



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

June 18, 1992

Honorable Steven D. Wolens  
Chairman  
Business and Commerce Committee  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2010

Letter Opinion No. 92-16

Re: Expenditure of hotel occupancy tax revenues (ID# 16325)

Dear Representative Wolens:

By a recent letter, you ask whether chapter 351 of the Tax Code allows the expenditure of municipal hotel occupancy tax receipts for general landscaping and sidewalk improvement. Your request has been assigned ID# 16325.

Our research of your question reveals that expenditure of funds generated by municipal hotel occupancy tax is governed by section 351.101 of the Tax Code. Section 351.101(a) of the code identifies the permissible uses of such tax funds, as follows:

(a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:

- (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities;
- (2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;
- (3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;

(4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; and

(5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

....

(b) Revenue derived from the tax authorized by this chapter is to be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry as permitted by Subsection (a). That revenue may not be used for the general revenue purposes or general governmental operations of a municipality.

**Tax Code § 351.101.**

In Attorney General Opinion JM-965 (1988) this office addressed a situation in which a city proposed to use the hotel tax fund for certain recreational facilities located in the city. That opinion determined that the information provided relative to the request suggested that the facilities under consideration are used for general recreation rather than for any of the purposes authorized by subsection (a) of section 351.101. The legislative intent behind this section is clear and consistent: the funds are "to be used only to promote tourism and the convention and hotel industry." Tax Code § 351.101(a). The remainder of the chapter contains special exceptions tailored to communities with special circumstances. See, e.g., *id.* §§ 351.1015 (manned space flight tourism facility), 351.105 (coastal municipalities must use a portion of the funds for beach cleaning).

As was the case in Attorney General Opinion JM-965, information provided with your request indicates that the proposed expenditure would not be made "in a manner *directly* enhancing and promoting tourism and the convention and hotel industry." Tax Code § 351.101(b) (emphasis added). Rather it appears that the proposed use would be "for the general revenue purposes or general governmental operations of a municipality" in contravention of subsection (b). *Id.* This office, however, is not equipped to resolve the factual issues involved in the determination of that central issue.

S U M M A R Y

Hotel occupancy tax funds may only be expended in conformity with chapter 351 of the Tax Code.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee