



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 19, 1997

The Honorable Patricia Gray  
Chair, Committee on Civil Practices  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768

Letter Opinion No. 97-005

Re: Whether a city may impose a municipal hotel occupancy tax in an area annexed for limited purposes pursuant to a strategic partnership agreement under Local Government Code section 43.0751 (ID# 39130)

Dear Representative Gray:

You ask whether a municipality that has entered into a "strategic partnership agreement" with a municipal utility district pursuant to Local Government Code section 43.0751 may collect a municipal hotel occupancy tax in the district. Enacted by the Seventy-fourth Legislature in 1995, section 43.0751 authorizes, and in some cases requires, a certain home-rule city and a municipal utility district located within the city's extraterritorial jurisdiction to enter into a strategic partnership agreement providing for continuation of the district after annexation by the city.<sup>1</sup> See Act of May 29, 1995, 74th Leg., R.S., ch. 787, § 1, 1995 Tex. Gen. Laws 4078, 4078. Strategic partnership agreements may provide for, among other things, full-purpose annexation or limited-purpose annexation of the district. Local Gov't Code § 43.0751(f).

You suggest that because section 43.0751(f)(8) allows strategic partnership agreements to include "such other lawful terms that the parties consider appropriate," a city and a district may agree to imposition of a municipal hotel occupancy tax in the district. We do not believe that this provision allows the city to impose by agreement taxes that otherwise would be prohibited by law.

Municipalities are strictly limited in their taxing powers to those powers granted to them by the Texas Constitution or by statute. See *City of Heath v. King*, 705 S.W.2d 812, 814 (Tex. App.--Dallas 1986, no writ). The constitution provides that home-rule cities "may levy, assess and collect such taxes as may be authorized by law or by their charters." Tex. Const. art. XI, § 5. This taxation power, like other ordinance enforcement powers, is limited to areas within a city's corporate limits unless the city is authorized by the constitution or by statute, either expressly or by necessary implication, to levy taxes outside city limits. Cf. *City of Austin v. Jamail*, 662 S.W.2d 779, 782 (Tex. App.--Austin 1983, writ dismissed w.o.j.) (stating that city must have express or necessarily implied authority to exercise its powers extraterritorially); *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 686 (Tex. Civ. App.--Waco 1980, no writ) (same); *City of*

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<sup>1</sup>Normally, when a city annexes all the area within a municipal utility district, the city assumes the powers, duties, assets, and obligations of the district, and the district is dissolved. See Local Gov't Code §§ 43.071, .075, .076.

*Sweetwater v. Hammer*, 259 S.W. 191, 195 (Tex. Civ. App.--Fort Worth 1923, writ dismissed) (same); Attorney General Opinion JM-226 (1984) at 2 (same).

Chapter 351 of the Tax Code authorizes municipalities to collect hotel occupancy taxes. Tax Code § 351.002. Only certain cities are authorized to impose the tax outside city limits. *Id.* § 351.0025 (“A municipality with a population of less than 35,000 by ordinance may impose the tax authorized under Section 351.002 in the municipality’s extraterritorial jurisdiction.”).

When an area beyond a city’s boundaries is annexed by the city for full purposes, the area is subject to city ordinances and taxes. *See Tod v. City of Houston*, 276 S.W. 419, 421 (Tex. 1925); *Maddrey v. Cox*, 11 S.W. 541 (Tex. 1889). Thus a city may impose a municipal hotel occupancy tax in an area fully annexed by the city.

When an area is annexed for limited purposes, however, the city does not have general regulatory or taxing powers over the annexed area. *See City of Nassau Bay v. Winograd*, 582 S.W.2d 505, 508-09 (Tex. Civ. App.--Houston [1st Dist.] 1979, writ refused n.r.e.) (holding that statute authorizing annexation of area for limited purposes of aiding navigation and wharfage did not authorize city to exercise general regulatory powers over area); *see also* Local Gov’t Code § 43.130(c) (prohibiting city that may annex area for limited purposes of applying planning, zoning, health and safety ordinances from imposing taxes on any property in area or on any resident of area for activity occurring in area). Unless the constitution or a statute authorizes a city to impose taxes in an area annexed for limited purposes, a city may not do so.

The Seventy-fourth Legislature expressly authorized cities to impose a certain tax in an area annexed for limited purposes pursuant to a strategic partnership agreement under Local Government Code section 43.0751: “A municipality that has annexed a district for limited purposes under this section may impose a retail sales tax within the boundaries of the district.” *Id.* § 43.0751(k). No such authorization is provided for the imposition of hotel occupancy taxes. We conclude, therefore, that absent full-purpose annexation, municipal hotel occupancy taxes may not be imposed in a municipal utility district annexed pursuant to a strategic partnership agreement.

**S U M M A R Y**

A city may not collect a municipal hotel occupancy tax in a municipal utility district annexed for limited purposes pursuant to a strategic partnership agreement under Local Government Code section 43.0751. A city with a population of less than 35,000, however, may impose a hotel occupancy tax in the city's extraterritorial jurisdiction pursuant to Tax Code section 351.0025 irrespective of city annexation of the area.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is fluid and cursive, with a large loop at the end.

Barbara Griffin  
Assistant Attorney General  
Opinion Committee