



**Media Contact**  
Mackenzie Finklea  
Public Relations Manager  
Mobile: 409-919-3635  
Email: [mfinklea@visitgalveston.com](mailto:mfinklea@visitgalveston.com)

## **Texas Attorney General Issues Opinion on Galveston Park Board's Use of Hotel Occupancy Tax and Governmental Powers**

**GALVESTON, Tex.** (Oct. 19, 2023) – The Texas Attorney General has issued an opinion on the Galveston Park Board's governmental powers and interpretation of Hotel Occupancy Tax (HOT) law.

The opinion from the Office of the Attorney General Ken Paxton is consistent with the Park Board's position that it has operated legally and within its powers as a separate government entity from the City of Galveston with the ability to house and manage HOT funds as well as disperse those funds "without further authorization" once the Park Board's budget has been approved and the funds have been allocated by the Galveston City Council. The opinion brings clarity to the Park Board's ability to house HOT funding as well as its authorities as an institution.

"We are pleased to receive this opinion from the Attorney General, which brings clarity to the Park Board's roles and responsibilities within the Galveston community and will assist us in our mission to work collaboratively and efficiently with all of our partners with the welcomed oversight of the Galveston City Council," said Park Board Interim CEO Kimberly Danesi.

Major points from the Attorney General opinion include:

- The Attorney General clarified that a local ordinance cannot be enacted that contradicts State Law or imposes limitations on the Park Board's powers, duties, and responsibilities as defined by state law.
- The Attorney General has opined that no additional authorization is required for the Park Board to expend HOT funds allocated to it. These funds are allocated through various legal mechanisms, and once appropriated, the Park Board can proceed with their expenditure. The Attorney General concluded that the City cannot exercise control over funds once allocated to the Park Board unless otherwise agreed upon by contract.
- The Attorney General's opinion affirms the city's authority to entrust park management to a third party, which includes the Park Board.

The Park Board sought an Attorney General opinion in February to clarify the relationship between the Park Board and City.

“I am grateful to have further clarity on the legal relationship between the City of Galveston and the Park Board of Trustees, provided by Attorney General Paxton,” said Park Board of Trustees Chair Jason Hardcastle. “From the beginning, I hoped only for clarification of roles, appropriate autonomy, and maximum efficiencies. I continue to welcome transparency, direction from city council, and collaborative cooperation between the staff of each organization. This opinion returns the relationship to a contractual one, in which two separate governmental entities work collaboratively for the benefit of the residents, businesses and visitors.”

The Texas Tax Code provides directives on the use of HOT, which is not generated by local taxpayers and is a specialized fund restricted for specific uses. In Galveston, the Park Board was specifically created to manage the portion of HOT funds that are restricted for tourism advertising and promotions. By seeking an Attorney General opinion, the Park Board followed precedence on how previous legal questions have been addressed in Galveston (such as the Attorney General opinion used in 2011 to inform City policy regarding how the Galveston Island Convention Center Hotel Occupancy Tax “trickle down” funds could be used).

“The powers and responsibilities given to the Park Board at its inception have allowed the Park Board to effectively promote Galveston in the scope of its expertise and substantially grow Galveston’s visibility as a tourism destination,” Danesi added.

## **SUMMARY OF ATTORNEY GENERAL OPINION**

*Below is a summary of the Attorney General opinion regarding the Galveston Park Board. To view the full opinion submitted by the Attorney General, click here: <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2023/kp-0446.pdf>*

**Question #1:** Given that the enabling legislation recites the Park Board's powers, duties, and responsibilities (including but not limited to entering long term leases, issuing bonds, and other activities associated with an independent governmental entity), may the City of Galveston (the City) by ordinance, absent an agreement, limit the Park Board's powers granted by the State?

**Answer #1:** The Attorney General opined that an ordinance cannot be passed that contradicts State Law and/or limits the powers, duties of responsibilities of the Park Board.

**Question #2:** Considering that Texas Tax Code Sec. 351.105(£)(2) states that a "Park Board" may use appropriated HOT funds "without further authorization", may the City

lawfully exercise control over the Park Board's use of those funds after the funds are appropriated to the Park Board?

**Answer #2:** The Attorney General opines that no further authorization is necessary for the Park Board to expend HOT appropriated to it. HOT funds are appropriated to the Park Board by three legal mechanisms:

1. One penny each for a total of two pennies, are allocated to beach cleaning and beach patrol by state statute.
2. City Charter allocates 3% of all HOT collections to the Park Board for advertising and promoting the island.
3. The Galveston Island Convention Center bond agreement allocates 2% of all HOT rebated by the state of Texas for beach nourishment, beach cleaning and beach patrol.

The Attorney General concluded that the City cannot exercise control over funds once allocated to the Park Board unless otherwise agreed upon by contract.

**Question #3:** Given that the enabling legislation authorizes the City to designate parks and facilities to the Park Board, and add to those designations over time, may the City lawfully remove previously designated parks and facilities from the Park Board's control?

**Answer #3:** The Attorney General opines that the City likely has the authority to grant or remove management of their properties to a third party, including the Park Board. We appreciate the City's trust and confidence in our abilities to manage their parks and take that responsibility seriously. We hope to continue to manage the parks in a way that benefits the City and its residents for decades to come.

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