

Texas General  
Land Office



David Dewhurst  
Commissioner

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MAR 10 1999

ATTORNEY GENERAL'S OFFICE  
Opinion Committee  
Liz Robinson - 024

March 8, 1999

The Honorable John Cornyn  
Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711

RQ-0038-JC

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Opinion Committee

Attention: Opinion Committee

Dear General Cornyn:

This is to request your official opinion on an issue involving Chapter 312 of the Tax Code, also known as the Property Redevelopment and Tax Abatement Act. That chapter allows municipal or county taxing units to enter into tax abatements for owners of property in reinvestment zones.

The specific situation to be addressed concerns structures along the coast of the Gulf of Mexico that have come to be located on the public beach due to erosion. The shoreline of the Gulf of Mexico in many coastal communities has been moving landward, and some homes that were once landward of the public beach are now on it.

Under the Open Beaches Act (OBA) (Texas Natural Resources Code, Chapter 61), the public beach typically extends from the line of mean low tide landward to the line of vegetation. The OBA codified the public's historical right to access and use this area. The structures on the public beach interfere with this right and are subject to suit by the Attorney General (or county, district, or criminal district attorneys) to remove them (OBA, Sec. 61.018).

After consulting with the Comptroller's Office, the Land Office has concluded that Tax Code Chapter 312 could apply to local taxing units that want to give a tax break to owners of structures on the public beach who voluntarily move those structures onto a different piece of property landward of the public beach. The local taxing unit could develop a tax abatement agreement for property to which the structure is moved.

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We are requesting your opinion on whether a tax abatement agreement could also apply to the owner of a structure on the public beach whose property line extends far enough landward so the structure could be moved off the public beach, but still on the same piece of property. We believe the underlined condition in Sec. 312.204 of the Tax Code needs to be interpreted to resolve this issue:

Sec. 312.204. Municipal Tax Abatement Agreement

- (a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, subject to the rights of holders of outstanding bonds of the municipality, on the condition that the owner of the property make specific improvements or repairs to the property. (emphasis added)

Would moving a structure off the public beach—but still on the same piece of property—qualify as a specific improvement or repair to the property, so that a local taxing unit could enter a tax abatement agreement under Chapter 312?

The Land Office believes moving a structure off the public beach should qualify as an improvement to the property. Moving a structure off the public beach would: 1) reduce the possibility that the structure would be damaged or lost in a storm; 2) preserve the property as property tax base (which would be lost if destroyed or condemned); 3) make the entire property more marketable; and 4) improve the public's access to and use of the public beach.

If you have any questions or need further information with regard to this request, please contact Mr. Wayne Kewley in our Legal Services Division. He can be reached at (512) 475-4308.

Sincerely yours,



David Dewhurst  
Texas Land Commissioner

DD:wk