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**OPINION COMMITTEE**

State of Texas  
House of Representatives

FILE # ML-47217-13

I.D. # 47217

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January 4, 2013

**RQ-1108-GA**

The Honorable Greg Abbott  
Attorney General of Texas  
Attn: Opinion Committee  
P.O. Box 12458  
Austin, Texas 78711-2548

Re: Request for an Attorney General's Opinion Regarding the Legal Authority of a Coastal Municipality to Use Hotel Occupancy Tax Revenue for the Purpose of Rehabilitation and Preservation of the Historic Broadway Boulevard, Pursuant to Texas Tax Code, Section 351.101(a)(5).

Dear General Abbott:

I respectfully request an Attorney General Opinion concerning the authority of a coastal municipality, the City of Galveston, to utilize local hotel occupancy tax funds for a project to be conducted by the Galveston Island Tree Conservancy, and pursuant to a municipal resolution<sup>1</sup> and rehabilitation plan<sup>2</sup>, to replenish the trees along Broadway Boulevard lost to Hurricane Ike.

The Texas Tax Code, Chapter 351, generally authorizes and further provides guidelines for the collection and use of local hotel occupancy taxes. First, Section 351.002 authorizes "a municipality by ordinance [to] impose a tax on a person who . . . pays for the use or possession or for the right to the use or possession of a room that is in a hotel."

The Texas Legislature has limited the purposes to which a municipality can utilize the tax revenue. Each of these twelve specific purposes must "promote tourism and the

<sup>1</sup> See attached Exhibit 1 (*Resolution No. 12-029*).

<sup>2</sup> See attached Exhibit 1 (supporting documentation: *Texas Cultural Landscape Rehabilitation and Maintenance Plan*).

convention and hotel industry.” The purpose at issue here is found in Section 351.101(a)(5), which allows a municipality to use the tax revenue for historical restoration and preservation projects or activities. These projects or activities, however, must be located within a particular locale: either “at or in the immediate vicinity of convention center facilities or visitor information centers,” or, more broadly, “located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates.”

The question presented in this opinion request is whether the project approved by municipal resolution is legally considered a historical restoration and preservation project or activity that will encourage tourists to visit the preserved historic sites, and is located within an allowed region, as currently proposed under the adopted rehabilitation plan. The Galveston City Council found that the Broadway Boulevard constituted a historic site in need of restoration and preservation. It further found it in the public interest to adopt the rehabilitation plan.

In September 2008, the City of Galveston’s Broadway Boulevard was devastated by Hurricane Ike. In fact, 39% of the trees on the entirety of Galveston Island did not survive the storm. Many of the trees destroyed were the live oaks and palm trees planted by the local Women’s Health Protective Association following the historic hurricane of 1900. By 1912, the organization had planted more than 10,000 trees throughout Galveston, including 53 blocks of oak trees along the Broadway Boulevard esplanade, which serves as the entrance to the city.

Initially, for the plan to be authorized to receive hotel occupancy tax funds, the project must be considered a historical restoration and preservation project or activity. The plan area is historical to the city, and the project will involve restoration and preservation of key elements of the Boulevard, i.e., the live oaks. The City Council authorized acceptance of a National Park Service grant to create a “Gateway to Historic Galveston Project,” and then adopted the Texas Cultural Landscape Rehabilitation and Maintenance Plan for the Boulevard on August 23, 2012. The project area is planned to be generally limited to the Broadway esplanade, extending over three miles from 6<sup>th</sup> Street to 59<sup>th</sup> Street. The city is 27 miles long, and both entrances to the city connect with Broadway Boulevard within the planned restoration area.

Further, the Texas Historical Commission and Texas Department of Transportation required the preparation of a Cultural Landscape and Maintenance Plan to enable the city to reforest the Island. The city therefore created the Galveston Island Tree Conservancy and the City of Galveston’s Tree Committee for this purpose. The Conservancy and the consulting team hired by the city worked with stakeholders to develop the plan, which was later reviewed and commented on by the National Park Service, Texas Historical Commission, and Texas Department of Transportation. All comments provided were addressed or incorporated into the plan. The Galveston Tree

Committee recommended adoption of the plan, which the City Council achieved by resolution on August 29, 2012.

Another requirement for the use of the hotel occupancy tax funds is that the project must encourage visitors to visit the area. Any tourists or convention delegates coming to the city will initially pass by the restored site, as it is planned to stretch from one entrance to the other along the Boulevard. Therefore, although all visitors will have the opportunity to view the restored and preserved site, it is unclear whether this will in fact "encourage" tourists to visit the site. In addition to the live oaks along the esplanade, there are numerous historic monuments, structures, and churches that also attract tourists. The restoration and preservation of the live oaks may enhance the visitors' experiences, and thus "encourage" tourists to travel to the area.

In addition to the initial requirements, the project must further come under one of the geographic limitations provided by statute. The area must either be located within the immediate vicinity of convention center facilities or visitor information centers, or be located elsewhere in the municipality or its vicinity that would be frequented by tourists or convention delegates. The plan area is within the municipal limits, and because it constitutes the entrance to the city, it is near definite that tourists and convention delegates will see the restored and preserved site when travelling to the city. The most unclear aspect of this inquiry is whether the mere passing by of the project site is truly "visiting" the site. Regardless, because other historic monuments and structures exist along the Boulevard and are frequented by visitors, as previously mentioned, these same visitors will also inherently frequent the project area (the live oak trees). Further, these trees ultimately may in and of themselves enhance the experience and encourage tourists to visit the Boulevard.

Questions presented:

Accordingly, I request your interpretation and guidance concerning the applicability of Texas Tax Code, Section 351.101(a)(5) to the City of Galveston's Broadway Boulevard Rehabilitation Plan.

Specifically, I seek guidance on the following questions:

- 1) Whether the Texas Cultural Landscape Rehabilitation and Maintenance Plan adopted by the Galveston City Council is considered a historical restoration and preservation project or activity pursuant to Texas Tax Code §351.101(a)(5)?
- 2) Whether the Plan will encourage tourists and convention delegates to visit preserved historic sites or museums?; and
- 3) Whether the location of the project is either:

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- a. Located at or in the immediate vicinity of convention center facilities or visitor information centers, as defined; or
- b. Located elsewhere in the municipality or vicinity that would be frequented by tourists and convention delegates?

Thank you for your time and attention to this matter. Please let me know if I can provide any additional information or further assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Allan B. Ritter". The signature is written in black ink and is positioned above the typed name.

Allan B. Ritter, Chair  
House Committee on Natural Resources