Office of the Attorney General
State of Texas

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December 15, 1995

The Honorable Pete P. Gallego
Chair
Committee on General Investigating
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 95-085

Re: Whether the term "qualified hotel project," as defined by House Bill 2282, Act of May 11, 1993, 73d Leg., R.S., ch. 231, 1993 Tex. Gen. Laws 480, includes a private entity selected by a municipality (RQ-854)

Dear Representative Gallego:

You ask, in essence, whether the term "qualified hotel project," as defined by House Bill 2282,[1] passed by the Seventy-third Legislature in 1993, includes a private entity selected by a municipality.[2] Pursuant to House Bill 2282, a "qualified hotel project" is eligible to receive rebates of certain tax proceeds.

The Seventy-third Legislature enacted the language in House Bill 2282 defining the term "qualified hotel project" as an amendment to the Texas Enterprise Zone Act, V.T.C.S. article 5190.7. Section 6 of House Bill 2282 added section 3(a)(14) to the act to provide as follows:

> "Qualified hotel project" means a hotel *proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation* created pursuant to the Texas Transportation Corporation Act (Article 1528*l*, Vernon's Texas Civil Statutes) that is within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including all facilities ancillary thereto such as shops and parking facilities. [Emphasis added.]

Section 6 also added section 3(a)(15) to the Enterprise Zone Act defining the term "eligible taxable proceeds" as follows:

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[1]Act of May 11, 1993, 73d Leg., R.S., ch. 231, 1993 Tex. Gen. Laws 480.

[2]Your query also asks about a private-public ownership arrangement. Because we believe our answer to the above question resolves that issue, we do not address it specifically.

> "Eligible taxable proceeds" means taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project, including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

In the same session that the legislature enacted House Bill 2822, it repealed article 5190.7 and codified the article in chapter 2303 of the Government Code. *See* Act of May 4, 1993, 73d Leg., R.S., ch. 268, §§ 1, 46, 1993 Tex. Gen. Laws 583, 883-97, 986. The codification was a nonsubstantive revision; the legislature intended no substantive change in the law. *Id.* § 47, 1993 Tex. Gen. Laws 583, 986-87. In 1995 the Seventy-fourth Legislature incorporated the definition of "qualified hotel project" into subsection (8) of section 2303.003 of the Government Code in order to conform newly codified chapter 2303 with House Bill 2282.[3] *See* Act of Apr. 25, 1995, 74th Leg., R.S., ch. 76, § 5.50, 1995 Tex. Sess. Law Serv. 458, 505. The definition of "eligible taxable proceeds" has been incorporated in section 2303.5055(e) of the Government Code. *See id.* § 5.53, 1995 Tex. Sess. Law Serv. 458, 510. All references in this opinion are to the Enterprise Zone Act prior to codification.

Your query requires us to consider whether the phrase "hotel proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation" in the definition of "qualified hotel project" refers only to a hotel owned by a municipality or a municipally sponsored corporation, or whether it also refers to a hotel owned by a private entity. Briefs submitted to this office suggest two differing constructions of the phrase. One brief suggests that the phrase "proposed to be constructed by a municipality" does not require municipal ownership but rather is intended to distinguish hotels that the municipality has selected for tax rebates (regardless of their ownership) from other hotels that might be built within the designated convention center area. The other brief suggests that the phrase is merely a temporal reference, denoting a hotel that a municipality or municipally sponsored corporation proposes to construct and thus will own at some future time. In order to answer your query, we must look at the definition of the term "qualified hotel project" in the context of House Bill 2282 as a whole.

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[3]Subsection (8) provides as follows:

> "Qualified hotel project" means a hotel proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation created under the Texas Transportation Corporation Act (Article 1528*l*, Vernon's Texas Civil Statutes) that is within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel.

Although worded slightly differently, the codification of the definition of "qualified hotel project" in section 2303.003(8) of the Government Code is identical in meaning to the original statutory language. *See* Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 47, 1993 Tex. Gen. Laws 583, 986-87.

In addition to defining the terms "qualified hotel project" and "eligible tax proceeds," House Bill 2282 amends other sections of the Enterprise Zone Act, another civil statute, and the Tax Code to delineate the authority of a municipality with respect to a qualified hotel project and to establish the tax benefits to which a qualified hotel project is entitled. The first four sections of the bill clearly refer to a hotel that is publicly owned. Section 4 of House Bill 2282 amends section 2(a) of article 1269j-4.1 to provide that a city is authorized to "establish, acquire, lease as a lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate or maintain . . . improvements" including "hotels *owned by a municipality or a nonprofit municipally sponsored local government corporation* created pursuant to the Texas Transportation Corporation Act . . . within 1,000 feet of a convention center owned by a municipality with a population of 1,500,000 or more." Act of May 11, 1993, 73d Leg., R.S., ch. 231, § 4, 1993 Tex. Gen. Laws 480, 481 (emphasis added).

Sections 1, 2, and 3 of House Bill 2282 amend provisions of the Tax Code relating to municipal and county hotel occupancy taxes. *See* Tax Code §§ 351.001(2), .102(a), 352.101(a). Section 1 amends the definition of "convention center facilities" and "convention center complex" in section 351.001 of the Tax Code to include "hotels *owned by the municipality or a nonprofit municipally sponsored local government corporation* created pursuant to the Texas Transportation Corporation Act . . . within 1,000 feet of a convention center owned by a municipality with a population of 1,500,000 or more." Act of May 11, 1993, 73d Leg., R.S., ch. 231, § 1, 1993 Tex. Gen. Laws 480, 480 (emphasis added). Section 351.101 of the Tax Code authorizes cities to use revenue generated from municipal hotel occupancy taxes to construct and operate "convention center facilities." Section 2, which amends section 352.101(a)(1) of the Tax Code, provides that county hotel occupancy tax revenue may be used to construct and operate "hotels *owned by a municipality or a nonprofit municipally sponsored local government corporation* created pursuant to the Texas Transportation Corporation Act . . . within 1,000 feet of a convention center owned by a municipality with a population of 1,500,000 or more." *Id.* § 2, 1993 Tex. Gen. Laws 480, 480-81 (emphasis added). The result of these provisions is to authorize cities and counties to use revenues from municipal and county hotel occupancy taxes to construct and operate a convention center hotel that is owned by a municipality or a municipally sponsored corporation. In addition, section 3 of House Bill 2282 amends section 351.102(a) of the Tax Code to provide that a municipality may pledge the revenue derived from a municipal hotel occupancy tax collected at the hotel for the payment of bonds or other obligations of a municipally sponsored corporation that were issued to pay the cost of "the acquisition and construction of a convention center hotel." *Id.* § 3, 1993 Tex. Gen. Laws 480, 481.

Unlike the foregoing sections, the remaining sections of the bill, sections 5 through 10, do not refer to a hotel owned by the municipality or a municipally sponsored corporation but rather to the owner of a qualified hotel project. Like section 6, sections 5, 7, and 8 amend the Enterprise Zone Act. Section 5 amends the definition of the term "qualified business" in the Enterprise Zone Act to include an entity that "is a qualified hotel project that is *owned by a municipality with a population of 1,500,000 or more or a*

nonprofit municipally sponsored local government corporation created pursuant to the Texas Transportation Corporation Act." *Id.* § 5, 1993 Tex. Gen. Laws 480, 481-82 (emphasis added). Section 7 amends section 13 of the Enterprise Zone Act. Prior to this amendment, sections 12 and 13 of the Enterprise Zone Act permitted cities and counties to refund local sales and use taxes paid by a qualified business or to reduce or eliminate any fees or taxes, other than sales and use or property taxes, imposed on a qualified business. Section 7 of House Bill 2822 provides in pertinent part as follows:

> (b) A municipality, county, political subdivision, or other governmental body may enter into an agreement to rebate, refund, or pay eligible taxable proceeds *to the owner of the qualified hotel project* at which such eligible taxable proceeds were generated or collected for a period not to exceed 10 years. A municipality with a population of 1,500,000 or more may enter into an agreement to guarantee from hotel occupancy taxes the bonds or other obligations of a municipally sponsored local government corporation created pursuant to the Texas Transportation Corporation Act . . . that were issued or incurred to pay the cost of constructing, remodeling, or rehabilitating a qualified hotel project.

Id. § 7, 1993 Tex. Gen. Laws 480, 482 (emphasis added). Sections 9 and 10 of House Bill 2282 amend section 151.429 of the Tax Code, which had provided only limited refunds of state sales and use taxes paid by enterprise projects, to provide that "the owner of a qualified hotel project" shall receive a rebate of 100 percent of the state sales and use taxes and state hotel occupancy taxes paid or collected by the qualified hotel project for a specified period. Thus, unlike other qualified businesses in an enterprise zone, a qualified hotel project is eligible to enter into agreements for tax rebates with any and all local taxing authorities and is entitled to receive a 100 percent rebate of site-generated state sales and use taxes and state hotel occupancy taxes.

In order to interpret the meaning of the definition of "qualified hotel project" in section 6 of H.B. 2282, we look not just to the language of section 6 but rather to H.B. 2282 as a whole. *See Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985) ("[I]t is our duty to construe statutes as written, and, if possible, ascertain the Legislature's intent from the language of the act. To ascertain legislative intent, we must look to the statute as a whole and not to its isolated provisions.") (citation omitted). Based upon our review of House Bill 2282 as a whole, we are persuaded that the phrase "hotel proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation" in section 6 may include a privately owned hotel.

First, the legislature used the words "proposed to be constructed" rather than "owned" or "proposed to be constructed and owned." We believe that if the legislature had intended to limit the term "qualified hotel project" to a publicly owned hotel it would have used the term "hotel owned by a municipality or a nonprofit municipally sponsored local government corporation" as it did repeatedly in sections 1 through 4 of House Bill 2282. The rules of statutory construction do not permit us to add words to a statute

unless it is absolutely necessary to do so to give effect to clear legislative intent. *Hunter v. Fort Worth Capital Corp.*, 620 S.W.2d 547, 552 (Tex. 1981) ("Only when it is necessary to give effect to the clear legislative intent can we insert additional words into a statutory provision.") (citing *Mauzy v. Legislative Redistricting Bd.*, 471 S.W.2d 570, 572 (Tex. 1971)); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) ("[E]very word excluded from a statute must also be presumed to have been excluded for a purpose. Only when it is necessary to give effect to the clear legislative intent can we insert additional words or requirements into a statutory provision.") (citing *Mauzy*, 471 S.W.2d at 572). Given that House Bill 2822 does not manifest such clear legislative intent, we believe it would be inappropriate for this office to insert the words "and owned" into the definition of a qualified hotel project.

Second, in construing a statute, this office, like a court, must give effect to all words of a statute and may not treat any statutory language as surplusage if possible. *Chevron Corp. v. Redmon*, 745 S.W.2d 314, 316 (Tex. 1987) (citing *Perkins v. State*, 367 S.W.2d 140 (Tex. 1963)); *see also Cameron*, 618 S.W.2d at 540 ("It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose."). Sections 1 and 2 of the bill authorize cities and counties to spend their hotel occupancy tax revenues to construct and operate a hotel owned by a municipality or a municipally sponsored corporation. If only a municipality or a municipally sponsored corporation may own a qualified hotel project, then inclusion of "hotel occupancy taxes" in the term "eligible taxable proceeds" in sections 6 and 7 of House Bill 2282 regarding tax rebates would have no purpose given the authority bestowed on cities and counties to spend their hotel occupancy tax revenues to construct and operate a hotel owned by a municipality or a municipally sponsored corporation in sections 1 and 2. It would be inappropriate for this office to construe the definition of the term "qualified hotel project" so as to render this statutory language meaningless. *See id.*

Third, as a more general matter, we believe it is significant that the legislature chose to enact the tax rebate provisions as part of the Enterprise Zone Act. The primary purpose of the Enterprise Zone Act is to encourage the expansion of the private sector within depressed urban and rural areas. *See* V.T.C.S. art. 5190.7, § 2(a) (repealed 1993). The legislative findings of the act provide in pertinent part:

> (b) It is therefore the public policy of this state to provide the people of this state with the necessary means to assist communities, their residents, and the private sector to create the proper economic and social environment *to induce the investment of private resources in productive business enterprises* located in severely distressed areas .... In achieving this objective, through this Act the state seeks to provide appropriate investments, tax benefits, and regulatory relief to encourage the business community to commit its financial participation ....
>
> (c) It is the purpose of this Act to establish a process that clearly identifies those distressed areas and provides incentives by

> both state and local government *to induce private investment* in those areas by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives and economic development program benefits.

Id. § 2(b), (c) (emphasis added). We believe that if the legislature had intended for only municipal or municipally sponsored corporations to be entitled to tax rebates, it would have chosen a different statutory vehicle for sections 5 through 8 of House Bill 2282. Furthermore, we believe that these provisions must be interpreted in keeping with the purposes of the Enterprise Zone Act which they amend.

The argument has been made that the legislature employed the phrase "proposed to be constructed by a municipality" in section 6 of House Bill 2282 because of the nature of the designation process set forth in the Enterprise Zone Act, *i.e.*, that a project must be approved by state and local authorities before it is awarded Enterprise Zone Act incentives and is constructed. Under this view, the use of the phrase "proposed to be constructed by a municipality" recognizes the fact that the majority of Enterprise Zone Act provisions deal with activities occurring before construction of a project has commenced. This argument, however, ignores the fact that House Bill 2282 provides in section 6 that a qualified hotel project is entitled to automatic approval as an enterprise project:

> A qualified hotel project shall be deemed to have met the employment, income, and other criteria of a qualified business and an enterprise project, and the enterprise zone in which the qualified hotel is located shall be deemed to have met all qualifications of this Act to permit the [Texas Department of Commerce] to designate the qualified hotel project as an enterprise project.

Act of May 11, 1993, 73d Leg., R.S., ch. 231, § 6, 1995 Tex. Gen. Laws 480, 482.

It also has been argued that the legislature could not have intended to include a privately owned hotel within the term "qualified hotel project" because, unlike a municipally owned or sponsored hotel, such a hotel would not be entitled to use general, non-site-specific municipal and county hotel occupancy tax revenues to finance, construct, and operate the hotel as provided in sections 1 through 3 of the bill. We do not find this argument persuasive, however, because it is entirely reasonable to suppose that the legislature intended to give a municipality the choice between public and private ownership alternatives. While a privately owned hotel may not be entitled to use general, non-site-specific municipal and county hotel occupancy tax revenues, it is entitled to a rebate of state hotel occupancy taxes and state sales and use taxes generated on site and is also eligible to negotiate tax rebates for other tax proceeds generated on site with local taxing entities, including the county and city. Furthermore, we fail to see how it follows that the affirmative grant of authority to a city to own and operate a convention center hotel and to use hotel occupancy tax revenues to do so in sections 1 through 4 of the bill precludes a private party from owning and operating such a hotel. For example, we have been asked why the legislature would amend article 1269j-4.1 to permit a city to own a

hotel if the legislature intended such hotels to be privately owned. Again, we believe that this amendment and the amendments to chapters 351 and 352 of the Tax Code are entirely consistent with the conclusion that House Bill 2282 is intended to give a city the flexibility to choose between private and public ownership of a convention center hotel.

For these reasons, we believe that the phrase "proposed to be constructed by a municipality" in section 6 of House Bill 2282 is not intended to require municipal ownership of a qualified hotel project but rather is intended to distinguish between hotels that the municipality has selected to be eligible for tax rebates (regardless of the type of ownership) from other hotels that might be built within the designated convention center area. The result is to authorize local taxing jurisdictions to negotiate tax rebate agreements as provided by the Enterprise Zone Act with only those convention center hotel projects, whether private or public, selected by the city, and to entitle only those hotels selected by the city to receive a 100 percent rebate of state sales and use taxes and state hotel occupancy taxes.

Based upon our review of House Bill 2282 as a whole, we believe that the definition of "qualified hotel project" includes a privately owned hotel. To conclude otherwise would render significant provisions in the bill meaningless.[4] We also emphasize that because House Bill 2282 applies only to a hotel proposed to be constructed by a municipality or a municipally sponsored corporation *that is within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more* this opinion is of very limited application. Moreover, the effect of this opinion is to give such a municipality the flexibility to choose between public and private ownership arrangements; the opinion merely construes House Bill 2282 and does not endorse one type of ownership arrangement over another.

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[4]Given that it is possible to construe House Bill 2282 based on its statutory language, we believe that it is unnecessary to resort to the extrinsic legislative history of House Bill 2282 as an aid to statutory construction. *See Minton v. Frank*, 545 S.W.2d 442, 445 (Tex. 1976) ("Where the intent is apparent from the words of the statute, it is not necessary for this Court to make any analysis of the extrinsic evidence of legislative intent."); *see also Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) ("We focus on the literal text . . . because the text is the only *definitive* evidence of what the legislators . . . had in mind when the statute was enacted into law. There really is no other certain method for determining the collective legislative intent or purpose at some point in the past, even assuming a single intent or purpose was dominant at the time of enactment.").

We also note that we have been invited to consider postenactment statements regarding the intent of House Bill 2282 made by individuals, a legislator and an attorney, involved in its passage. We decline to do so. *See* Attorney General Opinions DM-321 (1995) at 1-2 n.1 ("Post-enactment statements of legislators do not form part of the legislative history of provisions that may be taken account of in their construction.") (citing 2A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 48.16 (5th ed. 1992)), JM-1256 (1990) at 7-8 (same); *see also General Chem. Corp. v. De La Lastra*, 852 S.W.2d 916, 923 (Tex.) ("[T]he intent of an individual legislator, even a statute's principal author, is not legislative history controlling the construction to be given a statute."), *cert. denied*, 114 S. Ct. 490 (1993); *City of El Paso v. Madero Dev. and Constr. Co.*, 803 S.W.2d 396, 401 (Tex. App.–El Paso 1991, no writ), *cert. denied*, 502 U.S. 1073 (1992); *Mayhew v. Town of Sunnyvale*, 774 S.W.2d 284, 298-99 (Tex. App.–Dallas 1989, no writ), *cert. denied*, 498 U.S. 1087 (1991).

SUMMARY

The term "qualified hotel project," as defined by House Bill 2282, Act of May 11, 1993, 73d Leg., R.S., ch. 231, 1993 Tex. Gen. Laws 480, includes a private entity selected by a municipality.

Yours very truly,

Mary R. Crouter
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