



Office of the  
**SECRETARY OF STATE**

George S. Bayoud, Jr.  
SECRETARY OF STATE

April 20, 1990

**The Honorable Bob Bullock**  
**Comptroller of Public Accounts**  
**State of Texas**  
**LBJ State Office Building**  
**Austin, Texas 78774**

**EXECUTIVE DIVISION**  
P.O. Box 12697  
Austin, Texas 78711-2697  
(512) 463-5701

**ELECTIONS DIVISION**  
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Austin, Texas 78711-2060  
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**Texas Register**  
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(512) 463-5561

**Uniform Commercial Code**  
P.O. Box 13193  
Austin, Texas 78711-3193  
(512) 475-2705

**Election Law Opinion GSB-2**

**Re: Whether the City of Wylie legally held elections to increase its sales and use tax rate by  $\frac{1}{2}\%$  for the reduction of the property tax rate and to increase its sales and use tax rate by an additional  $\frac{1}{2}\%$  for dedication to local economic and industrial development.**

**Dear Mr. Bullock:**

By letter of February 27, 1990, you requested my opinion, as chief election officer of the State of Texas, concerning the effect of an election held January 20, 1990, in the Wylie, Texas.

You gave the following pertinent facts regarding the City of Wylie:

- (1) At the election held January 20, 1990, the voters of the city approved a local sales and use tax increase of  $\frac{1}{2}\%$  for the purpose of reducing the property tax rate, as authorized by Section 321.101(b)(3) of the Tax Code.
- (2) At the same election, the voters of Wylie approved an additional sales and use tax increase of  $\frac{1}{2}\%$  for dedication to local economic and industrial development, as authorized by the Development Corporation Act of 1979.



- (3) Wylie is wholly located in Collin County, a county which contains territory within the boundaries of a regional transportation authority created by a principal city with a population greater than 800,000 (the City of Dallas) under Article 1118y of the Texas Civil Statutes.
- (4) Wylie is not a "contiguous city" to the City of Dallas, as the term is defined by Article 1118y of the Texas Civil Statutes and Section 321.101(c) of the Tax Code.
- (5) Wylie is not included within the boundaries of a regional transportation authority and is not found wholly or partly in a county in which the most recent federal census estimates fewer than 250 persons are residents of both the county and the regional transportation authority.

First, I will address the issue of the right to hold an election for a  $\frac{1}{2}$ % sales tax to reduce the property tax rate. Section 321.101(b)(3) of the Tax Code provides that a municipality that is not disqualified may adopt an additional sales and use tax for the benefit of the municipality. It further provides that a municipality is disqualified if:

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(3) [it] is wholly or partly located in a county that contains territory within the boundaries of a regional transportation authority created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 ( Article 1118y, Vernon's Texas Civil Statutes), by a principal city having a population in excess of 800,000, unless:

- (A) the city is a contiguous city; or
- (B) the municipality is not included within the boundaries of the authority and is located wholly or partly in a county in which fewer than 250 persons are residents of both the county and the authority according to the most recent federal census . . . .

Tex. Tax Code § 321.101(b)(3) (Vernon Supp. 1990).

Article 1118y of the Texas Civil Statutes defines "contiguous city" as:

- (1) any city with a population in excess of 150,000 with boundaries contiguous to a principal city; or
- (2) any city with boundaries contiguous to a principal city and with boundaries extending into two or more adjacent counties, two of which counties include a principal city.

I have reviewed the population and location of the City of Wylie, and the criteria for qualification to adopt a local sales and use tax under Chapter 321 of the Tax Code. The City of Wylie is wholly located in a county that contains territory within the boundaries of a regional transportation authority created by a principal city with a population greater than 800,000. This is a disqualification unless Wylie is either a contiguous city, or it is not included within the boundaries of the authority, but is located wholly or partly in a county in which fewer than 250 persons are residents of both the county and the authority, according to the most recent federal census. Wylie does not meet the exceptions. Wylie is not a contiguous city. Furthermore, it is not within the boundaries of the authority and, Collin County, the county in which Wylie is located, has more than 250 residents who are residents of both the county and the authority. Therefore, Wylie is disqualified from holding an election for a  $\frac{1}{4}\%$  sales tax to reduce its property tax rate.

Next, you asked whether Wylie would be similarly disqualified from holding an election to increase the sales tax by  $\frac{1}{4}\%$  for dedication to local development, pursuant to the Development Corporation Act of 1979. Section 4A(d) of that Act provides in part:

[t]he Municipal Sales and Use Tax Act (Chapter 321, Tax Code) governs an election to authorize the imposition of the sales and use tax under this section . . . except as inconsistent with this section.

Tex. Rev. Civ. Stat. Ann. art. 5190.6, § 4A(d) (Vernon Supp. 1990).

You asked whether this reference back to Chapter 321 of the Tax Code would disqualify cities that may not hold an election to increase the sales tax to reduce the property tax rate, from holding an election to increase the sales tax rate under this section. I believe that the reference back is solely for the purpose of providing the procedures for conducting such an election, not for the purpose of authorizing the election or limiting the election. The Municipal Sales and Use Tax Act applies generally to sales and use taxes imposed by cities; only parts of the Act refer to the additional  $\frac{1}{4}\%$  sales tax that may be authorized in certain cities to reduce the property tax rate. The general procedures for holding any sales and use tax election are found in Subchapter E of Chapter 321 (Sections 321.401 - 321.408). These election procedures apply to an election authorized by Section 4A to the extent they are not "inconsistent" with that section. Section 321.101(b) of the Act, which limits authority to impose an additional  $\frac{1}{4}\%$  sales tax for reduction of property taxes to certain cities, is specific and self-contained and, in my opinion, does not impose a similar limitation on elections called under the Development Corporation Act of 1979.

Furthermore, Sections 4A(a) and (c) of Article 5190.6 specifically authorize a city located in a county with a population of 500,000 or fewer, according to the most

recent federal decennial census, to create a corporation under the Development Corporation Act of 1979 and hold an election to levy a sales and use tax for the benefit of the corporation. Any further limitation of authority to conduct an election under this Act would be "inconsistent" with Section 4A(a) and thus would not apply under the terms of Section 4A(d).

Therefore, since Wylie is located in a county with a population under 500,000, the city is qualified to hold an election to increase taxes by  $\frac{1}{2}\%$  for dedication to local economic and industrial development.

Wylie was authorized to conduct an election under the Development Corporation Act of 1979, but was not authorized to conduct an election to increase its sales tax by  $\frac{1}{2}\%$  to reduce the property tax rate. The courts in Texas have long held that "elections must be held by virtue of some legal authority, and an election held without affirmative statutory authority or contrary to a material provision of the law is universally held to be a nullity." Smith v. Morton Independent School Dist., 85 S.W.2d 853, 857 (Tex. Civ. App.—Amarillo 1935, writ dismissed). See also Countz v. Mitchell, 120 Tex. 324, \_\_\_, 38 S.W.2d 770, 773 (Tex. Comm'n App. 1931, opinion adopted); Ellis v. Hanks, 478 S.W.2d 172, 176 (Tex. Civ. App.—Dallas 1972, writ refused n.r.e.); Parks v. Elliott, 465 S.W.2d 434, 436 (Tex. Civ. App.—Houston [14th Dist.] 1971, writ refused n.r.e.); Ellis v. State, 383 S.W.2d 635, 636 (Tex. Civ. App.—Dallas 1964, no writ); Williams v. Glover, 259 S.W. 957, 960 (Tex. Civ. App.—Waco 1924, no writ); Trustees of Independent School Dist. No. 57 v. Elbon, 223 S.W. 1039, 1040 (Tex. Civ. App.—Fort Worth 1920, no writ); Op. Tex. Att'y Gen. Nos. H-425 (1974), M-742 (1970), and V-564 (1948).

A Texas Court has held specifically, with regard to an unauthorized election to impose a tax, that the election "was simply a nullity, and no tax could be levied or collected by virtue thereof." Stephens v. Dodds, 243 S.W. 710, 712 (Tex. Civ. App.—Amarillo 1922, no writ). The court held that this would be true whether the election was ever contested or not because it was subject to collateral attack any and everywhere. Id.

You are, therefore, advised that the election to increase the sales tax rate to reduce the property tax rate was held without authority and is a nullity, and no tax may be levied or collected, for this purpose, by virtue of this election.

#### SUMMARY

Wylie is disqualified from holding an election to adopt an additional  $\frac{1}{2}\%$  sales tax to reduce the property tax rate. An election held without authority is a nullity.

**The Honorable Bob Bullock**  
**Page 5**

Therefore, no tax may be levied or collected as a result of the election to adopt an additional  $\frac{1}{4}$ % sales tax to reduce the property tax rate. However, Wylie is qualified to hold an election to adopt a  $\frac{1}{4}$ % sales tax for dedication to local economic and industrial development.

Sincerely,



**George S. Bayoud, Jr.**  
**Secretary of State**

**Pete Wassdorf**  
**Assistant Secretary of State**

**Prepared by Sharon Hanko**  
**Director, General Law Section**  
**Elections Division**

**APPROVED:**  
**OPINION COMMITTEE**

**Tom Harrison, Chairman**  
**Austin C. Bray, Jr.**  
**Sharon Hanko**  
**Rebecca L. Payne**  
**Edward Shack**

**GSB:TH/sh/im**



512-463-4000

L B J  
State Office  
Building

Bob Bullock

Comptroller of Public Accounts

Austin, Texas 78774

February 27, 1990

The Honorable George S. Bayoud, Jr.  
Secretary of State  
State of Texas  
Capitol Building, Room 127  
Austin, Texas 78701

Dear George:

This is to seek your official opinion as Chief Elections Officer of the State of Texas. Specifically, I want to know if an election held January 20, 1990, in the City of Wylie was valid.

The voters in the City of Wylie passed a local sales and use tax increase of 1/2 % for the reduction of the property tax rate as authorized in Tax Code §321.101 (b)(3), and an additional local sales and use tax increase of 1/2 % for dedication to local economic and industrial development as authorized in Tex. Civ. Stat. § 4 A, Art. 5190.6. A majority of the qualified voters approved both taxes.

Tax Code §321.101 (b)(3) provides, in part:

(b) A municipality that is not disqualified may . . . adopt an additional sales and use tax [for property tax reduction] . . . A municipality is disqualified . . . if

. . . (3) [it] is wholly . . . located in a county that contains territory within the boundaries of a regional transportation authority created under Article 1118y, Vernon's Texas Civil Statutes, by a principal city having a population in excess of 800,000, unless

(a) the city is a contiguous city; or

(b) the municipality is not included within the boundaries of the authority and is located wholly or partly in a county in which fewer than 250 persons are residents of both the county and the authority according to the most recent federal census . . .

Facts known about the City of Wylie corresponding to those made pertinent by the above quoted section of the Tax Code may be stated as follows:

To Tsm H  
ASAP.  
JB

The Honorable George S. Bayoud, Jr.  
February 27, 1990  
Page 2

- the City of Wylie is wholly found in Collin County, a county that contains territory within the boundaries of a regional transportation authority -- the Dallas Area Rapid Transit -- created under Article 1118y, V.C.S., by a principal city having a population above 800,000, the City of Dallas; and
- the City of Wylie is not "a contiguous city" to the City of Dallas as that term is defined by V.C.S. § 24, Art. 1118y, and Tax Code §321.101; and
- the City of Wylie is not included within the boundaries of a regional transportation authority and is not found wholly or partly in a county in which the most recent federal census estimates fewer than 250 persons are residents of both the county and the regional transportation authority.

In consequence of these facts and the clear requirements of Tax Code §321.101 (b) (3), the City of Wylie may have been disqualified to conduct a property tax relief election. Former Secretary of State Jack M. Rains, in a memo addressed to City Secretaries dated February 5, 1987 (copy attached), expressly ruled the City of Wylie ineligible to adopt such a tax. That ruling would appear to be controlling unless you should overrule it.

The local economic development tax authorized by Tex. Civ. Stat. Art. 5190.6, as amended by Acts of the 71st Legislature, Regular Session, Chapter 878, S.B. 977, 1989, applies only to those counties eligible to adopt a local sales and use tax under Chapter 321 of the Tax Code, the operable provisions of which are contained in Tax Code 321.101 (b) (3). See Tex. Civ. Stat. Art. 5190.6, § 4 A (d). Consistent with Secretary Rains' ruling and the clear language of § 4 A (d), the City of Wylie seems to have been ineligible to adopt the local economic development tax also unless the Rains' ruling is set aside.

An expedited response is sought so that I can either begin collecting and remitting the tax to local authorities as soon as possible if the election was valid, or promptly inform the City of Wylie and its citizens that I can't collect and remit the tax if the election was invalid. Thank you for your assistance.

Sincerely,



BOB BULLOCK  
Comptroller of Public Accounts

BB:bb

Attachments

cc: The Honorable James Mattox, Attorney General of Texas



Office of the  
**SECRETARY OF STATE**

1-800-  
252-8683  
Elections Division

**Jack M. Rains**  
SECRETARY OF STATE

MEMORANDUM

**EXECUTIVE DIVISION**  
Box 12697  
San Antonio, Texas 78711

**REGISTRATION DIVISION**  
Box 13824  
463-5561

**ELECTIONS DIVISION**  
Box 12060  
463-5630

**REGISTRATION DIVISION**  
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463-5704

**REGISTRATION DIVISION**  
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Box 12087  
463-5600

**TO:** City Secretaries  
**FROM:** Jack M. Rains, Secretary of State *JWR*  
**DATE:** February 5, 1987  
**RE:** Federal Preclearance of House Bill 79 (1986)  
Providing for Additional Sales and Use Tax  
Election

This is to inform you that this office has received a letter from the U.S. Department of Justice preclearing House Bill 79, Act of September 27, 1986, ch. 10, 1986 Tex. Sess. Law Serv. 22 (Vernon) which authorizes certain counties and incorporated cities or towns to conduct elections on whether to adopt additional sales and use taxes. It also authorizes certain incorporated cities and towns to establish mass transit departments and to conduct elections on whether to adopt additional sales and use taxes and to issue bonds. Further explanation of this bill as it relates to cities is found below.

The Justice Department indicated in its letter that it considers H.B. 79 to be enabling legislation, and that prior to holding an election under its provisions the authority calling the election must submit the election procedures and any changes affecting voting (e.g., bilingual election procedures, polling places) for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. § 1973c). Rules for submitting requests for preclearance are contained under 28 C.F.R. 51.48.

Any city or town qualified to do so may, by a majority vote of the qualified voters of such city or town, adopt an additional sales and use tax of one-half of one percent to reduce the property tax rate.



A. Cities and towns disqualified from adopting additional tax.

A city or town is disqualified from adopting the additional tax if it:

- 1) is included within a rapid transit authority created under Tex. Rev. Civ. Stat. Ann. art. 1118x;
- 2) is included within a regional transportation authority created under Tex. Rev. Civ. Stat. Ann. art. 1118y by a principal city having a population under 800,000;
- 3) is located in a county containing territory in a regional transportation authority created under Tex. Rev. Civ. Stat. Ann. art. 1118y by a "principal" city having over 800,000 population unless such city is a contiguous city; or
- 4) imposes a tax authorized by Tex. Rev. Civ. Stat. Ann. art. 1118z. (Article 1118z is added by Article 1, Section 34 of this Act, H.B. 79.)

Information compiled by the office of the sponsor of H. B. 79, State Representative Stan Schlueter (tel. 512-463-0684), shows that the following Texas cities are ineligible to impose an additional sales and use tax under House Bill 79. The ineligible cities are listed with the counties in which they are located.

Bexar: Alamo Heights, Balcones Heights, Castle Hills, China Grove, Converse, Elmendorf, Grey Forest, Melotes, Mill Country Village, Hollywood Park, Kirby, Leon Valley, Olmos Park, Saint Hedwig, San Antonio, Somerset, Terrell Hills, and Windcrest.

Collin: Allen, Altoga, Anna, Blue Ridge, Celina, Fairview, Farmersville, Frisco, Josephine, Lavon, Lowry Crossing, Lucas, McKinney, Melissa, Murphy, New Hope, Parker, Plano, Princeton, Prosper, Royse City, Saint Paul, Westminster, Weston, and Wylie.

Dallas: Addison, Balch Springs, Buckingham, Carrollton, Cedar Hill, Cockrell Hill, Coppell, Dallas, Desoto, Duncanville, Farmers Branch, Garland, Glenn Heights, Grand Prairie, Highland Park, Hutchins, Irving, Lancaster, Mesquite, Ovilla, Richardson, Rowlett, Sachse, Seagoville, Sunnyvale, University Park, and Wilmer.

<sup>valid co.</sup>  
Ellis: Waxahachie, Ennis, Midlothian, Italy, Palmer, Red Oak, Ferris, Bardwell, Maypear, and Milford.

see p 38



**CITY OF WYLIE**

2000 HWY. 78 N. — P.O. BOX 428

WYLIE, TEXAS 75098

(214) 442-2236

February 15, 1990

Ms. Paula Towngate  
State Comptroller  
Revenue Accounting Division  
P O Box 13528  
Austin, Texas 78711

Dear Ms. Towngate:

As per our telephone conversation of last week, I am enclosing a copy of the Resolution passed by the City Council on Feb. 13, 1990 and a copy of the Canvass of General Election. These documents are related to the 1% Sales Tax Increase for the City of Wylie and will be in effect July 1, 1990.

If additional information is needed, please call (214 - 442-2236) and let me know.

Sincerely,

  
Carolyn Jones,  
City Secretary

Enclosures

RECEIVED

FEB 21 1990

TAX ALLOCATIONS



RESOLUTION NO. 90-2-13-90-2

RESOLUTION FOR THE CITY OF WYLIE, TEXAS  
STATING RESULTS OF THE JANUARY 20, 1990  
ELECTION FOR 1% SALES TAX INCREASE -  
1/2% TO REDUCE PROPERTY TAX RATE AND  
1/2% FOR IMPROVING AND PROMOTING ECONOMIC  
AND INDUSTRIAL DEVELOPMENT

WHEREAS, The City of Wylie held an Election on January 20, 1990 for a 1% Sales Tax Increase - 1/2% to be used to reduce Property Tax rate and 1/2% to be used for improving and promoting Economic and Industrial Development

WHEREAS, The results of the 1/2% Sales Tax Increase to be used to reduce the Property Tax rate were 185 for and 56 against; and,

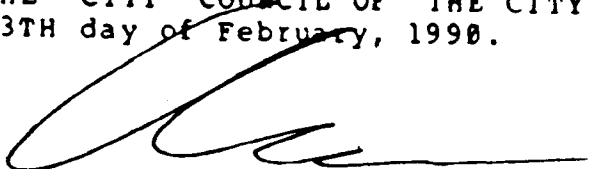
WHEREAS, The results of the 1/2% Sales Tax Increase to be used for improving and promoting Economic and Industrial Development were 155 for and 85 against

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS:

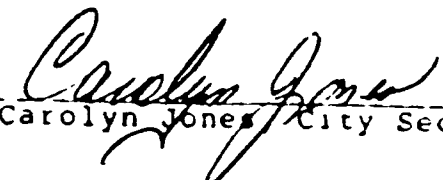
SECTION 1 The 1/2% Sales Tax Increase to be used to reduce the Property Tax rate was approved and passed by 185 voters

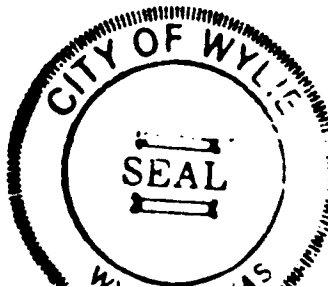
SECTION 2 The 1/2% Sales Tax Increase to be used for improving and promoting Economic and Industrial Development was approved and passed by 155 voters

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS ON THIS THE 13TH day of February, 1990.

  
\_\_\_\_\_  
Chuck Trimble, Mayor

ATTEST:

  
\_\_\_\_\_  
Carolyn Jones, City Secretary



RESOLUTION NO. 90-2-13-90-2

RESOLUTION FOR THE CITY OF WYLIE, TEXAS  
STATING RESULTS OF THE JANUARY 20, 1990  
ELECTION FOR 1% SALES TAX INCREASE -  
1/2% TO REDUCE PROPERTY TAX RATE AND  
1/2% FOR IMPROVING AND PROMOTING ECONOMIC  
AND INDUSTRIAL DEVELOPMENT

WHEREAS, The City of Wylie held an Election on January 20, 1990 for a 1% Sales Tax Increase - 1/2% to be used to reduce Property Tax rate and 1/2% to be used for improving and promoting Economic and Industrial Development

WHEREAS, The results of the 1/2% Sales Tax Increase to be used to reduce the Property Tax rate were 185 for and 56 against; and,

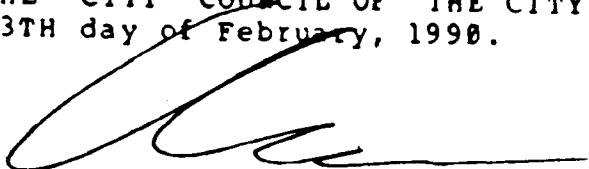
WHEREAS, The results of the 1/2% Sales Tax Increase to be used for improving and promoting Economic and Industrial Development were 155 for and 85 against

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS:

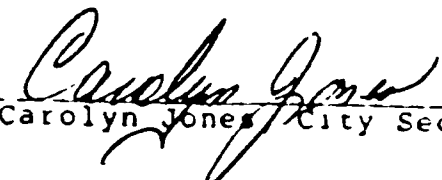
SECTION 1 The 1/2% Sales Tax Increase to be used to reduce the Property Tax rate was approved and passed by 185 voters

SECTION 2 The 1/2% Sales Tax Increase to be used for improving and promoting Economic and Industrial Development was approved and passed by 155 voters

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS ON THIS THE 13TH day of February, 1990.

  
\_\_\_\_\_  
Chuck Trimble, Mayor

ATTEST:

  
\_\_\_\_\_  
Carolyn Jones, City Secretary

