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OPINION COMMITTEE

April 21, 2011

FILE # 11-46727-11
I.D. # 46727**RQ-0963-GA**

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

Dear General Abbott:

The Comptroller of Public Accounts ("Comptroller") administers the Events Trust Fund program pursuant to Tex. Rev. Civ. Stat. Ann. art. 5190.14, §5C (Vernon Supp. 2010). Under this program, a city or county may obtain financial support from the State to offset the costs of hosting sporting and non-athletic events. *Id* at §5C(h). The statute authorizes the Comptroller to establish an Events Trust Fund, outside the Treasury, with local and state gains from sales and use, auto rental, hotel and alcoholic beverage taxes **generated over a 30-day period from an eligible event or series of events**. *Id* at §5C(d). These funds are disbursed to the local entity, which can be an endorsing city, endorsing county or local organizing committee, to pay costs to conduct the event. *Id* at §5C(h). Pursuant to this provision, the Comptroller has paid the costs for events that are incurred by the endorsing municipality or endorsing county as well as costs that have been incurred by the site selection organization that conducts the event.

Prior to September 1, 2009, an eligible event was defined as including only certain sporting and athletic events:

A National Collegiate Athletic Association regional tournament or playoff game, a Senior Olympic activity, including a training program or feeder program sanctioned by the National Senior Games Association, or a major sporting or athletic event or a related series of events sanctioned by a site selection organization. The term includes any activities related to or associated with the event.

Act of May 25, 2007, 80th Leg., R.S., ch. 1426, §3, sec. 5C(a)(3), 2007 Tex. Gen. Laws 4906, 4907.

In 2009, the Legislature amended the definition of event to remove the references to sporting and athletic events:

"an event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site

selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.”

Act of May 28, 2009, 81st Leg., R.S., ch. 810, §7, sec. 5C(a)(3), 2009 Tex. Gen. Laws 2035, 2041 (codified as an amendment of Tex. Rev. Civ. Stat. Ann. art. 5190.14, §5C). Since 2009, the Events Trust Fund has been used for events other than sporting events. Some of the events that have been supported by the Events Trust Fund program since 2009 are: Air Conditioning Contractors of America Conference and Indoor Air Expo 2011, American Association of Endodontists Annual Session 2011, GameStop, Inc. Annual Convention 2010, International Association of Emergency Managers 58th Annual Conference and EMEX 2010, North American Nature Photography Association Summit 2011, and Purina Mills Annual Retail Solutions Exposition 2011.

A complete list of the events that have participated in the program as well as additional information regarding the program is available at the Comptroller’s web site http://www.texasahead.org/tax_programs/event_fund.

The Comptroller has received a request from the City of Dallas to establish an event trust fund for an event called MegaFest 2012. A copy of the application is enclosed for your convenience. The documentation submitted with the application indicates that MegaFest 2012 is hosted by Potter House of Dallas, Inc. which appears to be a non-denominational Christian church. As part of the application, a list of the activities for MegaFest 2005 was included. At least some of the activities identified for MegaFest 2005 appear to have an overtly religious purpose.

The Texas Constitution, Article I, section 7 states, “No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary.” Additionally, the United States Constitution, First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

To our knowledge, the Events Trust Fund has not been used to provide state funds for public events that are of a religious nature, therefore this is a case of first impression.

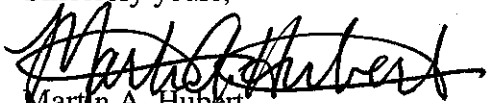
The Comptroller requests the opinion of the Attorney General regarding:

1. Does the use of the Events Trust Fund program for events that include religious content, such as MegaFest 2012, comply with the requirements of the Texas and United States Constitutions?

2. If the Events Trust Fund program may provide assistance for an event such as MegaFest 2012, are there any constitutional limitations on the use of state funds to reimburse costs of conducting the event that may be incurred by the endorsing municipality, the endorsing county, or the event site selection organization, as defined in the statute?

If you have any questions, please contact Ashley Harden, General Counsel, at (512)463-7067 or ashley.harden@cpa.state.tx.us.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Martin A. Hubert", written in a cursive style.

Martin A. Hubert
Deputy Comptroller

Enclosure