



The National Standard

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FLAG PROJECT GRANT RECIPIENTS: Yamboree flags are sold by the Gilmer Area Chamber of Commerce office in downtown Gilmer. Showing the two sizes of banners are, from left, Abby Stewart, Joan Small and Janice Hargrove. The Gilmer Rotary chapter sponsors a candidate for Yamboree Queen with the proceeds from its flag project, recently approved by the Attorney General. COURTESY GILMER MIRROR

ATTORNEY GENERAL SAYS COUNTIES MAY USE TAXPAYER DOLLARS TO DISPLAY FLAGS DURING HOLIDAYS

July 13, 2016

Tex. Atty. Gen. Op. No. KP-0104

MS. BRANDY LEE
*Upshur County Auditor
Gilmer, Texas*

Re: Whether a county may participate in a nonprofit organization's flag project

DEAR MS. LEE: You explain that a nonprofit organization “conducts an ongoing fundraiser by recruiting area businesses to contribute funds, and in return, American flags are placed in front of their businesses on holidays.¹ You tell us that the project raises funds for “scholarships for area students.” Request Letter at 1. You further explain that Upshur County has participated in this project in the past and that the county “is billed \$20-\$27 per flag each holiday.” *Id.* You question “whether it is a legal use of public funds to contribute to the Rotary Club’s Flag Project.” *Id.*

Whether a county may contribute to a nonprofit organization in exchange, for the display of flags implicates article III, section 52(a) of the Texas Constitution. Article III, section 52(a) precludes political subdivisions from using public funds

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REPORT: 2016 BUSINESS MEETING, IRVING

The Association held its annual business meeting on Saturday, March 5, 2016, at the Omni Mandalay Hotel, auxiliary to the 120th annual meeting of the Texas State Historical Association in Irving. Among other business, members re-elected James Liston, Hugh Brady, and Charles Spain as members of the Board. The Board met after the annual meeting and re-elected Mr. Liston as President, Prof. Brady as Vice President, and Judge Spain as Secretary-Treasurer. The Board also appointed an organizing commission for the 28th International Congress of Vexillology to held in July 2019 in San Antonio, Texas. The commissioners are Mr. Liston, Prof. Brady, Judge Spain, H.P. (Pete) Van de Putte, Jr., and Vanessa Van de Putte. The 2017 annual business meeting will be held Saturday, March 4, 2017, at the Hyatt Regency Houston Hotel, auxiliary to the 121st annual meeting of the Texas State Historical Association in Houston.

REPORT: YEAR-END STATEMENTS FOR 2015

STATEMENT OF FINANCIAL POSITION			STATEMENT OF INCOME		
AS OF	12/31/14	12/31/15	FOR CALENDAR YEAR	2014	2015
Assets:			Income (revenue):		
Cash	\$3170.25	\$2351.59	Contributions	\$ 50.00	\$2000.00
Prepaid expenses	0.00	0.00	Membership dues	130.00	150.00
Total assets	<u>\$3170.25</u>	<u>\$2351.59</u>	Total income (revenue)....	<u>\$180.00</u>	<u>\$2150.00</u>
Liabilities:			Expenses:		
Accounts payable	\$ 0.00	\$ 0.00	Total expenses	<u>\$ 60.00</u>	<u>\$2968.66</u>
Loan.....	0.00	0.00	Net income:.....	<u>\$120.00</u>	<u>\$ (818.66)</u>
Prepaid member dues .	0.00	0.00			
Total liabilities	<u>\$ 0.00</u>	<u>\$ 0.00</u>			
Net assets:					
Total net assets	<u>\$3170.25</u>	<u>\$2351.59</u>			
Total liabilities & net assets.	<u>\$3170.25</u>	<u>\$2351.59</u>			



REPORT: NAVA 50: CAMPBELL, CALIFORNIA

The North American Vexillological Association-Association nord-américaine de vexillologie held its 50th Annual Meeting from October 14-16 at the DoubleTree by Hilton Campbell — Pruneyard Plaza. The 4th annual George Preble Lecture was delivered by Dr. Tamara Venit-Shelton, who spoke of “The 1861 Settlers’ War” in San Jose and the use of flags during that event.

The Association was represented by Vice President

Hugh L. Brady, FF, and Secretary-Treasurer Charles A. Spain, WSF; Dr. Scot Guenter, LF FF WSF FVAST.; H.P. (Pete) Van de Putte, Jr., FVAST, and Vanessa Van de Putte. Dr. Guenter and Prof. Brady were re-elected as members of the NAVA nominating committee. ABOVE: NAVA 50 Meeting Flag, in the swallow-tail shape preferred for flags of meetings ending in “0”. COURTESY NAVA

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VEXILLOLOGICAL ASSOCIATION OF THE STATE OF TEXAS

JAMES T. LISTON President | **HUGH L. BRADY** FF Vice President | **CHARLES A. SPAIN** wsf Secretary-Treasurer

OPINION ANALYZES PUBLIC BENEFITS OF FLAG PROJECT

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for private purposes, providing:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county ... to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever

Tex. Const. art. III, § 52(a). Texas courts have explained that this provision does not invalidate an expenditure which incidentally benefits a private interest if it is made for the direct accomplishment of a legitimate public purpose. *See Brazos River Auth. v. Carr*, 405 S.W.2d 689, 693-94 (Tex. 1966). The Texas Supreme Court has articulated a three-part test to determine whether a monetary transfer satisfies the limitations of article III, section 52(a). *Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002). The entity making the transfer must (1) ensure that the transfer is to "accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and (3) ensure that the political subdivision receives a return benefit." *Id.*

With regard to the first prong of this test, counties in Texas are limited to exercising those powers that are specifically conferred on them by statute or the constitution. *Guynes v. Galveston Cty.*, 861 S.W.2d 861, 863 (Tex. 1993). Federal and state laws provide for the display of the United States flag "on all days, especially" specific state and federal holidays and also provide for the display "on or near the main administration building of every public institution." 4 U.S.C. § 6(d), (e); Tex. Gov't Code §§ 3100.051(1), .052(b)(2) (authorizing the state flag to be displayed on "each state or national holiday" and "in the same circumstances that the flag of the United States may be displayed"). Thus, the use of county funds to display a United States flag in these circumstances serves a public purpose of a county. With regard to the second prong of the test, a county may retain public control over the funds by entering into an agreement or contract that imposes upon a recipient of public funds an obligation to perform a function benefitting the public. *See Tex. Att'y Gen. Op. No. GA-0078* (2003) at 4-5. And with regard to the third prong, any such agreement or contract could ensure that the county receives a return benefit. *Id.*

The determination of whether a particular expenditure satisfies the three-part test is for the political subdivision to make in the first instance, subject to judicial review for an abuse of discretion. *Tex. Att'y Gen. Op. Nos. KP-0007* (2015) at 2, *GA-0843* (2011) at 2; *see also Comm'rs Ct. of Titus Cty. v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997) (recognizing a district court's supervisory control over a commissioners court that abuses its discretion). Thus, to determine if the expenditure is constitutional under article III, section 52(a), the county must consider whether (1) the predominant purpose of the expenditure is to accomplish an authorized public purpose of the county; (2) there are sufficient controls to ensure the public purpose is accomplished and the public investment is protected; and (3) the county receives a return benefit. *See Tex. Mun. League*, 74 S.W.3d at 384.

SUMMARY

A county has express authority to expend county funds for the display of the United States flag on county property.

In expending public funds on an organization's flag project, a county commissioners court will avoid violating article III, section 52(a) of the Texas Constitution if it determines in good faith that the expenditure serves a public purpose, it places sufficient controls on the transaction to ensure that the public purpose is carried out, and it ensures that it receives a return benefit.

Very truly yours,

KEN PAXTON
Attorney General of Texas

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COUNTY MAY SUPPORT NONPROFIT'S FLAG PROJECT: The United States Flag flies over the Upshur County Courthouse in Gilmer. The Attorney General approved the county's financial support of the Rotary's program after County Auditor Brandy Lee objected. COURTESY ROBERT E. WESTON JR.

FLAG PROJECT

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Request Letter from County Auditor

January 26, 2016

THE ATTORNEY GENERAL
Austin, Texas

DEAR ATTORNEY GENERAL: Upshur County is inquiring whether it is legal to contribute money to the Rotary Club Flag Project.

The Rotary Club in Upshur County conducts an ongoing fundraiser by recruiting area businesses to contribute funds, and in return, American flags are placed in front of their businesses on holidays.

The Rotary Club uses the money raised from the Flag Project to fund things such as scholarships for area students. The County is billed \$20-\$27 per flag each holiday. There are approximately 60 flags put on display each holiday. The County has participated in the Flag Project for many years. Recently, the question arose of whether this was a legal use of public funds.

We are aware of previously issued opinions that prohibit counties from donating money to various civic organizations. However, I have been approached from current and previous commissioner's court members and their opinion is that this is a different situation because the county is getting a service in return.

Please advise whether it is a legal use of public funds to contribute to the Rotary Club's Flag Project.

Sincerely,

BRANDY LEE
Upshur County Auditor