



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 18, 2022

The Honorable Robert Love
Randall County Criminal District Attorney
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

Opinion No. KP-0397

Re: Whether section 37.122 of the Education Code prohibits the sale of alcoholic beverages at a school banquet facility located in a football stadium, both owned by an independent school district (RQ-0417-KP)

Dear Mr. Love:

You ask whether section 37.122 of the Education Code prohibits the sale of alcoholic beverages at a school banquet facility located in a football stadium, both owned by an independent school district.¹ You state that Canyon Independent School District (the “District”) rebuilt the locker-room building at the south end of a football stadium owned by the District and added a second-floor banquet facility. Request Letter at 1. You inform us that the locker room/banquet facility building is located within the enclosed perimeter of the stadium, there are no classrooms in the building, and the banquet facility is not intended for educational activities. *Id.* at 1, 3. You further tell us that the nearest school, an elementary school, is located about 4,000 feet, or three-quarters of a mile, away. *Id.* at 1. You explain that the District plans to lease the banquet facility for private events where alcohol could be served, but not at school-related or sponsored activities and not when the stadium is being used for school-related activities. *Id.* at 2. You ask specifically whether the banquet facility located in a football stadium owned by the District is a “building of a public school” within the meaning of subsection 37.122(a) of the Education Code. *Id.* at 1, 3. You state the “resolution of this question will determine whether the [District] may allow the possession, sale or consumption of alcoholic beverages” when it leases the facility for such private events. *Id.* at 1.

¹See Letter from Honorable Robert Love, Randall Cnty. Crim. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (July 19, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0417KP.pdf> (“Request Letter”).

Subsection 37.122(a) prohibits possession of

(a) . . . an intoxicating beverage for consumption, sale, or distribution while:

(1) on the grounds or in a building of a public school; or

(2) entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by a public school of this state is being held.

TEX. EDUC. CODE § 37.122(a). Subsection (a-1) provides a single exception or defense for possession occurring “at a performing arts facility” and “during an event held outside of regular school hours and not sponsored or sanctioned by a school district.” *Id.* § 37.122(a-1).

Neither section 37.122 nor any other provision in the Education Code defines the phrase “building of a public school.” Courts construe terms not defined in a statute according to their plain and ordinary meaning. *Henley v. State*, 493 S.W.3d 77, 89 (Tex. Crim. App. 2016). A “building” is commonly understood to be “a constructed edifice designed to stand more or less permanently, covering a space of land, usu[ally] covered by a roof and more or less completely enclosed by walls.” *See* WEBSTER’S 3D NEW INT’L DICTIONARY 292 (2002).² A “public school” commonly means “a tax-supported school controlled by a local governmental authority; specif[ically]: an elementary or secondary school in the U.S. providing free education for the children of residents of a specified area, [or] the building housing a public school.” *See id.* at 1836. Section 37.122 distinguishes between a “school district” in subsection (a-1) and a “public school” in subsection (a). Thus, in context, the prohibition in subsection 37.122(a) concerns a building of an elementary school or a secondary school rather than all school district buildings. Section 37.122 does not provide specific criteria for determining whether a particular building is a “building of a public school.”

You suggest that Attorney General Letter Opinion 98-002 may provide a definitive answer with respect to football stadiums. Request Letter at 2–4; *see* Tex. Att’y Gen. LO-98-002. Letter Opinion 98-002 determined that section 37.122 did not prohibit the sale of alcohol beverages at a football and track facility owned by a school district except during a school athletic event. Tex. Att’y Gen. LO-98-002, at 2. Letter Opinion 98-002 relied on a judicial opinion that considered the meaning of “public school” as it appears in a different statute. *See id.* at 1–2; *Rodgers v. Tex. Liquor Control Bd.*, 449 S.W.2d 292 (Tex. App.—Corpus Christi 1970, no writ). In *Rodgers*, the court discussed the predecessor statute to section 109.33 of the Alcoholic Beverages Code, which authorized counties and cities to prohibit the sale of alcoholic beverages “within 300 feet of any church, public school, or public hospital.” *Rodgers*, 449 S.W.2d at 294. The court considered the distance between the retail premises at issue and “the nearest school building,” a library. *Id.* But the court disregarded the location of a school bus depot and a football stadium in the area, stating

²*See also* TEX. PENAL CODE § 28.01(2) (defining “building” for certain offenses in the Penal Code as “any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use”); Tex. Att’y Gen. Op. No. GA-0414 (2006) at 3 & n.3 (discussing other statutory definitions of “building”).

without elaboration that the depot and the stadium were “not public schools within the meaning of the statute.” *Id.*

Relying in part on *Rodgers*, Letter Opinion 98-002 determined that the football and track facility under consideration was not a “building of a public school” under section 37.122 of the Education Code. LO-98-002, at 2. But neither *Rodgers* nor LO-98-002 determined, as a matter of law, that a building in a stadium can never be a “building of a public school” under section 37.122, nor did the opinions prescribe a definitive test for all cases.

Courts construe statutes in context “with a view to their place in the overall statutory scheme.” *In re Acad., Ltd.*, 625 S.W.3d 19, 25 (Tex. 2021). A court would likely construe section 37.122 in light of a district’s related duties to “prohibit the use of alcoholic beverages at a school-related or school-sanctioned activity on or off school property,” and “attempt to provide a safe alcohol-free environment to students coming to or going from school.” TEX. EDUC. CODE § 38.007(a), (b). Consistent with these duties, section 37.122 reflects an intent to provide an educational environment shielding students from exposure to the consumption, sale, or distribution of intoxicating beverages. *See id.* § 37.122(a). Absent a definitive test, a court would likely consider all the facts and circumstances concerning a building’s relationship to a public school to determine subsection 37.122(a)’s application.

You tell us some facts pertinent to the analysis, such as the location of the building in relation to other public-school buildings and the lack of classrooms in the building. Request Letter at 1, 3. But other facts may bear on whether a particular building is a building of a public school under subsection 37.122(a). The lack of classrooms is relevant, but a public school could use a building for authorized purposes other than classroom instruction. Also, while all school property belongs to the District, the District might assign a public school some rights of possession and control of a building. A court could consider these and other relevant matters to determine whether a particular building is a “building of a public school” subject to the prohibition in subsection 37.122(a). *See* TEX. EDUC. CODE § 37.122(a). The investigation into and resolution of such fact questions is beyond the scope of the Attorney General opinion process. *See* Tex. Att’y Gen. Op. No. KP-0088 (2016) at 1, 3. Thus, we cannot answer as a matter of law whether a building in a stadium owned by a school district is a “building of a public school” subject to the prohibition in section 37.122 of the Education Code.³

³While the request letter does not ask, it should be considered whether the lease of the banquet facility for private purposes meets the standard discussed in LO-98-002 for use of school property. Tex. Att’y Gen. LO-98-002 at 1 n.2 (citing to *Royse Indep. Sch. Dist. v. Reinhardt*, 159 S.W. 1010, 1011 (Tex. App.—Dallas 1913, writ ref’d) (explaining that an independent school district is authorized to permit school property to be used for private purposes so long as such use does not affect its use as school property)). Further, because you ask only about the sale of intoxicating beverages, this opinion does not address subsection 37.122(a)’s application in other circumstances, such as the sacramental use of alcohol by a religious organization while on leased school premises.

S U M M A R Y

Subsection 37.122(a) of the Education Code prohibits the possession of an intoxicating beverage for consumption, sale, or distribution while on the grounds or in a building of a public school. Whether a building in a stadium owned by a school district is a “building of a public school” subject to the prohibition depends on the particular facts and therefore cannot be determined as a matter of law in an Attorney General opinion.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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