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**RECEIVED**

OCT 23 2013

**OPINION COMMITTEE**

October 21, 2013

The State of Texas  
House of Representatives  
District 63

**RQ-1159-GA**

FILE # ML-47425-13  
I.D. # 47425

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

Re: Whether amendments to Subdivision (4), Subsection (a), Section 5A, Chapter 1507 (S.B. 456), Acts of the 76<sup>th</sup> Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes, made by the Texas Legislature in S.B. 1678 during the 83<sup>rd</sup> Regular Session (2013) must be given full effect by the Texas Comptroller of Public Accounts.

Dear General Abbott:

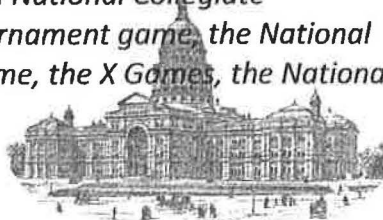
Pursuant to the authority to issue advisory opinions granted by the Attorney General in § 22 of Article IV of the Texas Constitution and § 402.041 et seq. of the Texas Government Code, I write to request an opinion regarding whether the Comptroller of Public Accounts must give full application to certain amendments to the Major Events Trust Fund statute made by S.B. 1678 during the 83<sup>rd</sup> Regular Session of the Texas Legislature. It has become apparent that the Comptroller is reticent to give effect to certain provisions of S.B. 1678 due to alleged ambiguity in the language of the bill and the statute.

### **BACKGROUND LAW AND FACTS**

The METF statute was amended by S.B. 1678 in order to, among other things, add to the list of events eligible to receive METF funding an event that meets specific criteria and that is held at a specific venue located in this State. Relevant portions of S.B. 1678 follow:

*SECTION 1. Subdivision (4), Subsection (a), Section 5A, Chapter 1507 (S.B. 456), Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is amended to read as follows:*

*(4) "Event" means a Super Bowl, a National Collegiate Athletic Association Final Four tournament game, the National Basketball Association All-Star Game, the X Games, the National*



Hockey League All-Star Game, the Major League Baseball All-Star Game, a National Collegiate Athletic Association Bowl Championship Series game, a World Cup Soccer game, the World Games, a national collegiate championship of an amateur sport sanctioned by the national governing body of the sport that is recognized by the United States Olympic Committee, an Olympic activity, including a Junior or Senior activity, training program, or feeder program sanctioned by the United States Olympic Committee's Community Olympic Development Program, a mixed martial arts championship, the Breeders' Cup World Championships, a Formula One automobile race, the Academy of Country Music Awards, the National Cutting Horse Association Triple Crown, ~~or~~ a national political convention of the Republican National Committee or the Democratic National Committee, or the largest event held each year at a sports entertainment venue in this state with a permanent seating capacity, including grandstand and premium seating, of not less than 125,000. The term includes any activities related to or associated with an event.

SECTION 2. Section 5A, Chapter 1507 (S.B. 456), Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is amended by amending Subsections (a-1), (b-1), (h), (i), (k), (p), and (w) and adding Subsections (a-2), (x), and (y) to read as follows:

(a-1) An event not listed ~~included~~ in Subsection (a)(4) of this section is ineligible ~~eligible~~ for funding under this section. A listed event may receive funding under this section only if:

(1) a site selection organization selects a site located in this state for the event to be held one time or, for an event scheduled to be held each year for a period of years under an event contract, or an event support contract, one time each year for the period of years, after considering, through a highly competitive selection process, one or more sites that are not located in this state;

(2) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region

composed of this state and one or more adjoining states; ~~and~~

(3) the event is held not more than one time in any year; and

(4) the amount of the incremental increase in tax receipts determined by the comptroller under Subsection (b) of this

section equals or exceeds \$1 million, provided that for an event scheduled to be held each year for a period of years under an event contract or event support contract, the incremental increase in tax receipts shall be calculated as if the event did not occur in the prior year.

(a-2) Subsection (a-1)(1) of this section does not apply to an event that is the largest event held each year at a sports entertainment venue in this state with a permanent seating capacity, including grandstand and premium seating, of not less than 125,000. If an endorsing municipality or endorsing county requests the comptroller to make a determination under Subsection (b) of this section for an event described by this subsection, the provisions of this section apply to that event as if it satisfied the eligibility requirements for an event under Subsection (a-1)(1) of this section.

The Comptroller's reluctance to implement the provision of S.B. 1678 that adds "or the largest event held each year at a sports entertainment venue in this state with a permanent seating capacity, including grandstand and premium seating, of not less than 125,000" to the list of events eligible for METF funding is seemingly based on:

- Absence of language in S.B. 1678 exempting the event added to Sec. 5A(a)(4) from Subsections 5A(5) (a-1)(2), (3), and new (4); and
- A lack of guidance regarding how to carry out the procedural requirements of the METF in the absence of a site selection committee, specifically those procedures related to the event support contract and the parties to that contract;
- A belief that the original intent of the Major Events Trust Fund, to provide an economic development tool for local governments to attract revenue-generating events to the state, should be maintained and promoted to the exclusion of subsequent amendments added by the Legislature.

## DISCUSSION

### Issue of Ambiguity

The Comptroller is correct that some of the amendments made by S.B. 1678 to the METF statute may arguably be ambiguous. For example, the language adding UFC and X Games to the list of events eligible for funding, but failing to identify a specific venue or event, may create an ambiguity. This particular "ambiguity" may or may not be a fatal flaw, but is not the issue sought to be resolved here.

Admittedly, one could argue there are some procedural holes left to be filled in order to effectuate the Legislature's intent in adding "*the largest event held each year at a sports*

*entertainment venue in this state with a permanent seating capacity, including grandstand and premium seating, of not less than 125,000”* to the list of those eligible for METF funding. However, the Legislature clearly designated both the venue and the event, leaving no ambiguity or room for interpretation. In so doing, the Legislature became the de facto site selection organization. The rulemaking process is the appropriate method to determine how the remaining site selection committee duties, with regard to an event statutorily designated as eligible for METF funding, are to be carried out satisfactorily.

The Code Construction Act (Sec. 311.023, Government Code) provides that consideration may be given to “the object sought to be obtained”, “the consequences of a particular interpretation”, and “legislative history”. Additionally, Sec. 311.021(2), Government Code, provides that “the entire statute is intended to be effective.”

Disregarding the provisions of S.B. 1678 at issue in their entirety because some portions may be ambiguous (X Games and UFC) would disregard the object sought to be obtained and the Legislature’s clear intent in adopting the “largest venue” language. The debate on the House floor clearly sets forth the Legislative intent to designate Texas Motor Speedway, located in my District, as the largest venue. (See floor debate attached hereto as Exhibit “A”.) The consequences of refusing to implement this provision could include a loss of revenue to the State and to the North Texas region that currently hosts one of the events added to the list of events eligible for METF funding at the largest venue in the state.

In fairness, the language of the METF statute was already very complex. A recodification of the statute to address the X Games and UFC issues may be warranted, but the provisions already included in the law regarding “largest venue” should be given effect to the greatest possible extent. Further, the Texas Legislative Council has issued a legal opinion (attached hereto as Exhibit B and incorporated herein) strongly concluding that the Comptroller should promulgate rules in accordance with Texas law.

### **Procedures**

The procedures for carrying out the clear language of S.B. 1678 should be established in a rulemaking procedure undertaken by the Comptroller. Sec. 2001.003(6)(A)(i), Government Code, defines “rule” as a “state agency statement of general applicability that implements, interprets, or prescribes law or policy.” Using the Code Construction Act, the Comptroller should develop a draft rule that attempts to implement the unambiguous provisions of S.B. 1678. The sponsors of S.B. 1678 and its amendments would have multiple opportunities to participate in the rulemaking process and provide insight regarding the intent of the legislation as well as the clear meaning of the language itself. Certainly, the Legislature did not contemplate that the “largest event” language they intentionally added to the METF statute in a floor amendment would be disregarded in its entirety because the Comptroller chose to assert there were not sufficient procedural guidelines to implement the amendment.

**Intent of METF Statute**

While the original intent of the METF statute may have been to provide a tool by which new events may be attracted to the State, it is for the Legislature to decide whether to modify that intent as the economic needs of the State and its regions change. It is the intent of the specific language in the law, not the overarching original policy, which should be the subject of the Comptroller's rulemaking to implement the provisions of S.B. 1678. In this instance, the Texas Legislature became the site selection organization for the largest venue event annually.

**QUESTIONS PRESENTED**

1. Is it clear that the Legislature chose a specific venue for an annual event to be included in METF?
2. Does the Comptroller have sufficient authority to promulgate rules implementing S.B. 1678 immediately under applicable state laws? If so, should the Comptroller promulgate rules to implement this "largest venue" provision?

Thank you for your assistance in resolving this matter. If I can provide you with any additional information, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "Tan Parker". The signature is written in a cursive style with a horizontal line above the first few letters.

Tan Parker  
State Representative

*Exhibit A*

**Transcript of Dialogue SB1678/SCR48 83<sup>rd</sup> Regular Session**

Rep. Jason Isaac on SB 1678 Second Reading – 5/17/13

This bill deals with the Major Events Trust Fund and the Events Trust Fund and I believe there are a few amendments...

...The first amendment is mostly a cleanup amendment with one exception. In the committee we removed a 5 percent infrastructure improvement provision from the Senate bill, we put that back in, put that 5 percent provision back into the bill unless it's a publicly owned facility...

...Alright, this second amendment would add the X-Games and an event at the Texas Motor Speedway to the items eligible for the Major Events Trust Fund. Most of you probably know or are familiar with the X-Games, for those of you who are not, the X-Games are the Olympics of extreme sports, it is broadcasted by ESPN to a worldwide audience. Texas, and more specifically, Austin is currently competing to host the X-Games, it is a nationwide competition, and after considering bids from dozens of cities the X-Games narrowed its list to Austin, Chicago, Charlotte, Detroit and Los Angeles. It is exactly the kind of event the Major Events Trust Fund was created for...

...Would add USC mixed martial arts champions to the Major Events Trust Fund...

...This has been the, I guess it's seen a lot of attention over the last couple of years, controversy. This bill really does a lot of work to clean it up, put some integrity back into the Major Events Trust Fund and to the Events Trust Fund and seeing no one at the back mic I move passage

Discussion on SCR 48 – 5/27/13

Rep. Jason Isaac: This SCR 48 makes a few technical corrections to senate bill 1678 which is the Major Events Trust Fund and Events Trust Fund bill...

Rep. David Simpson: Mr. Speaker, I rise to raise a point of order against further consideration of SCR 48 in that it violates Rule 8 Sec.13(f) and also Rule 10 Sec. 8

Point of order sustained.