



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

September 18, 1992

DAN MORALES
ATTORNEY GENERAL

Honorable Bill Sims
Chairman
Natural Resources Committee
Texas State Senate
One Capitol Square, Room 325
Austin, Texas 78711-2068

Letter Opinion No. 92-51

Re: Whether the City of Kerrville may
expend municipal hotel tax funds for
improvements to a visitor information
center (ID# 17155)

Dear Senator Sims:

You request our opinion on whether the City of Kerrville may authorize the expenditure of municipal hotel tax funds for building improvements for a visitor information center for tourists and visitors to the city.

The imposition, collection, use, and allocation of municipal hotel occupancy taxes is governed by chapter 351 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.

Attorney General Letter Opinion No. 92-16 (1992) addressed a similar issue and concluded that the expenditure in question was *probably* a general revenue expenditure and that as a result, it was not eligible to be financed from hotel tax funds. *See also* Attorney General Opinions JM-965 (1988); H-209 (1974). Ultimately, however, each of those opinions raised questions of fact, which cannot be resolved in the opinion process. On the other hand, in the situation you present, the expenditure is proposed for the purpose of making improvements to a visitor information center, and we can conclude, as a matter of law, that the improvement of a visitor information center contributes to the promotion of tourism and thus, constitutes an authorized expenditure under chapter 351 of the Tax Code.

While this office can make that initial determination, the governing body of the city must insure that the expenditure will advance one or more of the specific purposes listed in section 351.101(a), Tax Code, and allocate overall expenditures of hotel tax revenues in conformity with section 351.103 of the code.

S U M M A R Y

A city may expend municipal hotel tax funds for the improvement of a visitors information center. The city must insure that the expenditure fulfills one or more of the specific

purposes authorized by Tax Code section 351.101. Tax Code section 351.103 governs the allocation of tax receipts.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Gilpin", with a stylized flourish at the end.

Rick Gilpin
Deputy Chief
Opinion Committee