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OPINION COMMITTEE



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Dennis Bonnen
Chair

COMMITTEE ON WAYS & MEANS
TEXAS HOUSE OF REPRESENTATIVES

Yvonne Davis
Vice-Chair

RQ-0122-KP

August 1, 2016

The Honorable Ken Paxton
Attorney General
Office of the Attorney General
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for opinion regarding the use of local hotel occupancy tax revenue to fund a feasibility study and the construction, operation and maintenance of a performing arts center

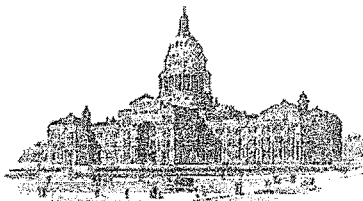
Dear Attorney General Paxton.

I write to ask your opinion about whether the City of Lakeway ("City") may use revenue from a local hotel occupancy tax ("HOT") to fund a feasibility study for, and the construction, operation and maintenance of, a performing arts center ("PAC") in the City. According to the City's legal counsel, the proposed expenditures meet the two-part test for the use of local HOT revenue under the relevant statute by directly enhancing and promoting tourism and the convention and hotel industry in the City, and the expenditures fulfill two of the qualified purposes for use of the local HOT revenue specified by statute. However, some in the hotel lodging industry question the City's authority to expend local HOT revenue for this purpose, and the City has found no reported decision or opinion of the attorney general directly on point.

The specific question I submit for your opinion is:

May the City legally expend local HOT revenue to fund a feasibility study for a PAC in the City and the construction, operation, and maintenance of the PAC?

The City has commissioned a study to build and operate a PAC that includes a theater with 500 to 800 fixed seats. According to the City, the use of the facility would directly promote tourism and the hotel and convention industry in the City. The PAC would be built in



conjunction with a small conference center that would accommodate 150 to 200 people and a hotel. The PAC would be designed to operate as the type of facility that will have a regional and statewide draw. According to the City, the PAC will help to establish the City as a destination location for culture and entertainment, and to attract visitors to the City for an overnight stay in its hotels or short-term rentals.¹

Under current law, it is the City's understanding that each HOT expenditure must meet a two-part test: (1) it must be expended in a manner that directly enhances and promotes tourism and the convention and hotel industry;² and (2) it must qualify under specifically authorized categories of expenditures.³

The City and other stakeholders have indicated they will provide your office with additional briefing on the specifics of this request for opinion.

I would appreciate your assistance in providing guidance to the City about the permissibility of spending local HOT revenue for the purposes outlined in this letter.

Thank you for your consideration of this request. Please do not hesitate to contact my office if you require any additional information from me.

Sincerely,



Dennis Bonnen
Chair
Committee on Ways & Means

¹ Tex. Tax Code § 156.001(b).

² Tex. Tax Code § 351.101(b).

³ Tex. Tax Code § 351.101(a).