

CAUSE NO. D-1-GV-09-000916

EX PARTE	§	IN THE DISTRICT COURT OF
	§	
CITY OF FRIENDSWOOD, TEXAS	§	TRAVIS COUNTY, TEXAS
	§	
	§	419th JUDICIAL DISTRICT

ORIGINAL ANSWER OF  
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Greg Abbott, Attorney General of Texas, a Respondent herein pursuant to chapter 1205 of the Texas Government Code, and in response to the First Amended Petition heretofore filed by Petitioner, the City of Friendswood, Texas, files this his Original Answer and would respectfully show the Court the following:

I.

The Attorney General neither admits nor denies the allegations made by Petitioner in this cause, but respectfully requests that this Honorable Court require the allegations of the First Amended Petition be properly proved and that this Honorable Court then act in such manner in the premises as the interest of all parties require, consonant with equity, justice, and the laws applicable to the facts as proved.

## II.

Without admitting or denying the allegations made by Petitioner, in order to inform the Court, the Attorney General addresses two main issues raised in Petitioner's First Amended Petition.

The first main issue, addressed in section III B on pages 5 through 7 of the First Amended Petition, regards whether the provisions for a petition for an election set forth in the Certificate of Obligation Act control over provisions set forth in the city charter. The longstanding position of the Public Finance Division of the Office of the Attorney General in its review and approval of certificates of obligation pursuant to chapter 1202 of the Texas Government Code is that the notice and petition provisions of Section 271.049 of the Local Government Code, read in conjunction with Section 271.044 of the Local Government Code, establish that no election is required for the issuance of certificates of obligation unless a petition is filed in accordance with the requirements of the Certificates of Obligation Act, Tex. Loc. Gov't Code, §§ 271.041 through 271.065.

The second issue, addressed in section III C of pages 7 through 8 of the First Amended Petition, involves a question of law before the Court as to whether the City of Friendswood may issue certificates of obligation to purchase park land not only outside of its corporate limits, but outside of the county in which the city is situated. Petitioner is relying upon its home rule powers as authority to purchase the park land outside its boundaries. A home rule city possesses powers not denied by statute or the constitution so long as the city has incorporated those powers in its charter. *H. B. Zachry v. City of San Antonio*, 296 S.W.2d 299, 301 (Tex. Civ. App. – San

Antonio 1956) (citing *Foster v. City of Waco*, 255 S.W. 1104 (Tex. 1923)), *aff'd on other grounds*, 305 S.W.2d 558 (Tex.1957). Therefore, a central legal question before the court is whether the city charter grants the City of Friendswood the power to purchase park land outside not only its corporate boundaries but outside the county in which it resides. Of the sections of the city charter attached to the First Amended Petition, only section 2.04 appears to directly address public parks and that provision discusses in part the power to establish, maintain, and improve public parks within the corporate limits of the City. In short, as part of its proof at the hearing, the Petitioner should demonstrate to the Court that the city charter or other law authorizes the city to purchase park land outside of the boundaries of the county in which the city resides.

### III.

Upon proper proof being made by Petitioner herein of the allegations contained in the First Amended Petition, the Attorney General will have no objection to the relief requested by Petitioner being granted by this Court; provided, however, the Attorney General reserves the right to contest any and all relief requested by the Petitioner upon failure by the Petitioner to properly prove all allegations contained in the First Amended Petition, or in the event the Petitioner's First Amended Petition is further amended.

WHEREFORE, PREMISES CONSIDERED, the Attorney General respectfully prays that upon final judgment this Honorable Court enter such order as may be proper in the premises.

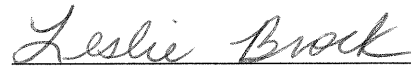
Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent by facsimile transmission this 12<sup>th</sup> day of June 2009 to:

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