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Opinion Committee

December 30, 1998

The Honorable Dan Morales
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711

FILE # ML-40606-99
I.D. # 40606

Attention: Opinion Committee

Dear General Morales:

This is to request your official opinion on an issue involving the sales tax law as it applies to fees charged by local governments.

The Texas Legislature has authorized local jurisdictions to charge various types of user fees related to beach use and access, and has given the General Land Office the responsibility for oversight of these charges. See generally Chapter 61, Natural Resources Code. The Land Office has adopted rules covering these fees, one of which provides that "A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches." 31 T.A.C. Sec. 15.8(c)(1).

The General Land Office has provided the following information:

...some local governments have enacted ordinances setting a fee for parking automobiles on the public beach or in off-beach parking lots giving access to the beach. In some locations a parking permit is sold; in others the fee is collected at a gate. Local jurisdictions are not allowed to charge a per person entry fee to access the beach. Any pedestrian may enter the beach without fee. (Letter from Mr. John Hamilton, Director, Resource Conservation, General Land Office, copy attached).

The statutory framework for the sales tax is found in Chapter 151 of the Tax Code. Since 1984, one of the services on which this tax has been imposed is "motor vehicle parking and storage." Sec. 151.0101(a)(4), Tax Code.

Your office has previously held that the sales tax act "...applies fully to ... municipalities ... entering into transactions which fit within the terms of the Tax Code." (Official summary of Op. Tex. Atty. Gen. JM-987). In that opinion, as here, the issue was not

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taxation of a public body, or the applicability of tax on items purchased by a public body. Instead, the issue then and now is the responsibility of a public body to collect tax on transactions that fall within the scope of the Tax Code.

The Tax Code does not provide an exemption for parking fees collected by local governments. In Hearing No. 27,055, the Comptroller concluded that a county was required to collect and remit sales tax on charges for motor vehicle parking.

We have recognized that charges for access to parks, playgrounds, or similar facilities can properly be classified as charges for admissions to amusement facilities. When these facilities are operated by cities and counties, such admission charges are exempt from the sales tax by Section 151.3101, Tax Code.

In the situation at hand, however, it is our understanding that local governments may not charge a fee for beach access, and it is clear that anyone is free to walk onto the beach without being required to pay any sort of fee. Since payment of the fees in question is not a prerequisite to admission to the beach, and since the payment gives the patron the right to park a vehicle either on the beach or in an off-beach lot near the beach, we have taken the position that the fees fit within the terms of the sales tax act, and that local governments should be collecting tax on these fees.

The General Land Office does not agree that local governments must collect and remit sales tax on these charges. Thus my questions to you are these:

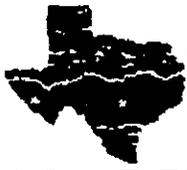
1. Does the state sales tax apply to the charges discussed above?
2. If the answer to the previous question is "yes", must the local governmental entities, including a licensee operating a facility under authorization from the governmental entity, remit the tax?

If you have any questions or need further information in connection with this request, please feel free to contact Martin Cherry in our Legal Services Division. He can be reached at (512) 463-4606.

Sincerely,



Dovie Ellis
Deputy Comptroller of Public Accounts



April 3, 1998

Mr. Martin Cherry
Office of the Comptroller of Public Accounts
LBJ State Office Building
Austin

Dear Mr. Cherry:

I will appreciate your help with a question about the applicability of sales tax to certain fees which are collected by local governments under the oversight of the General Land Office.

The Legislature has authorized the collection of fees by local governments responsible for the regulation, maintenance and use of public beaches. Further, it has authorized the Commissioner of the General Land Office to promulgate regulations governing the local governments' collection, custody and expenditure of revenues resulting from these fees. For your convenience, I attach copies of the statute and regulations.

Pursuant to the regulations, some local governments have enacted ordinances setting a fee for parking automobiles on the public beach or in off-beach parking lots giving access to the beach. In some locations a parking permit is sold; in others the fee is collected at a gate. Local jurisdictions are not allowed to charge a per person entry fee to access the beach. Any pedestrian may enter the beach without fee.

Is the fee collected in these circumstances subject to the sales tax on parking? If the local jurisdiction delegates the collection of fees to an agent, must the agent collect sales tax on the parking fee?

In communities where driving is allowed on the beach, a moving vehicle may be required to pay a vehicular access fee which includes the privilege of parking.

Under these circumstances, must the local jurisdiction collect sales tax on some portion of the fee?

If any additional information is needed, I will try to supply it. I can be contacted at 463-5310.

Sincerely,


John Hamilton
Director, Resource Conservation