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OPINION COMMITTEE

The Honorable John Cornyn  
Attorney General of Texas  
209 W. 14th Street  
P.O. Box 12548  
Austin, Texas 78711-2548  
Attn: Opinions Committee

FILE # ML-42036-01  
I.D. # 42036

Re: The City of Arlington, Interpretation of  
Section 4B, Article 5190.6, V.A.T.C.S

Dear General Cornyn:

As Chair of the Senate Committee on State Affairs, I am requesting your opinion interpreting certain provisions of Section 4B ("Section 4B") of the Development Corporation Act of 1979 (the "Act"), Article 5190.6, Vernon's Annotated Texas Civil Statutes, as applied to the following facts:

In 1990, prior to the enactment of the Act by the Legislature, the City Council of the City of Arlington (the "City") ordered and held a referendum election within the City at which the voters of the City were asked to vote "for" or "against" the following proposition:

"The levy and collection of an additional one-half cent (½ cent) sales and use tax within the City, when and to the extent permitted by law, with the proceeds thereof to be used and applied to the payment of the principal of and interest on bonds, notes, or other obligations, in aggregate principal amount not exceeding \$135,000,000, to be issued for the purpose of acquiring land for, and constructing and equipping, a major league baseball park and related facilities, including, access, recreational, entertainment and open space improvements, with the imposition of such tax to cease upon such date as such bonds, notes, or other obligations, and any refunding obligations, are paid in full"

More than 65% of the voters who voted at this election voted "for" the proposition.



Thus, the City voters were asked to, and did, authorize the City to issue not more than \$135 million of sales tax revenue bonds or notes for the purpose of paying a portion of the costs of the professional baseball stadium that is now named and popularly known as "The Ballpark in Arlington" (the "Ballpark") if the Legislature enacted legislation authorizing such bonds or notes for such purposes and the levy of a ½% sales tax to secure the payment thereof.

In the succeeding legislative session of 1991, the Legislature added Section 4B to the Act. In general, in its originally enacted version, Section 4B amended the Act to authorize certain cities (including the City) to incorporate non-profit industrial development corporations for the purpose of, among other things, financing and developing professional and amateur sports facilities, and to secure any bonds issued for such purposes by the levy and collection of a general sales tax, not exceeding a ½% rate, on taxable items sold within the city, subject to an 8.25% overall, combined maximum sales tax rate within the city. The sales tax would be imposed and collected in accordance with the provisions of Chapter 321, Tax Code.

In general, the new power granted by Section 4B could not be exercised until and unless the power and the sales tax was approved at an election held within an empowered city, and the amount of debt payable from the sales tax could not exceed \$135 million.

However, subsection (d) of Section 4B provided that this election requirement is satisfied and another election is not required in any city where an anticipatory referendum election was held prior to the enactment of Section 4B if notice of the election was published, if the proposition expressly stated that it was held in anticipation of the passage of enabling legislation in the future, and if the voters approved the conforming proposition. The City's anticipatory election qualified for this exception and was validated by subsection (d) of Section 4B. Hence, another election was not required in the City.

After the enactment of Section 4B and pursuant to subsection (b) thereof, the City, in 1991, authorized the incorporation of the Arlington Sports Facilities Development Authority ("ASFDA") to act at all times on the City's behalf and as its non-profit instrumentality.

In 1992, ASFDA issued its notes entitled "Arlington Sports Facilities Development Authority, Inc. Taxable Sales Tax Revenue Floating Rate Notes, Series 1992A and Series 1992B" (the "Notes") in the amount of \$135 million for the purpose of paying a portion of the costs of constructing and equipping the Ballpark. The Notes were secured by and payable from the previously voted ½% sales tax.

The Ballpark was constructed on time and was, and is now, leased to the owners of the Texas Rangers Baseball Club (the "Team"), a member team of the American League of Professional Baseball Clubs.

The City estimates that the Ballpark's overall cost exceeded \$225 million. The balance of the costs of the Ballpark above the \$135 million of the Notes were financed and paid for by other miscellaneous means, including special revenue bonds (not payable from taxes of any kind), from private funds provided by the owners of the Team, and by concessionaires at the Ballpark.

The Notes were approved by the Attorney General in accordance with applicable statutory procedures and requirements, were issued and sold into the national municipal bond markets, and their legality became incontestable in any court or forum.

While Section 4B authorizes cities to issue obligations, like the Notes, with maturities up to 30 years, the City wisely elected to issue and reissue the Notes into the short-term municipal bond markets in order to take advantage of the lower interest rates that are generally borne by municipal bonds with short-term maturities. This financial strategy has worked.

The City expects that, if sales tax revenues from within the City are received as currently projected, the Notes will be paid off and retired in November, 2001, only 10 years after their initial issuance rather than the maximum of 30 years permitted by Section 4B.

It is this positive development and fact that raises the question pertaining to Section 4B, regarding which your opinion is requested.

**The Question Submitted:**

The City expects to receive Section 4B sales tax revenues from the Comptroller on or about November 9, 2001, in an amount that will be sufficient to pay, in their entirety, the principal of and interest on the Notes on November 21, 2001.

If these expectations are realized, the City will immediately notify the Comptroller that the Notes and all obligations of the City that are payable in whole or in part from the previously voted Section 4B sales tax have been paid in full.

The voted proposition, as quoted verbatim above, provides that "...the imposition of such tax [will] cease upon such date as such bonds, notes, or other obligations...are paid in full." Obviously recognizing that the simultaneous payment of bonds or notes and the cessation of the collection of the tax is a mechanical impossibility, subsection (i) of Section 4B was enacted to provide that a Section 4B sales tax may not be collected after the last day of the first calendar quarter occurring after such notification. Thus, during the remainder of the quarter during which the Notes are paid and the following calendar quarter, the imposition of the Section 4B sales tax will be terminated after the Comptroller has taken steps to halt its initial collection by retailers within the City.

However, an indeterminate amount of sales taxes will be actually collected (the "Post Note Payment Sales Tax Revenues") during the temporary, extended period after the Notes have been paid, and the City will be entitled to receive those revenues from the Comptroller, adjusted by the Comptroller's normal withholding for refunds and collection costs.

These facts raise the following question, and it is respectfully submitted for your consideration and opinion:

**Does Section 4B restrict the use of the Post Note Payment Sales Tax Revenues to uses that provide public infrastructure that is to be used for purposes related to the Ballpark, or**

**may the City use the Post Note Payment Sales Tax Revenues for any lawful purpose at the discretion of the City Council?**

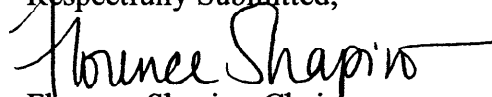
The City has experienced many of the problems that are typical of a rapidly growing and dynamic community and there is no shortage of need for funds for capital improvements throughout the City.

I have been advised by the City that if it is your opinion that the permissible uses of the Post Note Payment Sales Tax Revenues are restricted to public infrastructure that is related to the Ballpark, the City will use such funds to provide structured public parking facilities that will be used in connection with the Ballpark and, when not in use for that purpose, the City's Convention Center that is located adjacent to the Ballpark, or for such other more limited purposes as you might direct. The City believes that this use is one which is consistent with the proposition that was approved by the City's voters in 1990.

I have been advised that if it is your opinion that Section 4B does not limit the City's uses of the Post Note Payment Sales Tax Revenues, the City will restrict the uses of the funds to capital, non-operational purposes, but will consider an array of uses within the City that are in need of capital funding.

If you should need any additional information or records pertaining to this request, we will provide it promptly when requested.

Respectfully Submitted,

  
Florence Shapiro, Chair  
Senate Committee on State Affairs

cc: Senator Chris Harris  
Ms. Jeanene McIntyre,  
Assistant City Attorney  
P.O. Box 321  
Arlington, Texas 76004-0231