



THE ATTORNEY GENERAL
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January 31, 1977

The Honorable C. S. Devoy
General Manager
Galveston Wharves
P. O. Box 328
Galveston, Texas 77553

Open Records Decision No. 153

Re: Availability of
leases of the Galveston
Wharves under the Open
Records Act.

Dear Mr. Devoy:

You have requested our decision regarding the availability of leases of the Galveston Wharves under the Open Records Act, article 6252-17a, V.T.C.S. Cities on the Gulf of Mexico are authorized to operate and maintain their harbor and port facilities by virtue of articles 1187e and 1187f, V.T.C.S. Pursuant thereto, the Charter of the City of Galveston designates the City's "Wharf and Terminal properties" as a "separate utility of the City, to be known as 'Galveston Wharves.'" Art. 12, § 1. The Charter requires that meetings of the Board of Trustees

shall be open to the public excepting only for executive sessions held to discuss personnel appointments or to discuss or act upon matters of concern to the competitive position of the Galveston Wharves as a port facility.
Id. § 4.

You have received two requests for copies of all lease agreements entered into between the Board of Trustees of Galveston Wharves and its tenants.

Section 6(3) of the Open Records Act specifically makes public

information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law.

We have previously held section 6(3) to be applicable to contracts to which a public body is a party. Open Records Decision Nos. 75 (1975); 15 (1974). You contend, however, that the leases herein are excepted from disclosure by section 3(a)(4) of the Open Records Act, which excepts all

information which, if released, would give advantage to competitors or bidders.

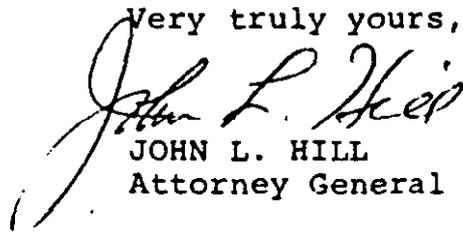
You believe that the release of the lease agreements would injure the competitive position of the Port of Galveston vis-a-vis the ports of various other cities.

In Open Records Decision No. 99 (1975), we stated that, when a city acts in a "governmental capacity as an agent of the state," it may not "properly be deemed to compete with private enterprise." In such instances, the section 3(a)(4) exception is not applicable. In City of Galveston v. Hill, 519 S.W.2d 103 (Tex. 1975), the Supreme Court, in holding that the Board of Trustees of Galveston Wharves may not delegate certain of its duties to a private company, declared the management of the Galveston Wharves to be a governmental function:

The management of income and revenue from the Galveston Wharves, the setting of rates and the determination of policies, being governmental functions, have been explicitly vested in the discretion of the board of trustees by the city charter, and such cannot be surrendered, delegated or bartered away. Id. at 105.

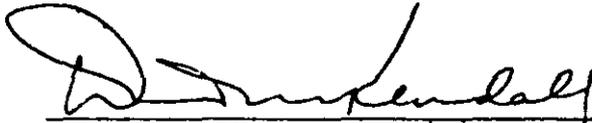
In our opinion, the Supreme Court would similarly conclude that the execution of leases is a governmental function which the board of trustees may not surrender. If so, section 3(a)(4) has no application to leases executed by the Board. Open Records Decision No. 99 (1975). It is therefore our decision that lease agreements to which the Board of Trustees of Galveston Wharves is a party are public information and should be disclosed.

Very truly yours,

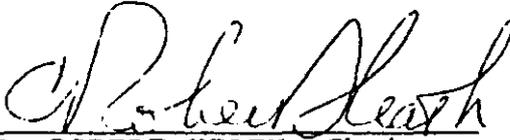


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APPROVED:



DAVID M. KENDALL, First Assistant



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Opinion Committee

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