



**Office of the Attorney General
State of Texas**

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November 3, 1992

Honorable Ron Wilson
Chairman
Committee on Liquor Regulation
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 92-71

Re: Questions relating to transfer of funds from the Metropolitan Transit Authority of Harris County to the City of Houston pursuant to V.T.C.S. article 1118x (RQ-364)

Dear Representative Wilson:

You ask several questions regarding the relationship between the Metropolitan Transit Authority of Harris County (METRO) and the City of Houston (the "city"). METRO funds have been or will be transferred to the city or spent for the purpose of maintaining or improving city streets. You indicate that the funds transfer is proposed pursuant to sections 6(t) and 6(u) of article 1118x, V.T.C.S. You also state that METRO has agreed to use its police force to investigate traffic accidents in municipalities within its jurisdiction.

You ask several questions in connection with these actions. First, you ask generally whether the proposed funds transfer is valid. Assuming it is valid, you next ask whether funds transferred to the city may be used for purposes other than those specified in section 6(t) and 6(u). If they may not, your third question is whether the city may reduce its street maintenance budget by the amount of METRO funds so transferred and use the surplus city funds for purposes other than those provided in section 6(t) and 6(u). You next ask whether a 1988 election in which the voters approved the dedication of 25 percent of METRO's annual sales tax receipts to general mobility projects limits the authority of METRO to transfer funds to the city. Finally, you ask whether METRO may use its police force to investigate traffic accidents which do not involve METRO property occurring in any of the 16 political subdivisions comprising METRO. We will address your questions in order.

Transfer of METRO funds for maintenance or improvement of city streets.

You state that the amount of METRO funds pledged to the maintenance or improvement of Houston streets totals \$115.5 million annually. You also describe the projects the proposed expenditures will be dedicated to. You further indicate that this action is proposed pursuant to authority granted by sections 6(t) and 6(u) of article 1118x, V.T.C.S., which provide the following:

(t) Except as provided by Subsection (u) of this section, each authority that was confirmed at a tax election under Section 5 of this Act before July 1, 1985, other than an authority that is authorized under Subsection (e) of Section 6C of this Act to include regional economic development facilities in its station or terminal complex, may construct, reconstruct, or maintain any highway, road, thoroughfare, or arterial or local street, including any bridge or grade separation, within the boundaries of the authority and may undertake traffic signalization and control improvements of any kind within the boundaries of the authority. An authority may exercise any portion of the powers granted by this subsection through contracts or other agreements with other governmental entities.

(u) An authority may not act under Subsection (t) of this section in a municipality without:

- (1) the consent of the governing body of the municipality;
or
- (2) a contract with the municipality that specifies the actions the authority may take in the municipality.

Section 6(v) provides that subsection (t) does not apply to activities undertaken by an authority pursuant to section 6(e) of the act, which authorizes a metropolitan rapid transit authority (MTA) to, *inter alia*, develop, construct, operate, and maintain "systems" within their boundaries and to use public streets for such purposes. See V.T.C.S. art. 1118x, § 2(f) (definition of "system"). Thus, section 6(t) was intended to authorize work on streets which are not part of the transit system.

Turning to your first inquiry -- whether the proposed expenditures are valid -- we note that the validity of specific expenditures will turn on the facts surrounding the expenditure. Whether particular projects can be characterized as construction,

reconstruction, or maintenance is necessarily dependent on the nature of the proposed work. Also, it is not clear what projects can be termed "traffic signalization and control improvements" for purposes of section 6(t). In light of the fact-bound nature of this question, we cannot resolve the general validity of the expenditures under section 6(t).¹

Your next question -- whether MTA funds transferred to a city can be spent for purposes not specified in those provisions -- is answered in the negative. The plain language of subsection (t) authorizes the expenditure of MTA funds only for the purposes of street and highway construction, reconstruction, and maintenance and traffic signalization and control improvements, and article 1118x does not otherwise authorize the transfer of MTA funds by contract to a municipality for other purposes.

You next ask whether the city may reduce its own budgeted expenditures for street maintenance by amounts transferred by METRO and apply the subtracted amounts to other uses, such as the hiring of police officers. We find no provision of article 1118x which restricts the budgets of municipalities in the manner you suggest, and we are aware of no other law which does so. Section 102.009(b) of the Local Government Code provides that a municipality may spend municipal funds only in strict compliance with its annual budget, except in an emergency. An emergency expenditure may be made "only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention." Local Gov't Code § 102.009(c). The governing body may, furthermore, amend the budget for "municipal purposes." *Id.* § 102.010. Whether an emergency within the meaning of

¹It has been argued that the proposed expenditures violate article III, section 52 of the Texas Constitution which, among other things, prohibits a political subdivision from making gratuitous transfers of its funds to another political subdivision. See *Harris County Flood Control and Improv. Dist. v. Mann*, 140 S.W.2d 1098 (Tex. 1940); *San Antonio Indep. Sch. Dist. v. Board of Trustees of San Antonio Elec. & Gas Sys.*, 204 S.W.2d 22 (Tex. Civ. App.--El Paso 1947, writ ref'd n.r.e.). However, one political subdivision may transfer its funds by contract to another political subdivision, provided the contract accomplishes a public purpose of the former and is secured by an adequate *quid pro quo*. See Attorney General Opinion H-403 (1974). The determination of public purpose is a function entrusted first to the legislature and the political subdivision and ultimately to the courts. *Id.*

section 102.009 exists or whether a budget amendment is for municipal purposes are questions of fact that cannot be resolved in an attorney general opinion.²

METRO's 1988 "Phase 2" election and dedication of sales tax receipts

Your next question concerns the effect of a 1988 election dedicating 25 percent of METRO's sales tax receipts to "general mobility projects" for a 13 year period from February of 1988 through September of the year 2000. On January 16, 1988, voters residing within METRO's territory approved a resolution approving "Phase 2" of METRO's mobility plan. A key component of the plan is the dedication of 25 percent of METRO's sales tax to "general mobility projects" for the duration of the plan (February 1988 through September 2000).³ You ask whether METRO may appropriate more than 25 percent of its sales tax revenue to such projects which are not in aid of, incidental to, or directly related to mass rapid transit purposes.

²In addition, the city charter or city code may supply additional procedural requirements that are not reflected in the Local Government Code. This office does not interpret city charter provisions in the opinion process.

³The ballot proposition, as it appears in orders of the METRO board and as approved by the voters, provides the following in pertinent part:

SHALL THE PHASE 2 CONSTRUCTION PLAN (ALSO REFERRED TO AS THE METRO PHASE 2 MOBILITY PLAN, THE "PHASE 2 PLAN"), AS ADOPTED BY THE BOARD [of METRO] . . . ON OCTOBER 22, 1987, AND INCORPORATED IN THE ELECTION RESOLUTION ADOPTED BY THE BOARD ON NOVEMBER 23, 1987, BE APPROVED, AND FURTHER SHALL THE BOARD OF METRO BE AUTHORIZED TO IMPLEMENT THE PHASE 2 PLAN, INCLUDING (BUT NOT LIMITED TO) THE ESTABLISHMENT OF THE GENERAL MOBILITY FUND AND THE DEDICATION THERETO OF TWENTY-FIVE PERCENT (25%) OF THE RECEIPTS OF METRO'S ONE PERCENT (1%) SALES TAX COLLECTED FROM FEBRUARY 1988 THROUGH SEPTEMBER 2000

The proposition further states that the 25 percent of sales tax receipts shall be used for "general mobility projects," which are described as consisting of "major thoroughfare improvements, underpasses and overpasses and other projects designed to lessen traffic congestion" contained in the Phase 2 Plan. In the order of the METRO board calling the election, the board concludes that voter approval of the Phase 2 Plan was "necessary and convenient . . . so that METRO and the Board may better carry out and effectuate the purposes of the METRO Act." The order also stipulates that upon voter approval of the plan, the 25 percent dedication of sales tax revenues "will be binding on METRO and its Board for the term of the Phase 2 Plan."

Texas courts have consistently held that the terms of the order calling an election at which the voters are asked to approve or disapprove financial undertakings of a governmental body and the terms of preelection orders relating to the purposes for which such funds shall be used become a solemn contract with the voters, who are entitled to receive substantially all of the benefits and security of the contract. See *Fletcher v. Howard*, 39 S.W.2d 32 (Tex. 1931); *Moore v. Coffman*, 200 S.W. 374 (Tex. 1918). In addition, the representations of the governing body outside of its official orders or resolutions may also give rise to a contract with the voters. See *Devorsky v. La Vega Indep. Sch. Dist.*, 635 S.W.2d 904, 907 (Tex. App.--Waco 1982, no writ). Any attempt to substantially alter the rights and expectations of the voters will be treated as a violation of article I, section 16 of the Texas Constitution, which prohibits laws impairing the obligation of contracts. See *San Saba County v. McCraw*, 108 S.W.2d 200, 203 (Tex. 1937). However, where conditions have so drastically changed that the governing body cannot fulfill its agreement with the voters, the courts will not compel the governing body to attempt to do so. See *Inverness Forest Improv. Dist. v. Hardy St. Investors*, 541 S.W.2d 454, 460 (Tex. App.--Houston [1st Dist.] 1976, writ ref'd n.r.e.). It is also settled that where the governing body expressly reserves the discretion to determine the uses to which the electorally-approved funds shall be put, the court will not interfere with the exercise of that discretion. See *Wright v. Allen*, 257 S.W. 980, 986 (Tex. Civ. App.--Dallas 1923, writ ref'd) (where order calling election stated projects funded by bonds would be completed in "substantial compliance" with road plan, commissioners court could make such changes as it deemed necessary).

The language of the ballot proposition submitted for our inspection does not immediately disclose whether the 25 percent figure was intended to serve as either a maximum or minimum dedication. Furthermore, the authorities above suggest the resolution of your fourth question turns not only on the terms of the proposition submitted to the voters and preelection orders of the METRO board, but on other possible representations made to the voters of which we are not aware. The expectations of the voters may very well depend on facts that we are not apprised of or on factual determinations which we cannot make in the opinion process. Consequently, we cannot resolve this issue.

Use of METRO's police force

The brief filed in conjunction with your opinion request states that the board of METRO recently agreed to double the size of its police force. You ask whether METRO may use its police force to investigate motor vehicle accidents that do not

involve METRO property in any of the 16 political subdivisions comprising METRO. We conclude that METRO peace officers enjoy concurrent jurisdiction with Houston police officers to investigate traffic accidents in the city.

Section 13(c) of article 1118x authorizes an MTA to employ peace officers and defines their duties:

An authority may employ and commission its own peace officers with the power to make arrests in all counties where the system is located when necessary to prevent or abate the commission of an offense against the laws of the state or a political subdivision of the state when the offense or threatened offense occurs on or involves the system of the authority, to make arrests in cases of an offense involving injury or detriment to the system, *to enforce all traffic laws and investigate traffic accidents which involve or occur in the system*, and to provide emergency and public safety services to the system or persons who use the system.

Any person, for an authority in which the principal city has a population of more than 1.5 million according to the most recent decennial census, commissioned under this section must be a certified peace officer who meets the requirements of the Texas Commission on Law Enforcement Officer Standards and Education, who shall file with the authority the sworn oath required of peace officers, *and who is vested with all the powers, privileges, and immunities of peace officers in all counties where the system is located, provides services, or is supported by a general sales and use tax.*

V.T.C.S. art. 1118x, § 13(c) (emphasis added). Attorney General Opinion JM-1238 (1990) determined that by virtue of this language and the definition of "system" in article 1118x, peace officers employed by METRO are empowered to make arrests, enforce traffic laws, investigate traffic accidents, and provide emergency and public safety services within the entire geographical area encompassed by METRO, including within the boundaries of its enclave cities.

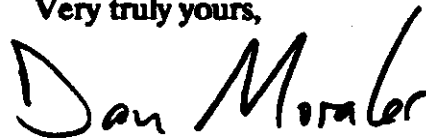
The city of Houston is the principal city forming METRO. See *City of Humble v. Metropolitan Transit Auth.*, 636 S.W.2d 484 (Tex. App.—Austin 1982, writ ref'd n.r.e.), *appeal dismissed* 464 U.S. 802 (1983). METRO peace officers may therefore

generally exercise jurisdiction over the same geographical area as police officers employed by the city. Furthermore, METRO peace officers are not limited to the investigation of traffic accidents involving METRO property. Rather, they are empowered to investigate accidents which "involve or occur in the system."

S U M M A R Y

A metropolitan rapid transit authority may not transfer funds from its treasury to a municipality pursuant to sections 6(t) and 6(u) of article 1118x, V.T.C.S., for purposes not authorized by those provisions. A municipality is not prohibited from deducting from its street maintenance budget amounts corresponding to the sum transferred to the city pursuant to sections 6(t) and 6(u), provided other provisions of the Local Government Code and the city charter or city code governing the city budget are complied with. Peace officers employed by a metropolitan rapid transit authority may investigate traffic accidents occurring within the boundaries of the authority.

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

Dan Morales
Attorney General of Texas