

BRYN D. MEREDITH
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February 26, 2020

Via Email

Mr. Gabe Reaume
City of Saginaw
333 West McLeroy Blvd.
Saginaw, Texas 76179

Re: Interlocal Agreement with Tarrant County for the regulation of Game Rooms

Dear Gabe:

As background information regarding this interlocal agreement it is important to understand Tarrant County's authority to regulate game rooms. The legislature has recently authorized all counties in the State of Texas to regulate game rooms, which are defined in Chapter 234 of the Local Government Code as businesses that have six or more amusement redemption machines or other electronic, electromechanical, or mechanical contrivances that award prizes. This would include 8 liners. Counties who choose to regulate game rooms can require licenses or permits to operate; restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county; prohibit game rooms within a specified distance from schools, places of religious worship, and residential neighborhoods; and restrict the number of game rooms allowed in an area.

Tarrant County adopted county-wide regulations in November, 2019. Those regulations go into effect on April 1, 2020 and the county is proposing to enter into separate interlocal agreements with the cities in Tarrant County to provide that each city will act as the permitting agency under the county regulations ("the Regulations"). The Regulations designate the sheriff as the Game Room Permit Administrator with the authority to investigate, deny, issue, attach conditions to, administratively suspend, and/or revoke game room permits; however, the Regulations allow any city who has entered into an interlocal agreement with the county to designate their own Game Room Permit Administrator to perform those functions.

STATUTORY AUTHORITY FOR COUNTY REGULATIONS

As stated above, Tarrant County has been given broad authority to regulate game rooms within the county. However, the enabling legislation (Chapter 234, Local Government Code) is not clear on whether the county regulations would apply within the city limits of incorporated municipalities. Section 234.133 provides:

Sec. 234.133. **AUTHORITY TO REGULATE.** To promote the public health, safety, and welfare, the commissioners court of a county may regulate the operation of game rooms and may:

- (1) restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county;
- (2) prohibit a game room location within a certain distance, prescribed by the commissioners court, of a school, regular place of religious worship, or residential neighborhood; or
- (3) restrict the number of game rooms that may operate in a specified area of the county.

The statement in paragraph (1) above – “including the unincorporated area of the county” – is not precise in its intent. Of course, counties have authority to regulate in the unincorporated areas of their county. That’s what they routinely do. The question is whether they have also been given the authority to enforce their regulations in the incorporated areas of the county which are under the jurisdiction of cities. They don’t routinely do that because that would allow for conflicting regulations to exist. What would have been clearer is if the legislature had said, “including incorporated areas of the county” or even better, “including incorporated and unincorporated areas of the county.”¹

Regardless, Tarrant County is interpreting this legislation to allow them to regulate within the city limits of incorporated municipalities and has clearly stated in Section 1.3 of the Regulations: “Pursuant to Section 234.133 of the Local Government Code, the Regulations apply to all areas of Tarrant County, Texas. This includes the incorporated and unincorporated areas of Tarrant County, Texas.” The Regulations are worded in an attempt to make them apply to city officials who perform similar actions as the sheriff or other county employees who are charged with implementation and enforcement of the

¹ Chapter 234 grants multiple authority for counties to regulate businesses and occupations. Subchapter A authorizes the regulation of automotive wrecking and salvage yards, junkyards, recycling businesses, flea markets, demolition businesses, and outdoor resale businesses **in the unincorporated area** of the county. Subchapter B allows certain counties to regulate slaughterers **only in the unincorporated area** of a county. Subchapter C allows counties to contract with municipalities for the county to inspect day-care centers or group day-care homes **in the municipality**. Subchapter D allows a county to regulate massage parlors **in the unincorporated area** of the county. Therefore, the language “**including the unincorporated area** of the county” arguably was intended to have a different meaning; yet it is less than clear that the legislature intended for the county’s game room regulations to apply within incorporated areas.

Regulations. There are a number of mistakes and inconsistencies in how the Regulations are worded, but the intent seems to be to allow city employees to substitute for county employees. I will discuss below, however, how some of these inconsistencies leave questions that need to be answered.

CITY REGULATORY AUTHORITY

Contrary to the broad authority to regulate game rooms that has been given to counties, such broad authority has not been specifically given to cities. The definition of amusement redemption machines in Chapter 234 of the Local Government Code includes machines such as 8 liners, which, depending on how they are used, could also fall under the definition of skill or pleasure coin-operated machines in Chapter 2153 of the Occupations Code. Section 2153.001 states, “The purpose of this chapter is to provide comprehensive and uniform statewide regulation of music and skill or pleasure coin-operated machines.” Section 2153.452 limits city authority to regulate music and skill or pleasure coin-operated machines as follows:

Sec. 2153.452. ZONING.

(a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.

(b) Subsection (a) does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.

The City of Fort Worth is currently involved in a lawsuit challenging its authority to regulate the location of game rooms due in part to these limitations in Chapter 2153. That lawsuit is currently pending in the Texas Supreme Court. Therefore, to the extent the City desires to regulate the location and permitting of game rooms, until the Supreme Court give us some guidance it may be preferable to utilize the county Regulations for those purposes.

TARRANT COUNTY REGULATIONS

In this discussion of the Tarrant County Regulations, it should be understood that what the Regulations allow and what the interlocal agreement actually does are two different things. The Regulations were adopted on November 12, 2019, and go into effect on April 1, 2020. In order for a Game Room to operate, it must have a permit. A violation incurs a civil penalty of \$10,000. Tarrant County is allowed to execute interlocal agreements within the county for purposes of having cities handle the permitting process for Game Rooms in each city. A city can charge a fee not to exceed \$1,000. (The fee

must reasonably approximate the costs incurred by the city in processing applications for permits, which would include conducting inspections, reviewing site plans, giving notices of deficiencies, etc.) You must (or may – depending on which section you read) post the fee schedule on your website.) There are specific due process permitting requirements that the City would have to follow, with appeals, etc. These procedures adopted by Tarrant County appear to be standard due process procedures, but I have not carefully scrutinized them to assure they comport with minimum constitutional guarantees.

The Regulations authorize Peace Officers, Fire Safety Officials, Code Compliance Officers, and designated County Employees to inspect Game Room premises for compliance. The Regulations define Peace Officers and Fire Safety Officials to include city officers and officials, but there is no definition of Code Compliance Officer in the Regulations so it is not clear if city code compliance officers are included; and of course, any references to County Employees would not include city employees. This is another one of the places the Regulations are not clearly worded. It is my opinion, however, that the overall intent of the Regulations is to authorize a city to utilize its employees for these purposes if it executes the interlocal agreement.

Section 3 of the Regulations also requires: i) the posting of a “Game Room” sign on each door; ii) readily accessible entry and exit doors; iii) transparent windows; iv) operation of the Game Room only between 8 a.m. and 10 p.m.; v) display of the Game Room permit; and vi) keeping records on employees and machines on the premises. The owners and employees of a Game Room cannot have been convicted of certain offenses. The Regulations prohibit a Game Room from requiring membership or other check-in procedures for anyone to enter the Game Room.

One of the more important regulations is the distance restrictions. A Game Room may not be located within 1,500 feet of a school, place of religious worship or residential neighborhood; nor within 2,000 feet of another Game Room. In your city limits this will be measured from lot line to lot line. Any Game Room that was operating prior to October 15, 2019, is exempt from complying with these distance restrictions as long as it does not change. To be entitled to the exemption, however, such a Game Room must apply for the exemption before April 15, 2020.

Finally, the Regulations specifically make it unlawful to have any illegal gambling device (such as an 8 liner) in a Game Room.

There is one more issue I want to bring to your attention. The statute authorizing these county regulations provides in Section 234.137:

A **county** may sue in district court for an injunction A person who violates this subchapter or a regulation adopted under Section 234.133 is liable to the **county** for a civil penalty of not more than \$10,000 for each violation... . A **county** may bring suit in district court to recover a civil

penalty The **county** is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

There is no mention in the statute of a city being able to take these actions or recover these penalties and expenses. In fact, nowhere in the statute does it contemplate a county contracting with a city to allow the city to enforce the county's game room regulations. In spite of this, Tarrant County has adopted regulations with the specific intent of authorizing incorporated cities to enforce them within their city limits. Moreover, Tarrant County specifically authorizes the following:

Pursuant to Section 234.137 of the Local Government Code, Tarrant County, Texas, or its designee or assignee by interlocal agreement, is authorized to file suit in district court seeking injunctive relief

Pursuant to Section 234.137 of the Local Government Code, a person who violates a Section or Subsection of the Regulations is liable to Tarrant County, Texas for a civil penalty of not more than \$10,000 for each violation... .

Pursuant to Section 234.137 of the Local Government Code, Tarrant County, Texas, or its designee or assignee by interlocal agreement, is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including reasonable attorney's fees, court costs, and investigatory costs.

Whether or not it has the authority to do so, Tarrant County specifically authorizes cities to seek injunctive relief and recover reasonable expenses, including attorney's fees and court costs. For whatever reason, however, they have not authorized cities to collect the \$10,000 civil penalty.

THE INTERLOCAL AGREEMENT

The interlocal agreement is quite simple and does not implement all the authority contemplated by the Regulations. Under the Regulations, the Tarrant County Sheriff is the Game Room Permit Administrator for purposes of issuing permits and taking other actions. The Agreement states that the Sheriff designates this role to the City. The Regulations actually state that the Tarrant County Commissioners Court allows cities that have executed an interlocal agreement to designate their own Game Room Permit Administrator. It does not require the Sheriff to designate this role; nor is the Sheriff a party to this Agreement which would allow him to do so. I have therefore modified the Agreement to have the County designate the City to perform this role.

If you enter into this Agreement, you will need to designate an entity (such as the Police Department) to oversee the permitting process. The City also needs to determine

who is going to be the Game Room Permit Administrator. This could logically be the police chief if the City is going to use its police department for permitting and overseeing Game Room operations. The city council will also need to appoint a hearings examiner to hear appeals from the denial, revocation or suspension of a Game Room Permit. That would logically be done at the time the city council approves the Agreement. I have added language to the Agreement that designates the city manager as the hearing examiner. This designation is subject to change from time to time by the city council.

Article II, Section B of the Agreement provides for enforcement. This section states that the Tarrant County District Attorney's Office retains the full authority granted in Section 234.137 of the Local Government Code to sue in district court for an injunction and to obtain civil penalties. The effect of this is that the City's role under the interlocal agreement is merely to process the permitting of Game Rooms. City employees will do inspections, reviews of applications, and the determination of compliance with the Regulations and city ordinances. However, the City will not be taking any enforcement action against noncompliant Game Rooms. You may be okay with this but the Regulations provide that the county or its designee or assignee by interlocal agreement may file suit to seek injunctive relief and may recover reasonable expenses in connection therewith. I have drafted alternative language that could be added to the Agreement to allow the City to perform this function if you want to have this authority. Remember, however, that the Regulations do not authorize the City to collect civil penalties (\$10,000 per violation).

The effect of the Agreement is merely to authorize the City to administer the issuance of Game Room Permits and to collect a fee of \$1,000 for such purposes. The permit is subject to annual renewal and another \$1,000 can be charged each year. The City does not need to separately adopt this fee or any other regulations regarding Game Rooms, as it is simply performing the functions of the county pursuant to the interlocal agreement. The fee being collected is the county fee, not a City fee, and the regulations and procedures being applied are county regulations and procedures. If you deem it advisable to adopt additional regulations applicable to game rooms you could do so, but it is not required. In processing Game Room Permits you will utilize the county Regulations and any applicable City regulations (such as zoning) to determine if a permit should be granted.

I have attached a redlined version of the Agreement showing revisions and corrections I would recommend. Please let me know if you would like additional information about the regulation of game rooms or the proposed interlocal agreement.

Very truly yours,

Bryn D. Meredith

Attachment: As noted