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January 20, 2015

VIA EMAIL: Opinion.Committee@texasattorneygeneral.gov

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

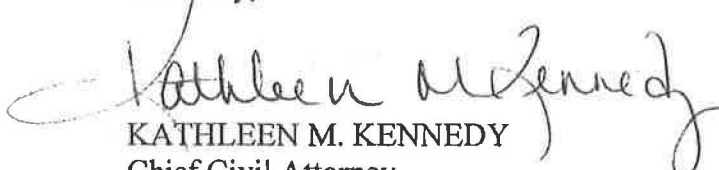
Re: Whether a Type C municipality is authorized to levy an ad valorem property tax on the property owners within the City limits?

Dear Sir or Madam:

My office has received the above-referenced question from the Mayor of the City of Taylor Landing, Jefferson County, Texas. The background facts and supporting brief with legal authorities is attached to this letter for your review. An opinion on whether the City of Taylor Landing, a Type C municipality, is authorized to levy an ad valorem property tax on the property owners within its city limits is requested.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


KATHLEEN M. KENNEDY
Chief Civil Attorney

KMK/
Enclosures.

City of Taylor Landing
324 N. Memorial Freeway
Nederland, TX 77627

January 13, 2015

Re: City of Taylor Landing Legal Question

Hon. Bob Wortham
District Attorney
Jefferson County
1149 Pearl St.
Beaumont, TX 77701

I am the duly elected mayor of the City of Taylor Landing, Jefferson County, Texas. Taylor Landing was incorporated as a Type C General Law Municipality under the Texas Local Government Code pursuant to an election conducted by Jefferson County in 2008.

Since that type it has provided municipal services, including garbage collection, a sewer plant, and drainage maintenance by collecting from the residents a utility fee uniform to all residents of the City. There has been an inquiry from its Public Works Department and other residents as to whether some of the City's fiscal requirements can be raised by means of a traditional ad valorem tax. To this date, the Jefferson County Appraisal District has not provided to Taylor Landing a certified property value list because it does not tax. If the City plans to tax, the Appraisal District would be asked to provide a certified property value list and in all likelihood the Jefferson County Tax Assessor Collector would be asked to collect the tax for the City pursuant to an interlocal agreement, so Jefferson County does have a stake in the question that has been raised regarding taxation by Taylor Landing.

I have extensively researched the case and statutory law, including prior published attorney general opinions, on the question and as mayor I have concluded that the law as to whether or not a Type C municipality can in fact assess a tax is unclear. Although I suspected that the Texas Attorney General would decline to render an opinion for Taylor Landing, I wanted to at least try, so I sent the attached e-mail to the opinions section of the office of the Texas Attorney General and received the expected reply.

My e-mail:

I am the duly elected mayor of the Texas City of Taylor Landing, located in Jefferson County, Texas. The City of Taylor Landing has requested that I seek this opinion. The City was incorporated on September 19, 2005, as a Type C General Law Municipality pursuant to an election conducted by Jefferson County, Texas, occasioned by a properly filed incorporation petition. It presently has a tax base as appraised by the Jefferson County Appraisal District of approximately \$20 Million Dollars. It has a population of 272. In addition to other traditional municipal exercises of authority authorized to general law cities by the Texas Local Government

Code, the City provides municipal sewage treatment, garbage collection, road maintenance, and drainage maintenance by collecting a utility fee from the residents.

Chapter 302 of the Texas Tax Code authorizes the levying of ad valorem property taxes by Type A and Type B general-law municipalities, limiting Type B taxation to 25 cents per hundred. Section 51.051 (b) of the Texas Local Government Code expressly states that a Type C municipality (with a population of 201 to 500 inhabitants) "... has the same authority as a Type B general-law municipality...".

Attorney General Opinion JC-0291, in reviewing the ability of a county development district to levy an ad valorem property tax, opined that a county development district could not levy an ad valorem property tax because there was no express authority for a county development district to levy a tax. That opinion reviewed, among other sources, the Texas Constitution. The Texas Constitution, Article 11, Section 4 states that cities and towns with a population of less than 5,000 may "...levy, assess and collect such taxes as may be authorized by law ...". Is a Type C municipality authorized to levy an ad valorem property tax on the property owners within the City limits?

John J. Durkay

I received the following reply from the office of opinions of the Texas Attorney General:

Dear Mr. Durkay:

Thank you for your recent email. We appreciate your contacting the Office of the Attorney General of Texas.

Please understand the role of this office is to advise and represent state entities, agencies and interests as specified in the Texas Government Code. Under Texas law, the Office of the Attorney General is prohibited from providing legal advice, analysis or representation to private individuals. However, I hope the following information is helpful.

The question you have posed requires a legal opinion. An attorney general opinion is a written interpretation of existing law where a legal issue is ambiguous, obscure or otherwise unclear. Opinions interpret existing laws in accordance with all applicable statutes and the Constitutions of the United States of America and the state of Texas.

The Texas Government Code Section 402.042 indicates to whom the Office of the Attorney General may provide a legal opinion. Opinions are written only at the request of certain state officials, defined as "authorized requestors." Please understand that the Office of the Attorney General is prohibited by law from providing legal opinions to anyone other than authorized requestors. You may wish to contact an authorized requestor about submitting an opinion request on your behalf.

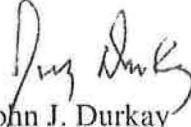
You can read about the opinion process, find a list of authorized requestors and research opinions issued by this office in the Opinion Section of our website at www.texasattorneygeneral.gov/opin/.

The reply contemplates that a nonauthorized requestor may request an authorized requestor to seek an opinion on behalf of the nonauthorized requestor. As the Jefferson County District attorney, you are authorized to seek an opinion and because Jefferson County will be affected by Taylor Landing's decision to apply an ad valorem tax, as stated above, I believe it is a useful use of County District Attorney resources to request an opinion. I would be happy, for example, to prepare a brief if you feel necessary on the question, with the assurance that it is unlikely to be much longer than the text of my original e-mail. I have conducted a search of Texas case law and find nothing directly applicable, particularly after the 1987 adoption of both the Type C chapters in the Texas Local Government Code and the applicable section of the Texas Tax Code.

I have attached printed copies of both e-mails in full and the page on the Attorney General web site listing authorized requestors.

Let me know what else you need to make a decision for your office as to whether you will proceed.

Yours very truly,


John J. Durkay