



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 26, 1988

Honorable Chet Brooks  
Chairman  
Health and Human Services Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

LO-88-47

Dear Senator Brooks:

You forwarded to us a proposed ordinance under consideration by the City of Galveston that prohibits a person from consuming alcohol on certain public sidewalks. This ordinance is proposed in the best interest of the public health, safety, and welfare. You ask whether Galveston has the authority to enact this ordinance.

In our opinion, laudable as the goals of the ordinance are, Galveston is prohibited from enacting the ordinance by section 1.06 of the Alcoholic Beverage Code, which provides (emphasis added):

Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

This provision covers every aspect of the regulation of alcohol. Indeed, in its last regular session, the legislature amended the code to make its intention unmistakable by adding in section 109.57(b): "It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state . . . ."

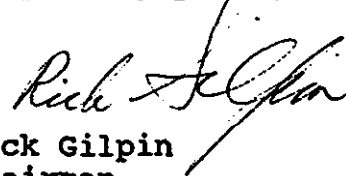
To give effect to this legislative intention, we have broadly applied section 1.06. In JM-619, we held that section 1.06 preempts an ordinance prohibiting the consumption of alcoholic beverages by persons operating

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motor vehicles. In JM-112 we held that section 1.06 preempts an ordinance banning open containers of alcoholic beverages in motor vehicles.

For the reasons expressed in those two opinions, we likewise believe that section 1.06 preempts an ordinance prohibiting the consumption of alcoholic beverages on public sidewalks. Prohibiting consumption is a form of regulating possession. By legislative mandate, as set out in section 1.06, and reiterated in section 109.57(b), the rules regarding regulation of alcoholic beverages are set forth exclusively by the Alcoholic Beverage Code. They cannot be varied or supplemented by city ordinance.

Very truly yours,



Rick Gilpin  
Chairman  
Opinion Committee

RG/FSM/bc

Prepared by F. Scott McCown  
APPROVED: OPINION COMMITTEE