



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 1, 1996

The Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 96-120

Re: Whether subchapter A of chapter 332 of the
Local Government Code is applicable to
professional baseball and football facilities and
related questions (ID# 39196)

Dear Mr. Driscoll:

You advise us that in an effort to secure another professional football team as well as retain the Houston Astros, a professional baseball team, the Harris County (the "county") Commissioners Court (the "commissioners court") is considering the construction of a new baseball stadium and either the renovation of the existing Harris County Domed Stadium (the "Astrodome") or the construction of a new football stadium to better accommodate a professional football team. In furtherance of these efforts, on August 30, 1996, the commissioners court ordered an election to be held on November 5, 1996,¹ pursuant to subchapter A of chapter 332 of the Local Government Code, on the question of whether it shall be authorized to exercise the powers conferred in that subchapter to provide new or renovated stadiums, arenas and related facilities. In regard to such commissioners court action, you ask us the following questions:

Does Subchapter A of Chapter 332 of the Texas Local Government Code apply to the proposed construction by Harris County of new or renovated stadiums, arenas, and other facilities for professional baseball and football teams?

Does the ballot language approved by Commissioners Court for the November 5, 1996, stadium referendum contain enough details to prevent the voters from being misled?

Is the November 5, 1996, Harris County stadium referendum, held pursuant to TEX. LOC. GOV'T CODE ANN. § 332.003 (Vernon 1988), binding?

¹You do not ask and we do not consider whether such an election may be held on the date of the general election. See Elec. Code § 41.003(a) (only certain elections may be held on date of general election for state and county officers). *But see* 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 11.5 (Texas Practice 1989) (county-wide measures ordered by county authority and that affect county government may be included among issues on general election ballot).

Would the defeat of the November 5, 1996, Harris County stadium referendum prevent the Commissioners Court from expending public funds to renovate or make other improvements to the Astrodome Complex?

The issue presented by your first question is, as you suggest, whether the proposed new or renovated stadiums, arenas, and other facilities for use by professional baseball and football teams constitute "recreational facilities" under subchapter A of chapter 332 of the Local Government Code. Local Gov't Code §§ 332.001 - .006. We believe that they do. Section 332.002 provides that "[a] municipality or county may establish, provide, acquire, maintain, construct, equip, operate, and supervise recreational facilities and programs, either singly or jointly in cooperation with one or more other municipalities or counties." Neither section 332.002 nor any other provision in subchapter A, however, defines or lists the type of facilities contemplated by such section. *See generally id.* §§ 332.001 - .006. In the absence of such statutory definition, the phrase "recreational facilities" is to be read in the context and construed according to its common meaning. Gov't Code § 311.011(a) (Code Construction Act). We note that both of these words are very broad: "recreation" includes "diversion," "play" or any "mode or means of getting diversion or refreshment," ("recreational" is defined as anything pertaining to "recreation"), *see* WEBSTER'S INTERNATIONAL DICTIONARY 2082 (2d ed. 1947); and "facilities" encompasses any means, generally inanimate, of promoting any action or conduct. *See* BLACK'S LAW DICTIONARY 531 (5th ed. 1979). We can think of few activities that are more universally viewed as recreational than the spectator sports of professional football and baseball. Clearly the provision of a stadium, arena or similar structures is necessary to and promotes professional football and baseball games. We conclude that facilities for the use of professional football and baseball teams constitute "recreational facilities."²

Your second question concerns the official ballot to be submitted to the voters as approved by the commissioners court order of August 30, 1996. You ask us whether the ballot language contains enough details such that voters will not be misled. You contend that although the ballot does not contain any information as to the number of facilities involved, where they will be located, details regarding design, operation or method of financing, it is nonetheless legally sufficient. We concur for the reasons stated below.

To answer this question we must examine both the language of the ballot and of the proposition itself since the ballot need simply fairly describe the substance of the proposition. First we look at the proposition approved by the commissioners court:

**SHALL THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS
BE AUTHORIZED TO EXERCISE THE POWERS CONFERRED BY
SUBCHAPTER A OF CHAPTER 332, TEXAS LOCAL GOVERNMENT
CODE, AS AMENDED, TO ESTABLISH, PROVIDE, ACQUIRE,**

²You argue that since the phrase "public parks" in former V.T.C.S. articles 6079e and 6081e, now codified as chapters 320 and 331, respectively, of the Local Government Code, has been construed to include facilities such as the Astrodome, that the legislature must also have intended the phrase "recreational facilities" to include such facilities. Since we conclude that, based on common usage, the phrase "recreational facilities" includes stadiums, arenas, and related professional football and baseball facilities, we need not address your argument.

MAINTAIN, CONSTRUCT, EQUIP, OPERATE, AND SUPERVISE NEW OR RENOVATED STADIUMS, ARENAS, AND OTHER FACILITIES FOR PROFESSIONAL BASEBALL AND FOOTBALL TEAMS, EITHER SINGLY OR JOINTLY IN COOPERATION WITH ONE OR MORE MUNICIPALITIES, PROVIDED THAT NO REAL OR PERSONAL PROPERTY TAXES LEVIED, ASSESSED, OR COLLECTED BY HARRIS COUNTY ARE SPENT TO ACQUIRE, CONSTRUCT, OR EQUIP THESE FACILITIES?

By analogy to case law dealing with bond elections, we believe the first issue presented is whether the proposition improperly combines distinct objects or purposes in a single proposition such that the voters are required to answer all of them by a single expression. As stated by the court in *Adams v. Mullen*, 244 S.W. 1083, 1083 (Tex. Civ. App.--San Antonio 1922, writ ref'd), "it is well settled that in elections of this character two or more separate and distinct propositions cannot be combined into one and submitted to the voters as a single proposition 'so as to have one expression of the voter answer all of them.'"³ The second issue presented is whether the proposition fails to provide sufficient details regarding the structures to be constructed or renovated based on the general rule that the proposition set forth in sufficient detail the purpose of the election. See *Moore v City of Corpus Christi*, 542 S.W.2d 720, 723 (Tex. Civ. App.--Corpus Christi 1976, writ ref'd n.r.e.). With respect to the first question, it is our view that the provision of stadiums, arenas and other facilities for the use of professional baseball and football teams is a single objective for the purposes of a referendum under section 332.003 and conforms to the requirements of section 332.002. Section 332.003 authorizes the county to submit to the voters the question of *whether* the commissioners court should exercise the powers granted by subchapter A. The powers granted are those set forth in section 332.002: to "establish, provide, acquire, maintain, construct, equip, operate, and supervise recreational facilities and programs, either singly or jointly in cooperation with one or more other municipalities or counties." As you point out, the proposition language mirrors the language of section 332.002 and asks the voters to vote on the question authorized to be submitted by section 332.003. Furthermore, by definition the provision of stadiums, arenas and other facilities for the use of professional baseball and football teams constitute the single purpose of providing "recreational facilities," since that is all that the statute authorizes. Although the law requires that separate propositions must be placed on the ballot for each distinct object or purpose, it is also the law that several structures that serve the same purpose and have a natural relationship to each other constitute a single purpose. *Royalty v. Nicholson*, 411 S.W.2d 565, 570 (Tex. Civ. App.--Houston 1967, writ ref'd n.r.e.).

With respect to the second issue as to the lack of detailed description of the facilities contemplated by the commissioners court, we note that the "character, features and purposes" of the proposed election are required to be set out in sufficient detail in the proposition so that the voters will be familiar with the proposal when they cast their ballot. *Moore*, 542 S.W.2d at 723. As discussed above, the proposition sets forth the question posed and the purpose of the election in conformity with sections 332.002 and 322.003. The advisability of describing the facilities contemplated in a more detailed fashion than was done or is required by the authorizing statutory

³See generally 31A TEX JUR. 3D Elections § 245 (1994).

provisions is a matter addressed to the discretion of the commissioners court. *Garcia v. Duval County*, 354 S.W.2d 237, 239 (Tex. Civ. App.--San Antonio 1962, writ ref'd n.r.e.). Moreover, whether the voters in the county will vote for the proposition authorizing the county commissioners to exercise the powers under subchapter A of chapter 332 without knowing the particulars of the facilities contemplated is a matter addressed to the discretion of the county voters. *Id.*

We turn next to the language of the ballot about which you ask, which is as follows:

AUTHORIZING HARRIS COUNTY TO ESTABLISH AND OPERATE NEW OR RENOVATED STADIUMS, ARENAS, AND OTHER FACILITIES FOR PROFESSIONAL BASEBALL AND FOOTBALL TEAMS, PROVIDED THAT NO COUNTY REAL OR PERSONAL PROPERTY TAXES ARE SPENT TO ACQUIRE, CONSTRUCT, OR EQUIP THESE FACILITIES.

As a general matter, the language of a ballot proposition to be submitted to the voters of a county is prescribed by its commissioners court unless such language is governed by a statute. *See* Elec. Code §§ 1.002 (code applies to all general, special, and primary elections and supersedes a conflicting statute outside code unless expressly provided otherwise); 52.072(a) (unless otherwise provided by law, authority ordering election shall prescribe wording of proposition to appear on ballot). No provision in subchapter A of chapter 332 prescribes the form or content of the question to be submitted to the voters: section 332.003 simply provides that “[a] municipality or county may submit in an election of its qualified voters the question of whether it should exercise the powers conferred by this subchapter.” Under these circumstances, the language of the ballot proposition is properly left to the discretion of the commissioners court, *Bischoff v. City of Austin*, 656 S.W.2d 209, 212 (Tex. App.--Austin 1983, writ ref'd n.r.e.), subject only to the common-law requirement that the language used “substantially submits the question which the law authorizes with such definiteness and certainty that the voters are not misled.” *Reynolds Land & Cattle Co. v. McCabe*, 12 S.W. 165, 165-66 (Tex. 1888); *see also Bischoff*, 656 S.W. 2d at 212. The ballot, the courts have stated, should contain such descriptive language as to fairly portray the main features of the proposition in plain words such that it can be understood by the voters; it need not include the full text of the proposition but is sufficient if it identifies the matter and shows the character and purpose of the proposition. *Wright v. Board of Trustees*, 520 S.W.2d 787, 792 (Tex. Civ. App.--Tyler 1975, writ disp'd); *Moore*, 542 S.W.2d at 723. It is presumed that the voters will have familiarized themselves with the contents of the proposition before voting and, thus, a ballot which simply directs the attention of the voter to the particular proposition is sufficient. *Bischoff*, 656 S.W.2d at 212; *Moore*, 542 S.W.2d at 723. Based on the foregoing, we believe that a court would find that the ballot authorized by the commissioners court order contains a fair description of the proposition submitted such that it can be understood by those entitled to vote and submits the question authorized by section 332.003 with such definiteness and certainty that the voters will not be misled.

In your third question you ask whether the election held pursuant to section 332.003 is “binding.” It is our opinion that insofar as this is an election expressly authorized by law, it is a binding election. This office has held that a commissioners court may not order a non-binding referendum to test public opinion in the absence of specific statutory authority. *See* Attorney General

Opinions DM-172 (1992) (Sabine County has no power to call election based on petition materially modifying scheme of Optional County Road System), Letter Opinion No. 94-091(1994) (absent specific statutory authority, Harris County Commissioners Court may not place non-binding referendum on ballot concerning age of criminal responsibility), H-425 (1974) (absent express authority Jackson County Commissioners Court cannot call election to test public opinion on dam project). These opinions have been based on the principle that the right to hold an election is dependent on authority conferred by law, and an election held without such authority or contrary to a material provision of the law is a nullity. *Id.* That is clearly not the case in the present situation. Section 332.003 expressly authorizes the county to submit to the voters the question of whether the commissioners court should exercise the powers granted under subchapter A.

We note, however, that section 332.002 provides that a county may establish and provide recreational facilities without conditioning the exercise of such powers on voter approval. Section 332.003 then provides that a county *may* submit in an election the question of whether it *should* exercise the powers granted by subchapter A. Based on this language, it is not clear that a referendum is necessary to exercise the powers granted and, if the referendum passes, that the county would then be required to exercise such powers. However, in order to give some meaning to these provisions, we believe a defeat of the proposition would mean that the commissioners court would no longer be authorized to exercise the powers stated in the proposition unless authorized to do so either pursuant to another election under subchapter A, or as permitted by other laws. *See e.g.*, Local Gov't Code §§ 51.079(a) (provisions applicable to *nonbinding* referendum held pursuant to a petition), 291.007 (authorization for counties of less than 40,000 to order *nonbinding* referendum on county matter).

Finally, you ask would the defeat of the referendum held pursuant to section 332.003 prevent the commissioners court from expending public funds to renovate or make other improvement at the Astrodome Complex, which includes the Astrodome, Astroarena, Astrohall, outside exhibition area and parking lot. As indicated above, we agree that a vote against the proposition would preclude the commissioners court from exercising the powers conferred by subchapter A of chapter 332 to establish, provide, acquire, maintain, construct, equip, operate, and supervise new or renovated stadiums, arenas, and other facilities for professional baseball and football teams and from payment of the costs of carrying out such powers from its general revenues or revenues derived from operation of parks and recreational facilities, as well as real and personal property taxes, based on the broad language of the proposition and of subchapter A. *See* Local Gov't Code § 332.002, .003, .004 (costs and expenses of carrying out subchapter may be paid from general revenues or revenues derived from operation of parks and recreational facilities). However, the defeat of the referendum, as you suggest, would not, as a legal matter, preclude expenditures of public funds for renovations or improvements to the Astrodome Complex under and in compliance with other statutory or constitutional authority. Subchapter A of chapter 332 is not the exclusive means of providing or improving recreational facilities. Section (8) of the original statute, omitted from the 1987 recodification,⁴ stated that the provisions of the act “[s]hall be cumulative as to all laws, ordinances,

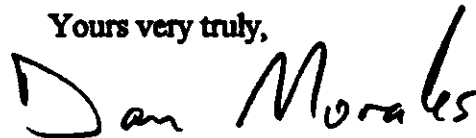
⁴The revisor's note at the end of subchapter of A of chapter 332 of the Local Government Code states that section (8) of the original statute, V.T.C.S. article 1015c-1, was omitted from the revised law as unnecessary since it is an accepted (continued...)

and charter provisions relating to public recreation and parks." See Act of June 2, 1955, 54th Leg., R.S., ch. 458, § 8, 1995 Tex. Gen. Laws 1179, 1180. Obviously, there are other statutory frameworks for providing or improving recreational facilities. See e.g., Local Gov't Code chs. 319 (authority to provide buildings for agricultural and livestock exhibits), 320 (authority to provide parks including stadiums, coliseums, auditoriums, athletic fields, pavilions and buildings and grounds for assembly), 321 (authority to provide parks); see also V.T.C.S. art. 717o (authority to provide sport centers). The section 332.003 referendum deals only with the authority to exercise the powers conferred by subchapter A. See Local Gov't Code § 332.003. There is no provision in subchapter A or any other statute that we are aware of that would prevent the commissioners court from exercising powers granted by other laws.

S U M M A R Y

Construction of new or renovated stadiums, arenas, and other facilities for use by professional baseball and football teams constitute "recreational facilities" under subchapter A of chapter 332 of the Local Government Code (the "code"). The proposition and ballot language conform to the requirements of law. An election held pursuant to section 332.003 of the code is binding although it is not clear that if the proposition submitted passes, that the Harris County Commissioners Court would be required to exercise the powers conferred. Defeat of the section 332.003 referendum would not preclude the commissioners court from expending public funds for improvements to the Astrodome Complex under and in compliance with other statutory or constitutional authority.

Yours very truly,



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⁴(...continued)

principle that statutes are given cumulative effect unless provided otherwise or inconsistent.