of the Texas Constitution. Accordingly, the Attorney General must conclude that the United States Grand Prix is ineligible for METF funding.

The Attorney General should conclude that, in all instances, an application by a local entity to host an event must precede the site selection in order to be eligible for METF support. The Attorney General should further conclude that the absence of an application to host the event by an eligible entity prior to the selection of the site for the United States Grand Prix precludes the event from receiving the support of METF funding. To conclude otherwise ignores the plain language of the controlling statute and invites limitless and unlawful abuses of the State's tax revenue collection process by the Comptroller of Public Accounts.

Sincerely,


JERRY E. PATTERSON
Commissioner, General Land Office

enclosures:

Draft of a letter to the Mayor of Austin, Texas; from Bernie Ecclestone, Chief Executive Officer of Formula One Management Ltd.

Responsive documents from Open Records Requests to (1) the City of Austin; and (2) Travis County