



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2015

The Honorable Bob Wortham
Jefferson County Criminal District Attorney
1085 Pearl Street, 3rd floor
Beaumont, Texas 77701

Opinion No. KP-0028

Re: Whether a Type C municipality may
levy an ad valorem property tax
(RQ-0006-KP)

Dear Mr. Wortham:

On behalf of the mayor of the City of Taylor Landing, Texas (the “City”), you ask whether a Type C general-law municipality may levy an ad valorem property tax.¹ In a letter attached to your request, the mayor states that the City has a population of 272 and provides various municipal services. Durkay Letter at 1.² The mayor asks whether the City may impose “a traditional ad valorem tax,” but he is uncertain whether the City has that authority under the principles discussed in Attorney General Opinion JC-0291. *Id.* at 1–2. That opinion advises that the power to tax, which belongs to the state, can be exercised by a political subdivision only when the constitution or the Legislature has expressly granted taxing authority to the political subdivision. Tex. Att’y Gen. Op. No. JC-0291 (2000) at 4 (determining that a political subdivision may levy an ad valorem tax only if the constitution or the Legislature has “plainly and unmistakably conferred” such authority). While that opinion concerned a county development district, the same principles govern the taxing authority of a Type C general-law municipality. *See Tex. City v. J.L. Martin Inv. Co.*, 222 S.W.2d 139, 141 (Tex. Civ. App.—Galveston 1949, writ ref’d) (stating that “municipalities are strictly limited in the exercising of their taxing power to the powers expressly granted them by the constitution or by statute, either expressly or by necessary implication”); *Vance v. Town of Pleasanton*, 261 S.W. 457, 458 (Tex. Civ. App.—San Antonio 1924) (stating that general-law municipalities “have no power to levy or collect taxes upon property within their

¹See Letter from Honorable Bob Wortham, Jefferson Cnty. Crim. Dist. Att’y, to Office of the Tex. Att’y Gen. at 1 (Jan. 20, 2015), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”); Letter from Honorable John J. Durkay, Mayor, City of Taylor Landing, to Honorable Bob Wortham (Jan. 13, 2015) (“Durkay Letter”) (attached to Request Letter).

²The 2010 decennial census lists the population of the City of Taylor Landing, Texas as 228. *See* U.S. Census Bureau, U.S. Dep’t of Commerce, 2010 Census of Population, <http://factfinder.census.gov>.

territorial limits, except such power as may be expressly delegated to them by the Constitution or statutes”), *aff’d*, 277 S.W. 89 (Tex. Comm. App. 1925).

Under article XI, section 4 of the Texas Constitution, the Legislature may authorize municipalities with a population of 5,000 or less to levy an ad valorem tax. TEX. CONST. art. XI, § 4. Section 302.001 of the Tax Code grants ad valorem taxing authority to home-rule municipalities and Type A and Type B general-law municipalities without addressing the authority of Type C municipalities. TEX. TAX CODE ANN. § 302.001 (West 2015). But section 51.051 of the Local Government Code gives Type C municipalities the same authority as a Type A or Type B municipality, depending on population. TEX. LOC. GOV’T CODE ANN. § 51.051 (West 2008).³ Subsection 51.051(b) of the Local Government Code provides: “The governing body of a Type C general-law municipality with 201 to 500 inhabitants has the same authority as a Type B general-law municipality unless the authority conflicts with a provision of [the Local Government Code] relating specifically to a Type C general-law municipality.” *Id.* § 51.051(b). No provision of the Local Government Code that relates specifically to a Type C general-law municipality conflicts with the taxing authority that a Type C municipality may possess under section 302.001 of the Tax Code. As a revisor’s note to section 302.001 of the Tax Code explains, it is not necessary for that section to specify the taxing powers of Type C municipalities because of the authority granted in the borrowing provision of Local Government Code section 51.051. *See* TEX. TAX CODE ANN. § 302.001 revisor’s note (West 2015). Accordingly, section 302.001 of the Tax Code and section 51.051 of the Local Government Code expressly authorize a Type C general-law municipality to levy an ad valorem tax on property within its city limits.

³*See also* TEX. LOC. GOV’T CODE ANN. § 51.052 (West 2008) (authorizing certain Type C municipalities to adopt the power of a Type A municipality based in part on assessed valuation).

S U M M A R Y

Section 302.001 of the Tax Code and section 51.051 of the Local Government Code expressly authorize a Type C general-law municipality to levy an ad valorem tax on property within its city limits.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

KEN PAXTON
Attorney General of Texas

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