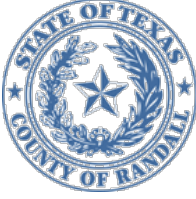


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By Opinion Committee at 8:39 am, Jul 19, 2021



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July 19, 2021

Office of the Attorney General
Attention Opinion Committee
Via Email: opinion.committee@oag.texas.gov

Re: Whether a Banquet Facility Located at a Football Stadium Owned by an Independent School District is a "Building of a Public School" in the Context of Texas Education Code Section 37.122(a)(1).

Dear Attorney General Paxton:

I write seeking an opinion whether a banquet facility owned by the Canyon Independent School District (CISD) that is located at a football stadium, also owned by the CISD, is a "building of a public school" within the meaning of Texas Education Code Section 37.122(a)(1). The resolution of this question will determine whether the CISD may allow the possession, sale or consumption of alcoholic beverages when the facility is leased to private operators for non-school-related or sponsored events.

Facts

The CISD owns the Happy State Bank Stadium located within the City of Canyon. The CISD recently demolished the existing locker rooms on the south side of the stadium and constructed new ones. The new structure, which is located within the fenced perimeter of the stadium, also includes a banquet facility located on the second floor directly above the locker rooms. Two photographs depicting this structure in relation to the stadium are attached as Exhibit "A." The banquet facility consists of a large open room that can be divided into smaller spaces using movable partitions, along with restrooms and kitchen facilities. The banquet facility is suitable for holding banquets, meetings and similar events. There are no classrooms within the stadium or locker room / banquet facility structure. The nearest school, Spring Canyon Elementary, is located approximately 4,000 feet, or .75 miles, away.

The fence surrounding the stadium is approximately eight feet tall. In addition, the stadium parking lot is surrounded by a cable barrier that restricts automobile access.

Unlike the stadium fence, however, this barrier presents no impediment to pedestrian access.

The CISD Board of Trustees (Board) plans to lease the banquet facility to private organizations for meetings and social functions. The Board may also lease the stadium parking lot for concerts, Independence Day celebrations and similar events. To make leasing more attractive, the Board is considering whether to allow the possession, sale and consumption of alcoholic beverages at these functions. Alcoholic beverages would only be permitted for non-school-related or non-school-sanctioned activities and only during times when the stadium is not being used for school-related or school-sanctioned activities.

Relevant Law

The board of trustees of a school district must prohibit the use of alcoholic beverages at school-related or school-sanctioned activities, whether on or off school property. Tex. Educ. Code Ann. § 38.007(a).¹ It is a Class C misdemeanor to possess intoxicating beverages for consumption, sale or distribution while on the grounds or in a building of a public school or within a stadium where an athletic event sponsored or participated in by a public school is being held. Tex. Educ. Code Ann. § 37.122(a), (c). The governing board of an incorporated city may prohibit the sale of alcoholic beverages within the city by a dealer whose place of business is within 300 feet of a public school or 1,000 feet of a public school if requested by the board of trustees of a school district. Tex. Alco. Bev. Code Ann. § 109.33(a).

In construing Education Code Section 37.122(a)(1), you opined that the term “public school” was not defined in the Education Code. Tex. Att’y Gen. LO 98-002 (1998). You noted, however, an appellate ruling that neither a high school stadium nor a school bus depot were a “public school” within the meaning of the statutory predecessor of Alcoholic Beverage Code Section 109.33(a).² *Id.*, citing *Rodgers v. Texas Liquor Control Board*, 449 S.W.2d 292 (Tex. App.—Corpus Christi 1970, no writ).

¹ A board of trustees may adopt a policy allowing the consumption, possession and sale of alcoholic beverages at an event at a performing arts facility owned by the school district if the district is located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located. Tex. Educ. Code Ann. §§ 38.007(a-1), 11.179(a). All other criteria aside, this provision is inapplicable here because there is no University of Houston component university in Randall County.

² The statute, 1948 Penal Code § 666-25a, can be found on the Texas State Law Library website: <https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/bookreader/1948-2/#page/114/mode/2up>. Like Alcoholic Beverage Code Section 109.33(a), this provision allows the governing authority of a city to prohibit the sale of alcoholic beverages by a dealer where the dealer’s place of business is within 300 feet of a public school.

In LO 98-002, you were asked whether Education Code Section 37.122 prohibited the sale of alcohol at the Socorro Independent School District's Student Activities Complex when it was leased for non-school related or sponsored events. The facility consisted of a 10,000 seat football stadium, a track facility and administrative offices. The nearest public school was located approximately 1.3 miles away. Relying on the determination in *Rodgers* that a football stadium is not a public school, you concluded that "Subsection 37.122 of the Education Code does not prohibit the sale of alcoholic beverages at the Student Activities Complex owned by the Socorro Independent School District except during an athletic event sponsored or participated in by a public school of this state."

A diligent search has uncovered no authority abrogating LO 98-002 or *Rodgers*. The same cannot be said for the definition of "public school." In 2013, the legislature added provisions to the Education Code relating to student loan repayment assistance for certain public school employees. Act of May 24, 2013, 83rd Leg., R.S., ch. 133, § 1, 2013 Tex. Sess. Law Serv. (codified in Tex. Educ. Code Ann. §§ 61.9811-9819). This included the definition of "public school" as "a public preschool or primary or secondary school in this state." *Id.*, at § 61.9811(3).

Question Presented

Is the banquet facility located at the Happy State Bank Stadium a "building of a public school" in the context of Education Code Section 37.122(a)(1)? The facts of LO 98-002 are remarkably similar to those here. The Socorro Independent School District owned a football stadium that contained no classrooms and was located approximately 1.3 miles from the nearest school. The CISD's stadium also contains no classrooms and is located approximately .75 miles from the nearest school. The only differences between Socorro's stadium and the CISD's is the substitution of a banquet facility for administrative offices and the absence of a track facility. All other things being equal, the question becomes whether the banquet facility transforms the stadium into a "building of a public school." Tex. Educ. Code Ann. § 37.122(a). Arguably, it does not.

LO 98-002 and *Rodgers* demonstrate that stadiums and bus depots are not considered school buildings. In the context of possessing alcohol, there is no meaningful distinction between these facilities and a banquet facility. In particular, none of them contain classrooms nor are they intended to be used for instructional purposes. While it is conceivable that ad hoc classes could be held in the banquet facility, the same is true of almost any facility owned by a school district.

The definition of "public school" added to the Education Code at Section 61.9811 does not alter the holdings of LO 98-002 or *Rodgers*; it does not include facilities other than "schools," or places where classes are held or instruction administered. *Id.*, at § 61.9811(3). It is debatable whether this definition extends beyond the narrow context

Attorney General Paxton
July 19, 2021
Page -4-

of student loan repayment, but even if applied to the Education Code globally, it is entirely consistent with the determination that a football stadium is not a school.

On the other hand, reliance on whether classes are held, or instruction administered, in a facility may be entirely misplaced. This distinction can be inferred from LO 98-002 and *Rodgers*, but neither expressly state as much. Because of this, I respectfully request your opinion on the question presented. In addition, should you find that alcohol is prohibited at the banquet facility because it is a school building, would the sale, possession or consumption of alcohol during a non-school event in the parking lot or other grounds around the stadium, but in the vicinity of the banquet facility, also be prohibited, or would the holding in LO 98-002 still prevail? I will gladly provide any additional information you may require in addressing these questions.

Thank you for your assistance. I look forward to receiving your response.

Yours truly,



Robert Love
Criminal District Attorney

Enclosure

cc: Dr. Darryl Flusche
Ms. Heather Wilson