



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

September 10, 1998

The Honorable Kim Brimer
Chair, Committee on Business and Industry
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 98-074

Re: Whether section 321.406, Tax Code, limits
the frequency of elections held under chapter 334
of the Local Government Code (RQ-1148)

Dear Representative Brimer:

You have requested our opinion as to whether Tax Code section 321.406, which limits the frequency of elections relating to sales taxes that a municipality can hold, applies to elections held under Local Government Code section 334.024 for the purpose of funding a public venue project. It is our understanding that the impetus for this request comes from the city of Arlington, which seeks to impose a sales tax for the purpose of funding the development of a tourist area along an inland waterway as per Local Government Code section 334.001(4)(C).

On May 2, 1998, a proposal to fund the development with a $\frac{3}{8}$ cent sales tax increase was rejected by Arlington voters. The city council is now proposing to re-submit the proposal to voters in January, 1999, probably "involving a scaled down version of the previously submitted project, costing less, and perhaps to be funded by a $\frac{1}{4}$ cent sales tax." You ask whether section 321.406 of the Tax Code would prohibit the holding of a second election within a year of the first election.

Chapter 334 of the Local Government Code, commonly known as the "Stadium Bill," was enacted by the Seventy-fifth Legislature in 1997. It was designed to furnish cities with a means of providing facilities for professional athletic teams and other recreational activities deemed to be of benefit to the community. Section 334.024 describes the electoral process required to impose taxes under the chapter, including how the election shall be called and what information must be contained in the ballot proposition. It states that elections held thereunder shall be governed by the Election Code.

Section 334.081, Local Government Code, provides that "a municipality or a county may impose a tax under this subchapter only if," *inter alia*, "the tax is approved at an election held under Section 334.024." Subsection 334.082(a) then states: "Chapter 321, Tax Code, governs the imposition, computation, administration, collection, and remittance of a municipal tax authorized under this subchapter except as inconsistent with this chapter." One of the provisions of chapter 321 is section 321.406, which declares that "[a]n election under this chapter in a municipality may not be held earlier than one year after the date of any previous election under this chapter in the

municipality.” Thus, if imposition of a sales tax embraces the election approving the tax, *and* if nothing in chapter 334 is “inconsistent” with the frequency of election provision in section 321.406 of the Tax Code, the city of Arlington may not hold the election at issue here prior to May 2, 1999.

The city of Arlington argues that the election to approve a sales tax is not part of the “imposition” of the tax. It is the city council, the city contends, that “imposes” the tax subsequent to its approval by voters. In our opinion, this argument cannot bear close scrutiny. Subsection 321.101, Tax Code, provides:

A municipality may *adopt* or repeal a sales and use tax authorized by this chapter, other than the additional municipal sales and use tax, at an election in which a majority of the qualified voters of the municipality approve the adoption or repeal of the tax.

This provision clearly contemplates that it is the electorate that “adopts” the tax. Section 321.101 uses the words “adopt” and “impose” interchangeably.¹ Furthermore, the title of subchapter B, which embraces section 321.101, is “Imposition of Sales and Use Taxes by Municipalities.” We conclude that the “imposition” of a sales tax includes the election approving the tax, and as a result, chapter 321, Tax Code, is applicable to a sales tax election held under chapter 334, Local Government Code, unless something in chapter 334 is inconsistent with chapter 321.

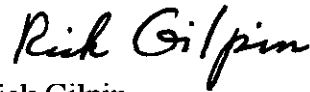
We have discovered no inconsistency between any portion of chapter 334 and chapter 321. Indeed, the legislature has specifically identified two sections of chapter 321 of the Tax Code that *do not* apply to the chapter 334 tax. Section 334.082(c) provides, “[s]ections 321.101(b), 321.506, and 323.101(b), Tax Code, do not apply to the tax authorized by this subchapter.” In our opinion, the presence of these two exceptions implies that there are no others, since a statute’s list of specific items implicitly excludes all other items. *Maley v. 7111 Southwest Freeway, Inc.*, 843 S.W.2d 229 (Tex. App.--Houston [14th Dist.] 1992, writ denied). Since the legislature clearly knew how to exclude those portions of chapter 321 that it did not wish to apply to chapter 334, we believe that other portions of chapter 321, including section 321.406, are applicable to sales tax elections held under chapter 334. Accordingly, the city of Arlington may not hold a sales tax election under chapter 334, Local Government Code, *earlier than one year from the date of the previous sales tax election.*

¹See, e.g., subsections (b), (e), (f), and (h).

S U M M A R Y

Section 321.406, Tax Code, which limits the frequency of sales tax elections held by a municipality, is applicable to elections held under chapter 334, Local Government Code. Thus, the city of Arlington may not hold a sales tax election under chapter 334 earlier than one year from the date of any previous sales tax election.

Yours very truly,

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

Rick Gilpin
Deputy Chief
Opinion Committee