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DISTRICT 23

COMMITTEES:
PUBLIC HEALTH, CHAIR
CORRECTIONS
~~SUNSET COMMISSION, VICE CHAIR~~

1358

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Office of the Attorney General
Executive Administration (001)
P.O. Box 12548
Austin, TX 78711
OPINION COMMITTEE

The Honorable John Cornyn
Attorney General of the State of Texas
209 West 14th Street
Austin, Texas 78711-2548

FILE # ML-41288-00

FEB 23 2000

Dear General Cornyn,

I.D. # 41288

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The City of Galveston and its Park Board of Trustees seek interpretation of the provisions of Section 306.032 of the Local Government Code. (Attachment A)

Section 306.032 of the Local Government Code authorizes the City of Galveston to own certain entities, including but not limited to parks, civic centers, hotels, parking facilities and golf courses, and to lease property to or place property under the management and control of the Park Board of Trustees, a separate statutorily created entity.

The City of Galveston owns certain property near the City-owned airport. In May, 1974, the City leased a tract of land to the Galveston Health and Racquet Club (hereinafter, "Racquet Club"), a privately owned and managed fitness facility. In July, 1987, the City's lease with the Racquet Club was amended, and the City agreed to "exert its best efforts to avoid leasing to or operating any business which competes with or detracts from [the Racquet Club's] operation of its tennis and recreation club..."

In January, 1983, the City leased several other tracts of property to the Moody Foundation. The Foundation's lease allows it to develop the land for recreational purposes. The Moody Gardens Complex was developed on part of the property. The Moody Gardens Complex is a premier tourist attraction in Galveston. Its facilities include an aquarium, a tropical biome, and a convention center. The lease between the Moody Foundation and the City was subsequently assigned to the Park Board of Trustees, and simultaneously with that assignment, Moody Gardens, Inc. entered into an agreement with the Park Board of Trustees to operate and manage the Moody Gardens Complex. Thereafter, a hotel, commonly known as the Moody Gardens Hotel (hereinafter, "Hotel") was constructed at the Moody Gardens Complex with grant funds from the Moody Foundation. In October, 1998, the Park Board of Trustees adopted rules governing the operation of the Moody Gardens Complex, including the Hotel. (Attachment B)


The Hotel includes a health and fitness facility. Under the rules adopted by the Park Board of Trustees, the Hotel is prohibited from selling health club memberships to non-hotel guests. The Hotel does currently allow non-hotel guests to use its exercise equipment for the same charges paid by hotel guests, an activity the Racquet Club undoubtedly will argue violates the spirit, if not the letter, of the rules adopted by the Park Board of Trustees governing the operation of the Moody Gardens Complex.

The broad question to be resolved is whether the Park Board of Trustees has the authority under the provisions of Section 306.032 to amend its rules to authorize the sale of memberships to the fitness facility of the Hotel to non-hotel guests, including residents of Galveston. The more specific question to be resolved is whether the provisions of 306.032(c)(8) prohibit the Park Board of Trustees from amending its rules to authorize the sale of such memberships.

I believe the Racquet Club will argue that the rules adopted by the Park Board of Trustees for the operation of Moody Gardens Complex clearly try to limit the Hotel's competition with other existing recreational and tourist attractions in the City, and that an amendment authorizing sale of memberships is outside the authority of Section 306.032 of the Local Government Code. I believe a further part of their argument will rely on the application of one cent of the hotel occupancy tax for operation of the convention center within the Moody Gardens Complex.

I believe that Moody Gardens, Inc. will argue that the hotel occupancy tax is irrelevant to the issue because it cannot be used for the operation of any other part of the Moody Gardens Complex. I believe a further argument from Moody Gardens, Inc. and the Foundation will be that Section 306.032 of the Local Government Code does not require a residential exclusion for amenities under the management or control of the Park Board of Trustees. Indeed, other attractions within the Moody Gardens Complex, such as the aquarium and the tropical biome, have always offered annual passes for admission which can be purchased by residents of the City of Galveston. The restaurants, meeting rooms, ballroom, and spa services within the hotel are also available for use by residents of the City of Galveston. The golf course formerly managed by the Park Board of Trustees, now managed by the City, also offers annual memberships to residents of the City.

Interested parties who may wish to supply additional briefing information include the Galveston Health and Racquet Club and the Moody Foundation and Moody Gardens, Inc. The names and addresses of their respective primary counsel contacts are listed below for your convenience. This issue has been a matter of considerable discussion in the City for more than a year. I considered submitting this opinion request during the 76th Legislative Session. The City has now formally requested that I seek an opinion on this matter. I therefore respectfully request that this matter be considered as quickly as is feasible. As always, I appreciate the courtesy and cooperation of your office.

Sincerely,

Patricia Gray
Chair, Public Health Committee

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The Honorable Craig Eiland
The Honorable Mike Jackson

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