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OPINION COMMITTEE



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May 22, 2015

Hon. Ken Paxton
Attorney General, State of Texas
Attention: Opinion Committee
Opinion.Committee@texasattorneygeneral.gov

Via Email

Re: Request for Opinion regarding Alternate Location for Public Sales

Dear Attorney General Paxton,

The Montgomery County Attorney's Office requests the opinion of the Attorney General of Texas regarding the following question:

May Montgomery County's Commissioners Court order public sales (specifically, tax sales under Texas Tax Code § 34.01 and foreclosure sales under Texas Property Code § 51.002) to take place in a county-owned convention center 3.2 miles from Montgomery County's courthouse?

Brief

Currently, Montgomery County public sales take place in the Montgomery County Commissioners Court meeting room on the fourth floor of the Montgomery County Commissioners Court building, which building is 0.2 miles away from the Montgomery County courthouse. Because of scheduling conflicts for the Montgomery County Commissioners Court meeting room, Commissioners Court would like for public sales to take place in a different location. Public sales in Montgomery County often attract a large crowd, and there is no other room in the Commissioners Court building, the courthouse, or any of the other nearby public buildings that could easily accommodate the number of people who come to bid on or observe public sales. The courthouse steps should be a large enough area to accommodate all participants, but



Montgomery County often experiences very hot or rainy conditions that would make outdoor public sales inconvenient. Some in Montgomery County have proposed holding public sales at the county-owned Lone Star Convention & Expo Center ("Convention Center"), which has ample indoor room to accommodate all bidders. The Convention Center is located 3.2 miles away from the courthouse by car (about an 8-minute drive), which is probably not a convenient walking distance, but which may be a convenient driving distance.

The Convention Center is located immediately outside the city limits of Conroe, Texas, which is the county seat of Montgomery County, Texas. The courthouse and the Commissioners Court building are both in Conroe's geographic center. There is ample free parking available at the Convention Center, and there is less—but usually sufficient—free parking along Conroe city streets within a few blocks of the Commissioners Court building. Conroe operates two bus routes, both of which have stops directly next to the Commissioners Court building and the courthouse; neither route has a stop within 2.5 miles of the Convention Center. If the Convention Center may be used for public sales, adequate space will be reserved and open to the public at the time for the sales given in the required statutory notices.

Two statutes contain identical provisions relating to the place of public sales. Texas Tax Code § 34.01(r) discusses the location of tax sales:

Except as provided by this subsection, a sale of real property under this section must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may designate an area other than an area at the county courthouse where sales under this section will take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door. . . . A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale.

Texas Property Code § 51.002 contains two subsections relating to the place where real property foreclosure sales must occur. Subsection 51.002(a) provides that "Except as provided by Subsection (h), the sale must take place at the county courthouse in the county in which the land is located . . ." Subsection 51.002(h) provides that a commissioners court:



may designate an area other than an area at the county courthouse where public sales of real property under this section will take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door. . . . A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale.

These statutes do not define “reasonable proximity” nor “as accessible to,” and these phrases do not appear to have been construed by any court in Texas. The statutes are deferential to commissioners court decisions, but the limits of a commissioners court’s discretion in this area are unclear.

The Convention Center, the Commissioners Court building, and the courthouse are all open to the public—or can be as needed at reserved times. The Commissioners Court building and courthouse are located near each other, in the center of the county seat, with two bus routes that pass through the immediate vicinity, and with enough parking within 3 or 4 city blocks to usually accommodate all participants in public sales. The Convention Center is immediately outside the city limits of the county seat, a 3.2-mile drive from the courthouse, with plenty of parking and no bus routes that pass anywhere within 2.5 miles. It seems apparent that the Commissioners Court building is a public place within a reasonable proximity of the county courthouse and is as accessible to the public as the courthouse door; thus, the Commissioners Court building is an appropriate venue for public sales. Our question is whether Commissioners Court may legally determine that the Convention Center would also be an appropriate venue for public sales—that is, that the Convention Center is a public place within a reasonable proximity of the county courthouse and is as accessible to the public as the courthouse door.

Thank you for your consideration in this matter.

Sincerely yours,

J. D. Lambright

County Attorney

Montgomery County, Texas