



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 23, 1988

Honorable Joe E. Kelly
Presiding Judge
Fourth Administrative Judicial Region
P. O. Box 2502
Victoria, Texas 77902

LO-88-73

Dear Judge Kelly:

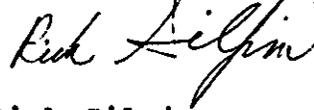
Attorney General Opinion JM-865 (1988) held that cities and counties that impose the Hotel/Motel Occupancy Tax pursuant to chapters 351 and 352 of the Tax Code, respectively, lack the authority to exempt non-profit corporations organized for charitable, religious, or educational purposes from the ambit of the tax. I understand you to ask about the applicability of the opinion to state employees. Specifically, I understand you to ask whether the opinion requires state judges who contract for hotel or motel rooms as a consequence of traveling on behalf of the state's judiciary or while on judicial business must pay the tax.

Attorney General Opinion JM-865 did not address whether state employees are subject to the tax in the situation that you describe. An attorney general opinion issued almost thirty years ago, Attorney General Opinion WW-738 (1959), did conclude that employees of the federal government were subject to the tax. An attorney general opinion issued in 1982, Attorney General Opinion MW-528 (1982), relied upon Attorney General Opinion WW-738 and concluded that state employees likewise were subject to the tax. In Letter Opinion 88-58, this office withdrew Attorney General Opinion MW-528, pending reconsideration, because of a conflict in the reasoning of a series of attorney general opinions that impliedly overruled Attorney General Opinion WW-735 and were issued subsequent to it. However, we have just received an official request for an opinion, designated RQ-1470, asking whether state employees are, in fact, subject to the tax. Accordingly, any determination as to whether you, as a state employee, are subject to the tax must await the issuance of this opinion.

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If anyone in this office can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Rick Gilpin".

Rick Gilpin,
Chairman
Opinion Committee

RG/bc

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