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RQ-0280-JC September 6, 2000

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OPEN RECORDS DIVISION

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FILE # ML-41621-00  
I.D. # 41621

ATTENTION: Opinion Committee

OPINION

RE: Use of Galveston Bay to Connect Two Communities for Purpose of  
Incorporation to form a New Town

Dear Sir:

Pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on whether two separate communities which have no physical land geographic contact may incorporate to form one town by using a 150 foot wide stretch of offshore Galveston Bay water to provide a contiguous and continuous track between the two communities.

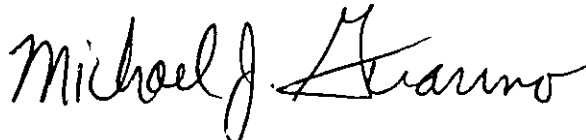
The separate communities of Bacliff and San Leon are separated on land by the Texas City annexation of land which surrounds a Houston Lighting and Power Plant. The Texas City city limit thereby extends to the shore line on Galveston Bay. Texas City city limits also extend into Galveston Bay but does not include a 150 foot wide strip of water between the Texas City city limit on land to the Texas City city limit claim in Galveston Bay. It is that 150 foot wide strip of Galveston Bay which Bacliff and San Leon intend to use for purpose of connecting the two communities to meet requirements of incorporation. The new town would be called the City of Bayshore. (See attached map of area in question.)

A review of case law and state statutes has produced no direct answer to the question raised in this request. State v. Stein, 26 S.W.2d 182 (Tex. Comm'n App. 1930, holding approved); 36 S.W.2d 698 (Tex. 1931); Thompson v. City of West Lake Hills, 457 S.W.2d 398 (Tex. App. - Austin 1970); City of West Lake Hills v. State Exec. Rel. City of Austin, 466 S.W.2d 722 (Tex. 1971); State Ex. Rel. Needham v. Willbanks, 595 S.W.2d 849 (Tex. 1980); Tex. Loc. Gov't Code Ann. § 43.0545 (e) (Vernon Supp. 2000); Tex. Nat. Res. Code Ann. § 11.013 (c) (Vernon Supp. 2000).

This request for a formal opinion is made to resolve a question raised by a duly formed nine member board elected to explore the feasibility of incorporation.

A conflict exist between that nine member board and a group of citizens in that area who argue the means of annexation are not allowed by law. Your assistance in resolving this matter may help in avoiding the expense of an election on this issue. In the event you find this matter to be a fact issue thereby not resolvable by your opinion please contact our office as soon as possible. Otherwise, a formal attorney general opinion on this matter would be greatly appreciated. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Guarino". The signature is written in a cursive style with a large, stylized initial "M".

MICHAEL J. GUARINO  
Criminal District Attorney  
Galveston County, Texas

MJG/pls  
Attachment