

THOMAS E. COOK, III  
J. MICHAEL FIEGLEIN  
36 COLONY PARK CIRCLE  
GALVESTON, TEXAS 77551  
(409) 744-2195  
FAX: (409) 744-0080

*Thomas E. Cook*

December 17, 1997

Honorable Nick Lampson  
417 Cannon House Office Bldg.  
Washington, DC 20515-0001

Dear Congressman Lampson:

We wish to direct your attention to a problem of serious magnitude that greatly affects small businesses in our county. That problem, which rises to Constitutional proportions, involves unfair competition by tax exempt organizations (TEOs) against small business taxpayers. These taxpayers are being denied their Constitutional right to equal protection under the law. This problem has not just suddenly appeared, but has been allowed to evolve over the past twenty (20) years. Currently, it poses a huge monetary problem for our government and the small business taxpayers. TEOs are using their tax exemption to compete with, and cause harm to, small business taxpayers.

Unless you have personally operated a small business and have been forced, due to inaction by our government, to face the unfair competition from a TEO, you cannot appreciate the frustrations one encounters: unfair, uncaring, unjust, rage, guilt, isolation, and just being put out in the cold to die. TEOs sound so good, so innocent. Charity, education, benevolence are all concepts associated with TEO. But, when a TEO attacks you and attempts to destroy everything you have worked for all your life, you feel victimized; you feel like you have been raped. The tragedy, up to now, is that no one seems to care. When your Constitutional Rights are being violated, somebody needs to care! That someone is the Congress of the United States. Congress must protect and defend the Constitution. Congress MUST act and end the abuse!

The tax laws must be written in a manner that ensures a level playing field and equal protection under the law for all taxpaying businesses. Congress must exercise great care to ensure that the tax laws which apply to TEOs are CLEAR, CONCISE, and DEFINITIVE so that loopholes do not exist. Businesses are willing to pay their fair share of taxes so long as everyone is treated equally. However, small business taxpayers are being denied equal protection under the law, and, because of tax loopholes, are being forced to compete with TEOs. This unequal protection under the law goes against the most basic concepts upon which our Republic was founded. We fought a Revolutionary War to end such suffering endured while under the reign of the King of England. We

*Thomas E. Cook*

poured tea into the Boston harbor to protest unfair taxation. Congress must face its responsibility and absolutely ensure that no taxpayer is denied his Constitutional Right to equal treatment under the law.

The Fourteenth Amendment to the United States Constitution provides that every citizen of the United States is entitled to equal protection under the law. Currently, TEOs are allowed to engage and compete in **exactly the same** commercial businesses as our small taxpaying businesses. Because Congress has not closed the tax loopholes, the following is the reality faced by our small businesses today:

Congress says to one large group of citizens: "You must operate commercial businesses and you must pay taxes". Then Congress turns to a specially favored group (TEOs) and says, "You are tax exempt! You may operate the **same** commercial businesses as the small taxpaying businesses, **but** you will pay no taxes." This action is a clear violation of the guarantee of equal protection under the law provided by the Fourteenth Amendment to our Constitution.

The tax law grants special tax exempt status to certain organizations to give them incentives to carry out truly charitable, educational and benevolent purposes, **not** to engage in businesses which compete directly with our taxpayers. Currently, some TEOs are using their tax exempt status to unfairly take advantage and compete with taxpayers; and they are causing great harm to taxpaying businesses. Congress never intended to happen. **But**, it is occurring. Case in point: less than 200 yards from my business, a large charitable foundation is building a hotel and intends to operate it and other businesses, using their tax exempt status, to compete with small taxpaying businesses in our community. Worse yet, an agency of the State of Texas has joined in the collusion, and has agreed to act as an accommodation (sham) owner of the hotel and businesses, in order to facilitate the foundation's scheme to build and operate commercial businesses and **avoid** payment of **all** taxes! Businesses, built and operated by grants from a tax free foundation, pay **no** sales taxes, **no** property taxes, and **no** income taxes. Small taxpaying businesses, who find themselves in direct competition with the tax free foundation, will definitely suffer financial harm.

**Everyone is beginning to believe that they can be tax exempt!** Unless Congress closes the loopholes, an increasing number of TEOs will decide to own and operate commercial businesses, putting more small business taxpayers out of business. In self-defense, more taxpaying businesses will decide to seek tax exempt status in order to operate their commercial businesses tax free. Why not? The loopholes are there! If Congress doesn't act, then our country will have a steady decline in the number of small business taxpayers and a sharp increase in the number of TEOs who operate commercial business. This is very unfair and very unhealthy for our democracy.

The abuse created by the loopholes in the tax laws is unconscionable and unconstitutional. It is the taxpayers who Congress must protect above all, for they are the "bread and butter" who drive the machinery of our government. It is taxpayers who provide the tax revenues to run our government. **The tax exempts pay nothing!** Abuse by the TEOs harms our taxpayers **and** our government.

Congress must enact legislation to close tax loopholes which currently permit TEOs to abuse and cause financial harm to taxpayers. Congress must set proper priorities to ensure fairness and evenhandedness: small taxpaying businesses are the kings; they



*Thomas E. Cook*

deserve our maximum protection in order for their businesses to survive. Tax exempt status is proper **only** so long as tax exempt status is used 100% for charitable, educational and benevolent purposes. TEOs who compete **tax free** in the business arena are the enemy of our government and the enemy of our taxpayers who carry the tax burdens of funding our government.

Those who work hard, pay taxes, and strive to endure are being harmed. Our government has dictated to taxpayers: invest your capital, hire employees, work hard, be industrious, make a profit and pay your share of taxes so that our government can carry out its responsibilities to the betterment of all citizens. Our Government, through tax loopholes, has armed tax exempts with the power to steal business opportunities from our taxpayers.

Our founding fathers would have called this action "treason" against the taxpayers. This blatant unfairness is contrary to all we hold dear in our society and to all that our country represents. This **abuse** must be stopped.

TEOs must not be permitted to operate commercial businesses while enjoying the benefits of tax exempt status. Congress must amend the Internal Revenue Code and require the specially favored tax exempts to **confine** their activities to **truly** charitable and educational purposes.

The Internal Revenue Code must be amended to eliminate the ability of a tax exempt organization to engage in, develop, fund, operate, or capitalize a commercial business enterprise and, at the same time, remain tax exempt itself. The current controls provided by the Internal Revenue Code are easily circumvented by shrewd and artful tax advisers.

Legislation must be passed to provide that in the event a TEO participates directly or indirectly in a business enterprise which competes with taxpaying businesses, then the TEO will lose its tax exemption with respect to **all** of its income and assets. In addition, significant penalties must be enacted to prevent self-dealing and private or personal inurement, by persons directly associated with TEOs. Currently, the Internal Revenue Code contains no **real** penalties against self-dealing and private inurement. As a result, those who manage some TEOs are engaged in rampant self-dealing and private inurement. These people are truly abusive and they must be stopped.

We would greatly appreciate the opportunity to meet with you and your staff to discuss in depth the issues outlined above and to provide the factual information upon which we base our premise that immediate affirmative Congressional action is required.

Sincerely yours,

Best regards,

J. Michael Fieglein

Thomas E. Cook, III

TEC:sc

THOMAS E. COOK, III  
J. MICHAEL FIEGLEIN  
36 COLONY PARK CIRCLE  
GALVESTON, TEXAS 77551  
(409) 744-2195  
FAX: (409) 744-0080

*Thomas E. Cook*

January 28, 1998

**Congressman Nick Lampson**  
417 Cannon House Office Building  
Washington, DC 20510

**RE: Abuse of small business taxpayers by  
Tax Exempt Foundations**

**Dear Congressman Lampson:**

In a recent speech to the Galveston Chamber of Commerce, Texas Senator, Kay Bailey Hutchison, stated, "I believe small business is the economic engine of America," and "We need to help small businesses grow and prosper." Mike Fieglein and I received her comments with great interest and we also hope that you feel strongly about helping small businesses survive and prosper.

In our last letter to you we outlined a most serious problem facing small businesses, who, because of loopholes in the tax law, are forced to endure unfair competition aimed directly at them by certain private tax exempt charitable foundations. Congress intended for these tax exempt entities to be charitable, and to not engage in commercial business operations. When charity becomes only incidental to a foundation's real motives, then the foundation should forfeit its 501(c)(3) tax exempt status.

It is imperative that Congress prevent tax exempts from unleashing their enormous wealth and power against defenseless small businesses who are required to pay taxes. Congress, by granting tax exempt status, allows charities to grow into financial giants capable of doing tremendous good, or, capable of incredible economic evil. Congress has the power and the duty to control these entities, ensuring benevolence and charity. Uncontrolled, these entities, like the humans who run them, can become ambitious and greedy, drifting off course, causing extraordinary damage to small business taxpayers who do not have the economic benefits available to tax exempt organizations.

A perfect example of a charity which has drifted off course and virtually lost its charitable mission is The Moody Foundation and Moody Gardens, Inc., of Galveston,

*Thomas E. Cook*

Texas. Charity has become only incidental to these wealthy foundations. Operation of commercial businesses, utilizing wealth, power, control, intimidation, and threats, has become their primary purpose. Charitable grants have become only a small percentage of their activities, and then always with "strings" attached. Over 63% of their expenditures during the past six years has been to commercial business projects at the Moody Gardens Complex controlled by the foundations and its trustees. This is truly an example of a foundation out of control. It is a foundation that, because of tax loopholes and manipulations, has forgotten that its real mission was charity. Its new mission is generating cash flow and the marketing of its commercial business enterprises.

It is quite impossible and inherently unfair for a small taxpaying business to be suddenly caught up in the unfair competition posed by a large and powerful, and supposedly **charitable**, tax exempt foundation. If a foundation is truly charitable, this would never happen. Small businesses do not fear fair competition. But, competition from a business that is tax exempt, developed by a tax exempt foundation, and whose operations are funded by that same foundation is blatantly unfair and wholly inappropriate. The Moody Foundation employs power brokers to force its will on the citizens of Galveston, including Sheriff Joe Max Taylor, and each of them is adept at this job. Any person who expresses an opinion that is contrary to the wishes of the Moody Foundation is subject to the ire of one or more of these individuals. Such action is not appropriate of a charity. This raises the question, which begs an answer: Why does a charitable foundation need a Sheriff to argue its position, and to lobby for approval of its decisions to operate commercial businesses at the Moody Gardens Complex?

A few years ago, when the Galveston Health and Racquet Club was first being financially harmed by unfair competition from the Moody Foundation's commercial enterprise at Moody Gardens, another of those power brokers made the statement, "If the Racquet Club can't compete, the Racquet Club needs to go out of business!" If the Moody Foundation was truly charitable, that statement would never have been made. The Galveston Health and Racquet Club does not fear competition from legitimate competitors. But competition from a business that is tax exempt and funded by a tax exempt private foundation is **not** fair and is wholly inappropriate.

We intend to make Congress aware of the problem created by the loopholes in our tax code, and the manipulations allowing tax-exempt business competition, that have led to this injustice. And, we hope to enlist your support for the necessary curative measures.

A charitable foundation should just be a charitable giver with no expectation of generating commercial cash flow, and with no strings attached to any charitable grant. That is what Congress intended when it granted tax exempt status to certain organizations. Congress intended for charities to grow, and to grow tax free, **but only** for charitable purposes; **not** to use those tax free funds to build and operate commercial enterprises.

We have included newspaper accounts of these issues involving the Moody Foundation and Moody Gardens, Inc., to help illustrate this serious problem. Someone in Congress must sponsor legislation to eliminate these abusive tax loopholes and manipulative practices, and assure that charities remain charitable, and nothing more. We hope you will support such legislation after you have studied the issues carefully. The Moody Foundation has a billion dollars to utilize in its commercial endeavors, and can

*Thomas E. Cook*

destroy, in one day, what it has taken one small taxpayer 25 years to build. The magnitude of the funds held by the foundation does not give it the right to utilize its tax-exempt status to take advantage of the opportunities that are properly reserved **only** to taxpaying enterprises.

Since we have taken on this task, and it has been publicly reported, we have received tremendous support from the citizens of Galveston. Each person has declared that the commercial competition by the Moody Foundation at Moody Gardens is a grave injustice that should be corrected. And, each person has encouraged us to continue the fight to present the issue until Congress makes the necessary changes to prevent its occurrence. Public opinion is steadfastly supportive of action to halt competition by this tax-exempt foundation.

We thank you for taking the time to study the issues raised here. Your support to close these very damaging and dangerous tax loopholes is essential and is sincerely solicited. We are available to meet with you or a member of your staff at your convenience.

Sincerely,

Best regards,

J. Michael Fieglein

Thomas E. Cook, III

TEC:JMF:sc  
Enclosures

cc: Mr. Craig Felner

PRESIDENT'S ADVISORY  
PANEL  
ON FEDERAL TAX REFORM

**COVER PAGE**

MAR 28 12:12

**SUBMITTER'S NAME:**

**JOINT SUBMISSION:**

**Thomas E. Cook, III, Individual  
Galveston Racquet Club, Inc., a Corporation**

**SUBMITTER'S ADDRESS) (for both)**

**36 Colony Park Circle  
Galveston, Texas 77551  
Phone: (409) 744-2195  
Fax: (409) 744-0080  
Email: [sscook2@houston.rr.com](mailto:sscook2@houston.rr.com)**

*Thomas E. Cook*

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- Exhibit I**            Opening Statement of Submitters.
- Exhibit II**            Document submitted in 1998 to Members of Congress demonstrating the Unfair Competition used by the Tax-Exempt, Moody Gardens against the taxpayer hotels, restaurants, and other businesses in Galveston, Texas.
- Exhibit III**            Document submitted on April 23, 1998, to the I.R.S. asking I.R.S. to revoke the tax-exempt status of Moody Gardens due to unfair competition and private inurement received by foundation trustees.
- Exhibit IV**            Document submitted to I.R.S. in August, 2004, asking I.R.S. to revoke the tax-exempt status of Moody Gardens due to unfair competition, lack of any charity, and private inurement received by foundation trustees.
- Exhibit V**            Document containing copies of letters sent to members of Congress, various newspaper articles depicting the unfair competition by the tax-exempt Moody Gardens against the taxpaying businesses of Galveston, Texas, causes headaches and burdens to those taxpayers and distorts important business and personal decisions. How can one borrow and invest money in a taxpaying business and then a year later a tax-exempt foundation enters the exact same business but with the incredible advantage of paying no taxes of any kind whatsoever. The taxpayer cannot overcome this unfair tax-exemption advantage which Congress is giving to these foundations while allowing them to directly compete with taxpayers.

# EXHIBIT I

(Page 1 of 2)

## OPENING STATEMENT OF SUBMITTERS:

(March 14, 2005)

Congress has passed cruel, unfair, mean tax laws which stifle incentives of small businesses by permitting tax-exempt organizations to operate commercial businesses.

Where is the logic? Where is the fairness? How can Congress be so mean spirited? Why does Congress allow tax-exempts to operate commercial businesses?

Wealthy Tax-exempts use their influence to badger, threaten, intimidate and cause mental abuse to small, taxpaying businesses. Tax-exempts openly compete with taxpayers, engage in the identical business as taxpayers, steal valuable revenues from taxpayers, and permit their trustees to derive financial benefits. Congress has caused incredible havoc, heartache, pain, and controversy by passing laws which permit tax-exempt foundations, ostensibly a "charitable??" entity, to operate commercial businesses without paying any taxes, thereby unfairly competing with taxpayer businesses. In some cases, the unfair competition by tax-exempts drive taxpayers into bankruptcy, and even if not, cause taxpayers great financial losses. In many cases, taxpayers, faced with unfair competition from tax-exempts, decide not to open the new business they had planned. It is a small wonder that, facing such blatantly unfair competition, more taxpayers haven't been driven to rage or even violence, their plight being so unjust, so unfair and seemingly so spiteful. How many people could stand to lose their hard earned life savings due to a despicable tax-exempt entity bent on competing unfairly against them. Congress is solely to blame for not closing the tax loop-holes which obviously exist and permit this unconscionable act of unfairly competing with taxpayers.

How can the ordinary citizen who operates a legitimate taxpaying business ever have confidence in a government who passes such unfair laws that hurt and punish taxpaying businesses by subjecting them to unfair competition by tax-exempts? Congress has created an un-level playing field so that tax-exempts can operate commercial businesses which directly compete with taxpayers. Congress has created and condoned, by its actions and laws, the following result, a result that is mean, illogical, irrational, and down right harmful to taxpaying businesses: to wit...

**\_\_\_\_\_ Congress tells one large group of taxpayers: "you can engage in and operate certain types of commercial businesses and you must pay all income taxes, sales taxes, property taxes, franchise taxes, and every conceivable tax that can be imposed upon you." Then Congress turns to a small specially favored group of tax-exempts and says: "you can operate the same identical commercial businesses as are operated by the taxpayers and you will be exempt from all taxes whatsoever. You can steal revenues away from the taxpayers businesses; you can compete with the taxpayer; you can drive the taxpayer out of business and you can permit your so called *charitable* tax-exempt trustees to derive financial benefits from the commercial business ventures and YOU PAY NO TAXES OF ANY KIND ... EVER." This action is a clear violation of the guarantee to every citizen of equal protection under the law as provided by the Fourteenth Amendment to our Constitution.**

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*Thomas E. Cook*

Small businessmen do not have the money to contribute to Congressmen to encourage them to pass fair laws which would level the playing field on which taxpayers and tax-exempts compete. Small taxpaying businesses are the very backbone of our Country's economic structure. What has happened to the principal of basic fairness for all and equal treatment under the law? Sadly, it seems that it's all about the money.

**It is incumbent upon Congress to pass new legislation to level the playing field and do away with the mean, unfair, unequal, taxation policies which clearly benefit tax-exempt organizations who operate commercial businesses directly competing with taxpaying businesses. Tax-exempts must be prohibited from engaging in the operation of any commercial businesses whatsoever. Quite simply, any entity which operates a commercial business cannot under any circumstances qualify for tax-exempt status.**

*Thomas E. Cook*



## EXHIBITS

**A.** Articles regarding the unfair competition by the Moody Foundation, Moody Gardens, and the Moody Hotel.

**B.** Articles regarding the tax-exempt development of the Moody Hotel.

**C.** Articles illustrating the substantial commercial spending and the decline of the truly charitable giving by the Moody Foundation. Charity has become incidental to the Foundation's funding and operation of commercial business enterprises.

**D.** Articles regarding the role of the City and the Park Board in the control and operation of Moody Gardens and the Moody Hotel.

**E.** Letters to the editor expressing concerns about unfair competition, use of public funds for tax-exempt businesses, and the Foundation's abuse of its tax-exempt status.

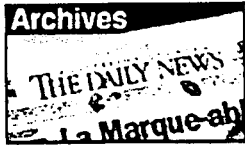
**F.** Sheriff Taylor, the most powerful and respected law enforcement officer in Galveston County, becomes the hired enforcer for the Moody Foundation and its commercial enterprises.

## **EXHIBIT "A"**

**Articles regarding the unfair competition by the  
Moody Foundation, Moody Gardens, and the  
Moody Hotel**

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## What's fair, and what's not?

Published November 05, 1996 10:25 PM CST

If you owned a shoe store, would it bother you for the government to provide tax money and other benefits to a competitor?

What about a car dealership or a bank?

Most people would argue that fair competition is a good thing, and government ought to keep its nose out.

That is exactly why some object to the government support for Galveston's Moody Gardens, especially as the complex embarks upon an ambitious hotel project.

The proposed hotel will be 25 percent larger than the next largest Galveston hotel, and it assuredly will compete with private business. Because of tax exemptions and direct tax support, the complex could undercut any competitor's price.

No one denies that Moody Gardens is a wonderful community asset. Still, there are real problems associated with the development.

Moody Gardens pays no local taxes and receives tax money (now about \$400,000 per year) for operating as the city's convention center.

In addition, the Moody Foundation, a tax-exempt charitable trust, will underwrite any operating losses of the new venture. Meanwhile, the complex does business with several for-profit enterprises run by Moody family members.

The Moodys, of course, are one of Texas' wealthiest and best-known families. They have been a force in Galveston politics, charity and social life since the 1860s.

Now a private entrepreneur like Tilman Fertitta, who has invested \$30 million in Galveston hotel and restaurant properties, believes the coming competition is unfair. He also believes the project will discourage outside investment in Galveston.

There are several policy matters the Galveston Park Board of Trustees

Online Guide to  
Galveston Island

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should resolve quickly. The board must create an impartial, arms-length relationship with the Moody Gardens project, and important steps in that direction include:

\* Park Board trustees and employees should not serve on the board of Moody Gardens or other entities that have a direct financial interest in Park Board deliberations. The potential for conflicts, or the appearance of conflicts, is too great.

At the moment, Park Board executive Wendy Dehnert serves without pay on the Moody Gardens Board. In addition, current and former executives of Moody family enterprises serve on the Park Board.

\* Second, staff should take precautions in posting agendas to make sure that agendas are clear and provide adequate time for discussion.

Planners have not taken adequate care in the past that members know in advance what issues they will discuss.

Still the larger question remains: How can the Park Board and the city of Galveston express support for Moody Gardens and preserve a competitive business environment?

We can think of several steps that might help:

\* The Park Board should phase out the tax support it provides Moody Gardens. Now, the complex receives one cent of the 13-cent hotel-motel tax.

The money should promote the whole community, not any single tourism entity.

\* Moody Gardens could also answer one big concern of many by voluntarily making a payment in lieu of taxes to local taxing entities.

There are other steps mentioned by private developers that could help address competitors' concerns. They include:

\* Slow the pace of development of the hotel.

\* Reduce the proposed size of the hotel, thereby reducing the apparent glut of hotel rooms in Galveston. It is hard to prove that hotel occupancy in Galveston has ever, even in banner years, risen above 50 percent for a full year.

There is a legitimate argument whether Galveston needs another hotel at all, much less immediately.

\* Increase the size of planned convention facilities. That step might enable

Galveston to compete for more very large conventions that would bring spill-over business, thus generating need that does not now exist.

Galveston would be unwise to back away completely from more than a decade of spoken and unspoken commitment to the Moody Gardens project.

However, the public interest that produced support for Moody Gardens in the first place now mandates additional work to guarantee that tourism in Galveston remains competitive and welcomes all investors.

The specter raised by all this is a tourism industry dominated by a single family-controlled entity. That is too much power for Galveston to hand over to any one enterprise, no matter who controls it.

This editorial was written by Dolph Tillotson, editor and publisher of The Daily News.

*Tax Exempt Charity* →

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# **GALVESTON HEALTH & RACQUET CLUB**

February 12, 1998

Mr. Hud N. Hopkins  
Office of the Airport Manager  
Galveston Municipal Airport  
P.O. Box 3266  
Galveston, Texas 77552

Dear Mr. Hopkins:

We appreciate your efforts to help solve the Racquet Club's parking problem. It has been a continuing headache for both the Galveston Airport and the Club.

Unfortunately the Club is unable to enter into a new lease or make any new commitments at this time. The reason for our inability is due to the additional facilities being constructed at Moody Gardens. One of the facilities, a fitness center, will compete with our Club on some basis, and depending on what the Moody Foundation decides to do, could force the Club to go out of business. The Moody Foundation has been unwilling to provide the Club any assurances regarding the level of competition they may decide to engage in. Foundation representatives have stated verbally that Moody Foundation Trustees are keeping all options open. As a result, the Foundation continues to hold life or death power over our business and, for that matter, any other small business which the Foundation decides to compete with and destroy. For this reason, the Club has been forced to refrain from any capital improvements or the purchase of new fitness equipment.

So long as the Moody Foundation and Moody Gardens continue to hold the Club hostage with its tax exempt business competition we will remain unable to enter into any further long term capital commitments.

Sincerely yours,

Eddie Marx  
Operations Manager



# **GALVESTON HEALTH & RACQUET CLUB**

March 31, 1998

Galveston Park Board of Trustees  
2100 Seawall Blvd.  
Galveston, Texas 77550

Dear Park Board Member:

The Galveston Health and Racquet Club respectfully requests an answer to a question of utmost importance to our club. The Galveston Park Board of Trustees owns the new hotel and fitness center under construction at Moody Gardens. Question: Will your new fitness center be open to the public or on a private membership basis in direct competition with the Racquet Club. As you are aware, the Racquet Club is one of your city's taxpayers and it has a \$1.5 million investment, at risk, riding on your decision.

The Park Board of Trustees is not a taxpayer. It is a governmental agency whose mission would never include entering into commercial business operations in order to cause financial harm to its own taxpayers. It is impossible for the Racquet Club or any small taxpaying business to compete with a tax exempt governmental body such as yourselves.

The Racquet Club is in limbo. It is being held hostage by the Park Board of Trustees. The Racquet Club doesn't know if it should continue to act as if it is going to be a continuing business or if it should be preparing to shut its doors and be driven out of business by the Park Board of Trustees. Such questions as club expansion, capital expenditures, new equipment, resurface the pool, hire a new employee, are all extremely difficult problems because we don't have your answer to the question posed above. Please let us know your decision as soon as possible. We have languished long enough.

The Moody Foundation has vested you with tremendous power and ability to control the life or death of any business in Galveston. Your great power comes from their enormous wealth and money and with it you can do good or evil. The choice is 100% in your hands. The Racquet Club begs you not to become drunk with your new power nor be driven to enormous greed that money sometimes breeds. It will be a sad day when you decide to eat your own; i.e., turn on your taxpayers and drive them out of business. It is a terrible long term strategy. The Park Board and our City cannot endure and prosper without taxpayers. Remember: Tax exempt organizations **don't pay the bills** of our community.

The Racquet Club deserves your prompt response to our question.

Best regards,

*Tom Cook*

Galveston Health & Racquet Club

# MENTARY

## GUEST COLUMN



● TOM COOK

### City, Moodys need level playing field

**M**oody Gardens representatives now state that there is no need for the city and Park Board of Trustees to have parity in bargaining with Moody Gardens.

The reason given is that now Moody Gardens has invested \$130 million and intends to invest \$140 million in the future.

The amount of money invested should not be a measure of the relative need for parity.

Parity is needed forever so that the park board can control forever what the park board will own and operate at Moody Gardens.

By agreeing to own Moody Gardens, the park board has enabled Moody Gardens to build and operate businesses and avoid all income taxes, sales taxes, school taxes, property taxes, and rent that should apply to the operation of those businesses.

The park board has become the enabler for tax avoidance by Moody Gardens. But the park board must have the right at any time for any reason to stop the unfair competition with our local taxpayers, if it goes too far.

What is too far? That's up to the park board to decide.

Obviously if Moody Gardens, over the years, develops businesses that compete with most of Galveston's taxpayers, then they have gone too far.

It must be decided on a case by case basis as the development unfolds.

The park board must remain in absolute control until the entire development is complete and an agreement is reached that nothing else will be built at Moody Gardens that competes with the taxpayers.

There are so many things that can be built at Moody Gardens that don't compete with local taxpayers, i.e., 3-D IMAX theater, rain forest, aquarium and hundreds more.

New developments need to be confined to those areas.

But what if eight years from now Moody Gardens decides to open a jumbo discount grocery store or an automobile dealership.

Because of their tax exempt status, businesses operated by Moody Gardens can offer their products and services far cheaper than competing taxpayer owned businesses.

If the park board gives up the 30-day, give-back clause now, then the park board has no power to bargain with Moody Gardens.

The park board will own a jumbo discount grocery store and an automobile dealership.

The park board will have no recourse and will be forced to own and operate these businesses.

The park board must keep the right, for any reason, to give back the Moody Gardens project.

Moody Gardens wants the park board to be able to return Moody Gardens to the foundation only if "a material breach" occurs.

What is a material breach?

That's for a judge and jury to decide.

Moody Gardens can afford \$200,000 in legal fees to fight the park board in a lawsuit.

But the park board cannot, and why should it weaken its position and be subject to very costly litigation?

Again, the city would find itself unable to bargain because it couldn't afford the legal fees.

The park board must retain the right to give the gardens back for any reason with no litigation ... and absolutely no high legal fees.

● Tom Cook is a Galveston businessman.



# Community must welcome private investment

6/8/97

**T**he Moody Foundation of Galveston plans to spend an estimated \$120 million on the Moody Gardens complex. Many people wonder why anybody, including those of us on the Parks Board of Trustees, should be anything but grateful.

That's a good question.

The Moody family has made many wonderful contributions to Galveston and, if managed properly, Moody Gardens could be among the most important of them.

However, the public-private-foundation relationship at Moody Gardens raises important questions for our community.

Remember, the parks board — a publicly owned entity — owns Moody Gardens. The board simply cannot avoid doing its best to be sure the facility operates always in the public interest.

There are good reasons for concern.

First, Galveston has for decades concentrated too much economic and social power in too few hands. Old families, powerful people and foundations not only gave generously, they dominated the community at the expense of outside investment.

Ask yourself why is it that for more than 100 years out-

**STEVE GREENBERG**



side investors have routinely bypassed Galveston Island. There is a reason, and that reason is the perception that "outsiders" will not have a fair chance to compete.

In the early 1980s I worked for Interfirst Bank in Galveston. I recall a major developer from Houston who made the following statement to me: "My lenders will loan me money for projects anywhere but in Galveston; they don't want to get involved in these local political fights."

Consider the difficulties facing a developer such as 39-year-old Tilman Fertitta. Fertitta has personally invested \$40 million on the island. His challenge is to make a profit while paying taxes.

Now he faces direct competition from a new hotel, a convention center and resort facilities whose losses are funded by tax money and through a tax-exempt foundation.

Multiply Fertitta's dilemma

among all the potential private investors in the tourism industry or any other industry.

The solution is not to attack the Moody Foundation. Instead, the community must work to create an environment that encourages and welcomes outside, private investment.

If the foundation wants to give Moody Gardens to the people of Galveston, surely trustees of the foundation will understand that we must set fair competitive ground rules for its operations. That means the public must retain a high degree of control over convention bookings and the use of Moody Gardens facilities.

Galveston for many years has been so eager to accept "gifts" from monied local interests that it has ignored the impact of that choice on the overall long-term health of the economy.

That may explain, at least partially, why the city's economy is stagnant, why unemployment here is twice the average for the state, per capita income is about two-thirds of the state average and why so many of our children grow up in poverty.

● Steve Greenberg is a member of the Galveston Parks Board of Trustees and is a former city councillor.

## GUEST COLUMN

The guest column on 2/8/98 by Mile Skiles makes several good points regarding the charity of the Moody Foundation. For many years the Moody Foundation has made generous gifts to many charities in Galveston and everyone is grateful to the Foundation and has always praised its true charity. One can never recall anything but praise for the Foundation's activities except, as Mr. Skiles points out, over concerns about Moody Gardens and the Hotel. However, the article misses a very important point. Moody Gardens and the Hotel represent a significant departure from Moody Foundation's continuing role as a charitable giver. There is reason to question Moody Foundation grants to entities which will make tax free investments in commercial business enterprises which compete with our local taxpaying businesses. Mr. Skiles says that with Moody Gardens, everyone is a winner. What about the hotels and other taxpayers who must compete with, and lose revenues to, the tax exempt businesses created by the Moody Foundation? Those businesses are certainly not winners and the acts of the Foundation may force them into bankruptcy. Is this charity? That is why there have been questions. It would appear from the reports and circumstances, that there is little real charity at Moody Gardens. - Mostly, it is a commercial business venture, funded and controlled by the Moody Foundation and its trustees.

There is no circumstance where a private, tax-exempt, foundation should be engaged in commercial business activities. Taxpaying business people cannot reasonably compete with tax-exempt entities and have no means of acquiring the benefits afforded tax-exempts such as are available to Moody Gardens and the Hotel. Moody Gardens and the Hotel were not developed by private funds or borrowed capital held at a risk by private investors. They were developed by a tax-exempt fund held for the benefit of all of the citizens of Texas and not for the purpose of operating businesses. Moody Gardens

and the Hotel, funded, developed, operated, controlled, and effectively owned by the Moody Foundation, have the ability to operate and continue operating, at cost, without profit or at a loss, and without any tax burden. No legitimate commercial enterprise can operate and compete on such a basis, and survive.

Ironically, a Moody controlled hotel company, Gal-Tex, makes money by managing Moody Gardens. Appearance means a great deal. If the Foundation doesn't want to be questioned about its charitable gifts, it should return to its original purpose and make gifts to real charities, for true charitable and benevolent purposes, which it neither controls nor has any financial interest in.

J. MICHAEL FIEGLEIN

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## The last dissenter: Mr. Cook goes to Washington

**By Michael Smith**  
The Daily News

Published December 29, 1997 12:08 AM CST

GALVESTON -- For Tom Cook, every rivet driven into the superstructure of the Moody Gardens hotel is a new nail in the coffin of his livelihood. The \$57-million hotel will open in December 1998, almost near enough to cast a shadow over Cook's Galveston Health and Racquet Club.

Along with its 304 guest rooms, the hotel will house a state-of-the-art fitness center that Moody officials say might be open to the public.

Aside from being newer, as well appointed and almost as large as Cook's, the Moody fitness center will be exempt from most of the taxes Cook has to pay, and it will be subsidized by the \$700-million Moody Foundation, a tax-exempt private charity.

The laws allowing tax-exempt organizations to build and operate such things as hotels and gyms are complex in the way only tax codes can be. And the relative costs and benefits to the island of two decades of Moody Gardens expansion are subjects of protracted controversy, ongoing negotiation and one federal lawsuit.

But for Cook, the whole situation can be simplified to a simple business equation. Tax exemption means the Moody facility can offer comparable service at a lower

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Online Guide to  
Galveston Island

price. "It absolutely will put me out of business if they open the health club to the public," Cook said.

Moody officials will not promise in writing not to sell cut-rate memberships to the general public and the city and park board of trustees have given him no protection, Cook said.

"As long as they maintain the right to offer memberships to the public, I'm in limbo," Cook said. "I don't know if I should risk investing in the business. I can't do much of anything. The only thing left to do is to go to Washington and get the loopholes in the tax code closed."

To accomplish that, Cook and Galveston attorney Michael Fieglein have hired a private detective to gather information about Moody Garden's finances and are lobbying some high-powered Texas politicians for support.

The two say they've piqued U.S. Sen. Kay Bailey Hutchinson's interest enough for her to assign a staff member to their endeavor. They are also trying to line up support from Rep. Dick Armey and Rep. Bill Archer to start congressional hearings on the issue, Fieglein said.

"What they are doing is perfectly legal under the current tax code," Fieglein said. "But it should not be allowed. If charities want to encroach into areas where private businesses are operating, they should have to pay the same taxes."

Doug McLeod, Moody Foundation's director of development, says it's Cook who wants to stifle competition. He said also that the hotel fitness center is not meant to compete with Cook's business. "We have to have a first-class fitness facility to compete with every other convention-center hotel," McLeod said.

Cook and Fieglein say they've tapped into

a national movement, headed by the International Recreational Sports Association, bent on curbing the incursions by nonprofits into the private sector.

But McLeod says he's not worried that Congress will change the tax code enough to hurt Moody Gardens. "Congress is not going to take up the issue next year and maybe not for years to come," he said. "And they can't get the code changed just as it applies to us; it will have to apply to everybody. So they'll be taking on the Moody Foundation and every other private foundation in the country."

→ See rebuttal  
next page

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# Fieglein speaks out on Moody clause

By MICHAEL A. SMITH  
The Daily News

**GALVESTON** — Those who toil in the private sector should fear an unfettered operation at Moody Gardens, an attorney told a group of island Republicans on Tuesday.

Attorney Michael Fieglein asked members of the Pachyderm Club to help prevent the removal of a "give-back" clause in the agreement that cedes ownership of Moody Gardens to the Park Board of Trustees.

"I'm trying to influence you to influence anybody you know on the park board, to not give away the most valuable asset the park board owns," Fieglein said.

The clause in question allows the board to return ownership of Moody Gardens to the Moody Foundation "for any reason whatsoever" with 20 days notice.

Doug McLeod, chairman of Moody Gardens' board, says the clause is outdated and makes the charitable organization vulnerable to Galveston's unpredictable politics.

Others, including Fieglein and hotel owner Tilman Fertitta, say the clause is the only lever the city has to make the deep-

## GALVESTON

pocketed foundation play fair with private sector businesses.

The proposed change affects only one of several termination clauses in the agreement by which the Moody Foundation gave the gardens to the city, which then leased its management to Moody-owned Gal-Tex Hotel Corp. for \$300,000 a year.

The arrangement allows the Foundation to forgo paying taxes on the \$130 million property, while the island's tourism industry benefits from the garden's facilities and attractions.

Fieglein said his client, the Galveston Health and Racquet Club, lost about \$50,000 a year when tax-exempt Moody Gardens opened a general-admission swimming pool at its Palm Beach facility.

"They don't have the tax or rent burdens," he said. "So they were able to offer memberships for \$25 a year while we were talking in terms of \$25 a month."

Fieglein said the club's owners now are worried about competing with a planned 5,000-square-foot fitness center at the Moody Gardens hotel.

And other businesses could suffer the same lopsided competition if the give-back clause is deleted, he said.

"We could have Bobby's Crab Shack out there unless there is some method of controlling what goes up at that facility," he said.

McLeod, however, said the Internal Revenue Service prevents Moody Gardens from conducting business not related to charitable operations.

"Mr. Fieglein makes it sound like we could open a car dealership if the clause was removed," McLeod said. "That's simply not the case. The IRS has very strict regulations that apply to us no matter what."

He said the planned fitness facility is intended for guests of the hotel, although people not staying at the hotel could buy a day pass.

But he said there are no plans to sell extended memberships to the facility.

"We have no intention of operating a private health club," McLeod said.

The Park Board of Trustees is slated to discuss deleting the give-back clause during a special meeting beginning 10 a.m. Thursday.

Sat  
1-17-98



## Tax-exempt organizations shouldn't compete

**EDITOR'S NOTE:** Tom Cook, the owner of Galveston Health and Racquet Club, has long maintained that Moody Gardens unfairly competes with his business. He is organizing a campaign to convince Congress to further restrict what nonprofit companies can do.

I wish to respond to a comment directed at me in your Dec. 29 edition.

Moody Foundation representative Doug McLeod stated "it's Cook who wants to stifle competition."

Nothing could be farther from the truth.

Every small businessman or woman expects to face competition every day, but they have an absolute right to expect that competition to come from taxpaying businesses, not a charitable tax-exempt foundation.

It's absurd to think that a private tax-exempt charity would even desire to compete

### GUEST COLUMN



● TOM COOK

with a small, taxpaying business. The taxpayer has no chance, and the foundation knows it.

Genuine, sincere, tax-exempt organizations bent on charity would never consider competing unfairly with a small business.

Congress, in making our tax laws, never intended for this to happen. In fact, it would not have happened except for the Galveston Park Board of Trustees' decision to join forces with the foundation.

A charitable foundation's

sole purpose is to give its money away for charitable and educational purposes. This raises an interesting question. What is charitable about a private charity competing with and financially harming a small business?

Is this charity? The very word "charity" implies goodness, kindness, benevolence, helping someone else and not yourself.

McLeod implies that every foundation will oppose closing tax loopholes which allow tax-exempt charities to compete against small businesses. McLeod assumes that all charitable foundations compete with small businesses.

Not so! It is more likely that the Moody Foundation is the only, or one of a few, private foundations engaging in this activity. Most foundations are perfectly happy just being charitable, with no strings attached

● Tom Cook lives in Galveston.

### LETTER TO THE EDITOR





# BIG FISH

**In the eighties Tilman Fertitta's seafood restaurants earned him millions while his hard-nosed business tactics earned him enemies. But these days the Galveston native is winning new respect in his hometown by standing up to the most powerful family on the Island. BY ROBERT DRAPER**

**T**

ILMAN FERTITTA CAME HOME TO GALVESTON last November to deliver the oratorical equivalent of a belly flop in the punch bowl. Speaking to the city's business leaders at a chamber of commerce luncheon, the wealthy 39-year-old Houston-based restaurateur mesmerized them with his cut-the-crap rhetoric. "I've been to forty-four states in the last few years," Fertitta said,

adding that as a tourist center, Galveston was "definitely lagging behind all the other areas I've visited. We don't have amusement parks. We don't have golf courses . . . Our greatest asset is the beach, but it's also our greatest weakness." The beachfront motels were shabby; their signs were outdated—including, he noted, that of the Holiday Inn, which was owned by his father, Vic, who happened to be in attendance. The audience tittered nervously, as it did when Fertitta brazenly dismissed the Woodlands resort, owned by Galveston patron saint George Mitchell, as a lesser tourist destination "just sitting up there amongst a bunch of trees in north Houston."

But the CEO of the \$500 million Landry's Seafood Restaurants chain saved his choicest broadsides for that mightiest of Galveston powers, the \$500 million Moody Foundation. Perfectly unbothered that the luncheon was taking place at the Moody Gardens Convention Center, Fertitta belittled the Moody family's civic spirit. "Remember, the foundation *has* to give the money away," he said. Yet the Moodys' latest project wasn't a new park, beachfront restoration, or other needed endeavor. Rather, it involved the construction of a three-hundred-room hotel on the grounds of Moody Gardens and was a venture that was "doing

His battle with the Moodys over a local hotel development is classic Tilman Fertitta: brazen to the point of insolence but impossible to disregard.



nobody any favors," other than Bobby Moody, whose company, Gal-Tex Hotel Corporation, would profit from managing the hotel. The whole deal reeked of greed—and, for that matter, unfairness, Fertitta insisted. The Moodys' new "nonprofit" hotel, with its tax exemptions and favorable location at Moody Gardens, would cripple the taxpaying hotels, two of which were Fertitta's. "We're sending the wrong message to the rest of the United States," he warned. "You're never going to get major developers in here. We're saying to them, 'Stay out of Galveston.'"

The audience, as one, gulped. "I will not let the Moody Foundation compete unfairly without a fight," Fertitta vowed. He was already suing the Moodys and the city over the matter, but he didn't intend to stop there. Noting that a U.S. House Ways and Means subcommittee would be investigating tax-exempt organizations, Fertitta promised, "I plan to be right in the middle of it."



The speech was classic Tilman Fertitta, brazen to the point of insolence yet impossible to wave off—and, in the end, rather breathtaking. The audience gave him a standing ovation. Afterward, a chamber member was heard to gush to the speaker, "How do you get your pants on in the morning with those big balls of yours?" Even Fertitta seemed dizzied by his performance. "I've never felt so *right* in all my life," he told his father later.

It was an altogether new sensation for a surviving warrior of the eighties' take-the-money-and-run amorality. During that decade, Tilman Fertitta was known more for his nerve and his artful dodging than for his principles. By the dawn of the nineties he would emerge unscathed with an empire as reflective of his day as insurance and energy were of the Moody and Mitchell era. Now he was a full-blown player, Houston's most dynamic young businessman, a Wall Street darling, and a friend of President Bill Clinton's. But he was nobody's hero, nor would he be, until he came home to Galveston as an avenging angel, where he could be not only rich but right.

**D**URING MY TEN OR SO VISITS WITH FERTITTA, I couldn't help but notice how the electric braggadocio of his monologues would suddenly give way to some blasé slogan that would seek to remind me that

I was in the presence of a good guy. "Do the right thing," he would interject. And, "It's nice to be important, but it's more important to be nice." Beneath the gruff, predatory exterior lurks a man who very much wants those around him to think the best of

him. Of course, since Fertitta built Landry's into the second-biggest seafood chain in America (after Red Lobster), his life has become cluttered with unctuous suitors who will cut him all manner of slack. Fertitta became identified with the Democratic party not because of his political views, which are generally conservative, but, he says, because "the Democrats embraced me." Clinton's party saw in Fertitta not so much a kindred spirit as a clean-cut young family man who wasn't a personal-injury lawyer. Here was a guy whose image and pocketbook the Democrats could exploit for decades to come. So far, Fertitta hasn't complained. He has been Clinton's guest at the White House four times.

If Fertitta, with his guileless patter and asymmetrical grin, were one of his signature restaurant's marquee signs, it would blare out, "Work In Progress." He is given to exclaiming in wonderment, "I'm so young." But this apparent vulnerability is nothing more than a seductive front. For even as he molds himself into Citizen Fertitta, CEO Fertitta remains a shrewd hustler with business instincts that are chillingly acute. Ever since his days as a junior high school kid selling candy and gum to his classmates at a markup, Fertitta has known his calling. "I can't draw a stick person," he acknowledges. "I can't play a musical instrument.

From top: Fertitta's great-uncle Anthony (left) and grandfather Vic, Sr., ran Galveston casinos for the Maceo crime family in the fifties; Tilman graduated from Houston's Westchester High School but dropped out of college; Fertitta with the executive staff of Landry's.

But I've always had a knack for making money." He was never merely a wage earner, though. Even as a fourteen-year-old kid working the floor of his father's Galveston restaurant, Pier 23, young Tilman could discern what made a business successful. Remembers Vic Fertitta, an affable lug whose voice assumes an almost worshipful tremor when speaking of his middle son: "Tilman would tell me, 'Daddy, the food is taking too long coming out of the kitchen. It should all come out in eight to twelve minutes.' One Friday night two waitresses got in a fight. He punched the clock for both of them, fired them, and took over their stations, four tables each. That's when I knew he was different."

In 1974 the Fertittas relocated to the west Houston suburbs, and Tilman attended Westchester High School, the same one I did. I remember him as a swarthy guy who threw his weight around and didn't settle for anything second-rate. He drove a Mustang convertible, went after the flashiest of girls, and when the football coaches told him he would be playing on the offensive line rather than at running back, he quit the team.



Fertitta had a squadron of two dozen employees, including general counsel Scheinthal, descend upon the properties at midnight the day of the closing to make sure that Gillebaard didn't abscond with some of the furniture? That's just good business. Instead of reviling Fertitta for living large in the eighties even as he was jacking around his creditors, why didn't they thank him for adhering to the final settlement terms, unlike other fat cats he could name? Why not emulate him instead of trashing his name all over town, telling every loser on a barstool that Citizen Fertitta was nothing more than a nefarious mobster?

That was what the malcontents always fell back on. Fertitta, with his in-your-face, hot-blooded Italian disposition, had to be a wiseguy. Mob money got him in, mob money bailed him out, they would claim. After all, they'd say, wasn't the arcade business controlled by the Mafia? Didn't his Key Largo partner, cousin Frank, own three casinos in Vegas? And just what did Fertitta intend to do with all that property in Galveston and Kemah, if not make it a haven for gambling thugs? Because you knew, didn't you, about his family . . .

"It's the one thing that gets to him," sighs his father, Vic. "Because my son is a control freak, and this is the one thing he can't control." How do you prove the negative? Dean Witter vetted his finances before green-lighting the public offering of Landry's, and the Secret Service all but turned his underwear inside out before letting him host a fundraiser for Clinton last September. I've seen his architect's blueprints for the Kemah development, and the closest thing to a casino that's in the works is a Ferris wheel for kids. And for what it's worth, his temperament and his last name aside, Tilman Fertitta is about as Italian as Hakeem Olajuwon.

But his great-great-uncles, Palermo emigrants Rose and Sam Maceo, are another matter. Every Galvestonian knows the legend of the Maceo brothers: local barbers who became bootleggers and then in 1926 opened up the Hollywood Dinner Club and later the Balinese Room—complete with air conditioning (a rarity in those days), glorious food, big-time entertainers like Fred Astaire and Guy Lombardo, and a fully loaded casino. Genteel Sam and whip-smart Rose brought a glamorous cachet to the Island, kept out the Chicago mob, discouraged the residents from gambling, donated to charities great and small, and propped up the town's economy—which helps explain why many still view the wide-open era as Galveston's moment of greatest glory.

Yet what the Maceos ran for thirty years was indisputably an organized-crime syndicate. The brothers' slot machines were ubiquitous, and their homemade booze was

warehouse. They could defy the law because the local lawmen were on their payroll—"Paid them off, every month, in cash," according to 85-year-old Pete Salvato, a close ally of the Maceos who operated casinos in the Galveston County town of Dickinson. "They used the law to chase the competition out of town." Judges and politicians were equally compromised. Additionally, the Maceos owned a number of legitimate local businesses—a fish house, a dairy, a trucking company, a concrete-mixing company—and applied their muscle to ensure that these industries as well remained under their control.

The Maceo era came to an end on June 19, 1957, when state attorney general Will Wilson filed civil action against the brothers and their lieutenants—including their nephews Victor and Anthony Fertitta. Six days later Tilman was born.

Fertitta was two when his great-uncle Anthony moved off to Las Vegas, three when his grandfather Victor died. In Houston, that tenuous connection was enough to make him a mafioso. But in Galveston, people took a different view of things. There, the Maceos and Fertittas were public-spirited, instinctively charitable gentlemen whose word was their bond. Not only were they not evildoers, they were everything a hero should be. Which was, in the view of many Islanders, everything a Moody was not.

A historian would be hard-pressed to find another Texas family that has given so much away only to be so hated. The Moodys have been a public relations disaster ever since Colonel Will Moody, Sr., evaluated the Great Storm of 1900 thusly to his son: "The fewer people on the Island, the better the hunting and fishing will be for us." Unlike the Sealys, who provided the first big bequest for Galveston's number one employer, the University of Texas Medical Branch; or the Kempners, whose generosity has always been discreet yet profound; or George Mitchell, whose revival of the Strand district was a magnificent labor of love; or for that matter the Maceos—unlike the other Galveston scions, the Colonel's tribe has always seemed to give begrudgingly, even bitterly, and with the expectation of a payback.

Colonel Moody's great-grandchildren may be the most roundly despised generation yet. Most notably, Shearn Moody, Jr., was carted off to prison in the late eighties for receiving kickbacks from recipients of questionable Moody Foundation grants (and was pronounced the sleaziest man in Texas on the cover of this magazine). Shearn is now dead, leaving his brother Bobby to bear the town's scorn. He's an easy target, being almost Carbo-esque in his elusiveness—the better, he says, to



Mark Twain House, Hannibal, Missouri

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kidnappers. Instead, Moody leaves it up to his lieutenants, attorney Buddy Herz and brother-in-law Doug McLeod, to browbeat local politicians and the media into giving Moody whatever they say he wants. The *Galveston County Daily News* has shown considerable fortitude in speaking its mind, but city officials have continually indulged Moody's wishes—because, as one frustrated ex-official observes, "By and large, a person isn't going to speak up against the people who provide. So the Moodys have pretty much had their way."

But has that way always come at the expense of Galveston? "At the Moody Foundation, we can give anywhere in the state

we want," Bobby Moody reminded me one afternoon over lunch. "But over the last thirty years, we have committed maybe \$380 million in Galveston." He pulled out a clipping from that morning's newspaper that discussed the imminent opening of a Texas A&M marine biology school in Galveston—made possible, he informed me, by a \$1.75 million matching grant by the Moody Foundation. The Moodys started putting money into the Strand long before Mitchell got there, he pointed out. And then there was Moody Gardens, which was founded in 1983 to rehabilitate victims of head injuries, such as Bobby's son Russ, but was now one of Galveston's greatest

tourist attractions, with a IMAX 3D theater, a rain forest, and soon a NASA space museum and an aquarium. But in the meantime, he reminded me, "The Moody Foundation is building a convention center at Moody Gardens at no cost to the city."

"But this hotel you're building next to the convention center," I said, interrupting him. "Leaving aside its merits, isn't Fertitta right that building a hotel that's exempt from federal and ad valorem taxes, has no debt service, gets subsidized by the city, and can offer all those attractions at Moody Gardens for free—isn't he right that it puts hotels like his at an unfair competitive disadvantage?"

Moody dropped his fork softly, folded his hands, and crinkled his left eye in thought. Finally he said, "Well, I don't think Mr. Fertitta is going to have to pay federal income tax either, because I don't think he'll generate a profit on his hotel investment in the first place."

And that was all Bobby Moody had to say on that subject.

**F**ERTITTA DIDN'T COME HOME TO Galveston and invest \$40 million to be treated like a chump. The guy who was responsible for Vice President Al Gore's visit to the Island and ornamented the Seawall with his gleaming restaurants and his lavish San Luis redesign wasn't going to let Bobby Moody make a mockery of him. When Fertitta learned, just months after buying the San Luis complex from Mitchell for \$16 million, that the Moody Foundation would soon be breaking ground on the "nonprofit" hotel it had originally slated for construction in 2004, he informed the Moody camp of his intention to sue if the plans weren't shelved. They weren't, so he did. On November 14, six days after he filed suit, he railed against the Moodys at the chamber of commerce luncheon held on Moody property. Moody attorney Buddy Herz responded the next day by threatening to pull the family's chamber memberships for permitting such an attack on hallowed grounds. The battle was joined.

Overnight, it seemed, Fertitta became a local hero. The *Daily News'* letters page was crammed with missives by Islanders who saw the Maceo descendant as a giant-killer. Even before the lawsuit, editor-publisher Dolph Tillotson had devoted a special section to the Fertitta-Moody dispute; he recalls, "Buddy Herz argued the case that the Moodys had done wonderful things for Galveston and this would damage relations, so we shouldn't do the stories." Tillotson ran them anyway, siding with Fertitta's concerns in an editorial. Later, George Mitchell expressed his support for Fertitta, creating what Herz publicly termed "an unholy alliance."

In the bars and shops of downtown

Aug. 19, 1988

# Island attorney says Palm Beach costing Racquet Club thousands

By JACK STENGLER  
The Daily News

GALVESTON — Attorney Roland Bassett told the city council the opening of Palm Beach at Moody Gardens has cost the Galveston Racquet Club \$10,000 in swimming memberships.

Bassett said he did not realize until the Palm Beach opened that its swimming pool would be fresh water.

"I guess I just thought it would be a salt water pool," he said.

The Racquet Club lost on memberships because Palm Beach is owned by a non-profit, non-taxpaying firm that pays no lease fee to the airport or city.

He said a private operator cannot compete with this and asked that the city pay careful heed to a clause in its lease with the racquet club that care will be taken to be sure no facility is constructed at the airport that would result in unfair competition for the racquet club.

The attorney said Palm Beach is offering swim memberships at \$25 a year, which the racquet club cannot do.

Bassett said he has seen plans for development of Moody Gardens, which include construction of a hotel, a health club, saunas and tennis courts, which also may provide unfair competition to private firms.

Bassett said he is not criticizing Moody Gardens, but just wants to be sure the city observes the lease

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"I guess I just thought it would be a salt water pool."

---

attorney Roland Bassett

provisions.

There is no way to really determine what will be built at Moody Gardens, according to the attorney, because of differences in plans he has seen.

He added that the city is supposed to approve each segment of development at Moody Gardens, but he cannot find where this approval has been given.

Care should be taken that a development does not penalize the racquet club, according to the attorney, because this would not only hurt that facility, which is currently losing money, but also the city, which would not get its fees.

"I am not criticizing what the Moody Foundation is doing at Moody Gardens, but they do not have the same ground rules as others at the airport," Bassett said.

The council recently set a policy that says airport development must follow the same procedures as any other proposed development in the city.

Councilman Steve Greenberg said neither airport management

nor the city should be blamed for this situation.

"I don't think anyone in this room could buy those buildings and develop them into what will probably be a nationally recognized facility," Greenberg said.

He said he would not favor building a hotel at Moody Gardens at the present time because of the economic difficulties being experienced by other hotels in the city.

There is one area where the city could get funds from Moody Garden operation.

A 10-acre tract has been designated as a parking lot and the city would receive \$1 for every vehicle parked there.

However, this tract has not used for parking, and there is no charge for parking at the facility.

In the regular council meeting, approval was given for a schedule to repay the \$900,000 borrowed from the city's water fund for use in the street resurfacing program.

The loan would be repaid from the city's debt service fund and would have no impact on the general operating fund.

Also, Mayor Jan Coggeshall was given authorization by the council to seek a Texas attorney general's opinion on whether the institution of a feeder service for the rail trolley system, which would utilize rubber-tire vehicles, is a new service or an extension of an existing transportation system.

The City Charter requires a public vote before any new transportation can be implemented.

Dear Park Board Trustee:

The Galveston Racquet Club has reviewed the language contained in the "Draft" of Amendment No. 1 and offers the following observations and comments:

## PAGE 2. SUMMARY TERMINATION RIGHTS

Moody Gardens wants them removed. This is a reasonable request, if and only if, Moody Gardens will agree to end unfair competition with Galveston taxpayers on their future developments. Unfair competition can never be regulated by the IRS Tax Code. The Tax Code is full of loopholes and many loopholes benefit only the very rich. The Park Board and the City must regulate unfair competition by Moody Gardens. If it goes too far, the Park Board and the City must stop it. If it doesn't go too far, then it doesn't need to be stopped. The agreement should simply say, "If, in the majority opinion of the Park Board and the City, Moody Gardens is causing too much damage to Galveston taxpayers, then it will be given back to the Foundation upon one year's notice. This gives the Foundation ample time to make other arrangements and it protects our taxpayers if things get out of control. The present 20 days is far too short. And, this would give the Foundation great comfort because it would know that as long as it doesn't aggressively compete unfairly with taxpaying businesses, it has no worries. This should be the basis of any relationship between the Park Board, the City, and the Foundation. Everyone benefits; no one is worried. But, if one side has too much power, then much damage can be done to the other. A good balance is necessary between the parties. Without some form of Summary Termination Rights, the Park Board loses its power to control unfair competition by the attraction it owns at Moody Gardens. The City and its taxpayers don't deserve to be abandoned by its elected and appointed officials. Who is left to watch after the taxpayers? Your actions, if not carefully contemplated, could cause the answer to be: No One!

## PAGE 5. HEALTH FACILITY OPERATIONS

The problem here is that Galveston residents can pay a "daily use fee" and use the Park Board's health club. The amount of the fee is not defined. If it is too low, the Racquet Club and others will be forced out of business. Who controls the amount of the fee? Is it agreeable for the Park Board and the City to set the fee? That might work. But, is it price fixing? The most reasonable plan would be to strictly operate the health facility for hotel guests. Most hotels operate in that manner. Very few allow outsiders to use their facility at all. It certainly wouldn't harm Moody Gardens and the Park Board to restrict the hotel fitness facility to guests of the hotel. Galveston residents would then use the facilities of our taxpaying businesses; i.e. Gold's Gym, Fitness Planet, and The Racquet Club. The taxpayers would be happy and continue working and paying the taxes badly needed to support our city. The Park Board and Moody Gardens are not harmed since the operation of a public health facility is not a necessary ingredient for the success of Moody Gardens. Moody Gardens is an unqualified success already and it will only get better.

*Jon Cook*

HOTEL	# OF ROOMS	SQ. FT. OF FITNESS FACILITY	GUEST POLICY & FEES
MIRAGE	2765	1500	\$20 PER DAY PER PERSON, GUEST ONLY, NO MEMBERSHIP
CAESAR'S PALACE	1400	APPROX. 1500	\$18 PER DAY PER PERSON, ANYONE, NO MEMBERSHIP
NEW YORK NEW YORK	2034	1000	\$15 PER DAY PER PERSON, GUEST ONLY, NO MEMBERSHIP
BALLY'S	2800	1200	\$20 PER DAY PER PERSON, ANYONE, NO MEMBERSHIP
MGM GRAND (world's largest)	5555	1300	\$20 PER DAY PER PERSON, ANYONE M-TH, GUEST ONLY F-S, NO MEMBERSHIP
LUXOR	2526	4000	\$20 PER DAY PER PERSON, ANYONE M-TH, GUEST ONLY F-S, NO MEMBERSHIP
TRUMP TAJ MAJAL	1250	3500	\$12.50 PER DAY PER PERSON, GUEST ONLY, NO MEMBERSHIP
DRAKE (CHICAGO)	535	NONE	\$20 PER DAY PER PERSON, ANYONE S-TH, GUEST ONLY F-S, NO MEMBERSHIP
MONT CARLOS	3014	2800	NO FEE, GUEST ONLY, NO MEMBERSHIP
SAN LUIS HOTEL	241	1230	NO FEE, GUEST ONLY, NO MEMBERSHIP
HOTEL GALVEZ	228	NONE	
TREMONT HOUSE	117	NONE	
VICTORIAN	258	360	NO FEE, GUEST ONLY
HILTON HOTEL	150	250	NO FEE, GUEST ONLY, NO MEMBERSHIP
MOODY GARDENS HOTEL	250-300	2900	
HEALTH FACILITIES	SQ. FT.		
GHRC	4600		
GOLD'S GYM	6000		
FITNESS PLANET			
FIELD HOUSE (UTMB)	3000		
TEXAS A&M	3872		
GALVESTON COLLEGE	5000		

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ON 5/15/97

(appears in newspaper often)

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Volunteers needed for the grand opening of our new Discovery Pyramid! Ext. 208.

81st St. to Jones. Left on Hope Blvd. Call 744-4673 to pre-purchase tickets.

**MOODY GARDENS**

EXAMPLE OF UNFAIR COMPETITION  
By TAX EXEMPT CHARITY

PALM BEACH AT MOODY GARDENS ONLY CHARGES \$25<sup>00</sup> for the ENTIRE SUMMER SEASON.

By CONTRAST, GALVESTON HEALTH + RACQUET CLUB REQUIRES A MEMBER OF THEIR SWIMMING POOL for JUST THE SUMMER

- to:
- a) pay a \$199<sup>00</sup> first year enrollment fee
  - b) sign a contract agreeing to pay \$29/mo for 12 months minimum

COMPARISON

TOTAL FIRST YEAR COST  
TOTAL 2nd Year Cost

	RACQUET CLUB	PALM BEACH
TOTAL FIRST YEAR COST	\$ 572 <sup>00</sup>	\$ 25 <sup>00</sup>
TOTAL 2nd Year Cost	\$ 371 <sup>00</sup>	\$ 25 <sup>00</sup>

How can the Racquet Club compete ??  
It can't! The tax exempt charity will drive the taxpayer out of business!



“(Unfair competition is)  
...a significant confrontation  
with private for-profit businesses  
on terms that are not only unfair  
but also probably economically  
destructive.”

*Forbes Magazine*

# Unfair competition: A simple problem

Let's say you own a small, neighborhood grocery store. You have owned your store for many years, dutifully paying taxes and contributing to the community in a variety of ways. Suddenly you find out that you will have new competition in six months. Another grocery store will open just down the road.

"Fair enough," you say. "My customers like my store because the prices are fair, the store is clean, and my employees are friendly. I may lose a few customers, but having good, clean competition is part of doing business. Besides, this may help me find new ways to appeal to my loyal customers." But wait a minute...

You find out that the new store will look exactly like yours (only newer). The store will be built on donated land for which it paid only \$1. Not only that, but the money to build the new grocery store will come from tax-deductible donations. You pay thousands of dollars every year in interest on the money you borrowed to buy the land and build your store. The competition won't be paying anything.

That's not the end of it. You pay the people who work at your store market wages, but the new store can use volunteers.

The **new store also claims that** selling food is a service to the community. It claims that the grocery store will sell healthy food that promotes a sound mind and body. Since the store will "benefit the community as a whole" and "promote health" it asks the IRS to be exempt from taxes. Having no capital costs and avoiding taxes gives the new store a huge financial advantage.

This is unfair competition. For every \$100 you spend to operate your grocery store, the new grocery store spends just \$67. *Just how do you propose to compete with that?*



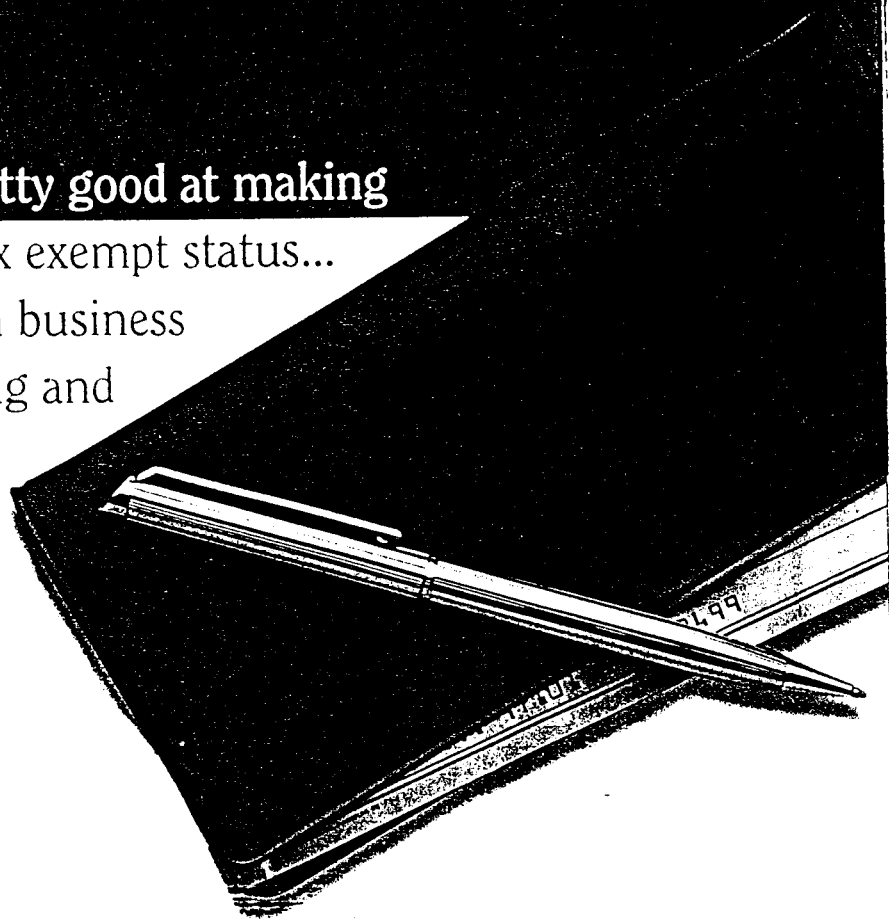
## The Nonprofits'

tax-exempt status helps them undercut competitors who pay taxes. And when those competitors lose business, taxpayers pay the price."

*USA Today, June 20, 1995*

“(Nonprofits) are...pretty good at making money — despite their tax exempt status... by going commercial with business ventures that keep growing and growing — at taxpayers’ expense.”

*USA Today, June 20, 1995*



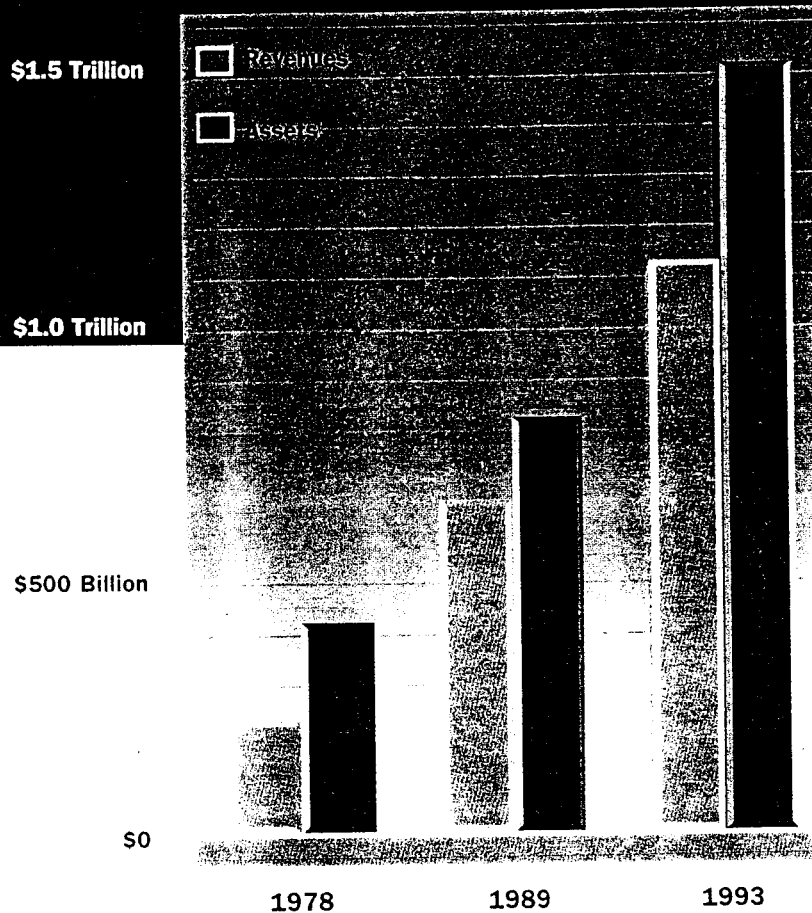
**6** **Businesses are entitled to a level playing field, and Congress and the IRS should see to it that the profits of nonprofits are taxed just like profits of regular businesses.**

*Business Week,*  
July 3, 1995

“In the past decade, while Congress has limited tax breaks for families and individuals, corporations of all types have moved successfully to claim tax-exempt status. The cost to the U.S. Treasury...runs into the many billions of dollars.”

*U.S. News & World Report, October 2, 1995*

## Revenues and Assets of nonprofits have grown dramatically in the past 15 years.



## Almost anyone can be nonprofit

It is increasingly easy to get nonprofit status. Nonprofit groups represented 10.4% of the U.S. economy in 1990. That's up from 5.9% in 1975. During that time, revenues climbed 227%, more than four times as fast as the rest of the economy. Many nonprofit companies feel they can launch commercial ventures without the slightest fear of having to pay taxes.

J.J. Pickle, former U.S. Representative and chairman, Oversight Subcommittee, Ways & Means, blames this unchecked growth on a lack of oversight by Congress, and a lack of self-policing by the nonprofits. He says it is "abominable and embarrassing" that it is so easy to get tax-exempt status. As more businesses avoid paying taxes, your tax bill skyrockets.

*You pick up the tab.*



## **“The role of the government**

(should)...be restricted to that of supplementing, not supplanting, the activities of for-profit business.”

Adelbert L. Spitzer  
former Special Assistant to the  
Assistant Secretary Department of the Treasury

## ***Did you know?***

*A typical nonprofit organization:*

- doesn't pay for money (no interest)
- doesn't pay for land (no mortgage)
- doesn't pay for buildings (no mortgage)
- is exempt from federal income taxes
- is exempt from state income taxes
- is exempt from local income taxes
- is exempt from sales taxes
- is exempt from property taxes
- receives large discounts on postal rates



“(Nonprofits) candidly admit they’re looking for more revenue, too. As one nonprofit executive puts it: ‘Don’t confuse nonprofits with not making more money.’”

Crain's Small Business, Chicago, September 1, 1995





It's time to solve this problem.

"The big problem is that we have grown accustomed to creating nonprofits, and they are part of the tax dodge. They get so big that nobody can touch them politically."

J.J. Pickle, former U.S. Representative  
and chairman, Oversight Subcommittee,  
Ways & Means



**“Small businesses’ contribution to job creation is no longer our economy’s best kept secret. Small business is deservedly recognized**

as “the engine that drives the economy.” It was small businesses, after all, that led the country out of the most recent recession, creating virtually all the net new jobs since 1987.”

Report for the President and Congress  
by the White House Conference on  
Small Business Commission  
September 1995

Park Board attorney, Dan Vaughn, admits that he works for the Moody Foundation. He also states that he could fairly represent the Park Board. How? He has a conflict of interest, doesn't he? Both of his clients are signers of this agreement. Both have adverse interests in some areas being negotiated between the parties. If he negotiates too aggressively for one client he runs the risk of losing the other and vice-versa. He has potential financial prejudice. Since both must sign this agreement, the Park Board needs an attorney with no financial ties to the Foundation and the Foundation needs an attorney with no financial ties to the Park Board. Then, no financial prejudice is possible.

(see newspaper article)

# Park board looks for outside attorney for Moody contrac

## GALVESTON

Park board counsel Dan Vaughn has done work for Moody Gardens.

By MICHAEL A. SMITH  
The Daily News

GALVESTON — An outside attorney will likely be hired to review proposed changes in an agreement between the Park Board of Trustees and Moody Gardens.

Trustee Steve Greenberg said that at the board's next meeting he would call

for Dan Vaughn, the park board's general counsel, to step aside during the negotiations with Moody Gardens.

"I don't know if he has a legal conflict of interest or even if there is one that applies to lawyers," Greenberg said.

"But he does a lot of work for the Moody Foundation. I think it would be better to have another attorney look out

for the board's interest."

But Vaughn and board Chairman Carl Kelly may have beaten him to the punch.

Kelly said he'll ask Galveston City Attorney Barbara Roberts to select a lawyer to review proposed changes in the agreement that would cede owner-

Trustee Steve Greenberg said he would raise the issue at the next meeting.

● See PARKS/Page A7

Continued from Page A6

ship of Moody Gardens to the park board.

"Since the City Council has to approve anything we do before it's final, I think a good solution would be for them to come up with an outside attorney of their choice to look over the proposals," Kelly said.

Vaughn, meanwhile, said he has no problem with an outside attorney reviewing the proposals, and that he's working with Kelly to find another attorney.

He also said, however, that he could fairly represent the park board despite the fact he also works for the Moody Foundation.

Hotel owner Tilman Fertitta accused Vaughn of having a conflict of interest last week during a board workshop about the proposed changes.

Vaughn said Tuesday that while he does work for the Moody Foundation, he doesn't work for Moody Gardens.

(George) Mitchell and on at least one occasion for Mr. Fertitta," he said.

Fertitta and Mitchell, who are among the island's biggest developers, have opposed a Moody Gardens request to amend the agreement.

The amendment would change a clause that allows the board to return ownership of Moody Gardens "for any reason whatsoever" with 20 days notice.

Doug McLeod, chairman of Moody Gardens' board, says the clause is outdated and makes the charitable organization vulnerable to Galveston's unpredictable politics.

Others, however, say the clause is the only lever the city has to make the deep-pocketed Moody Foundation play fair with private-sector members of the tourism industry.

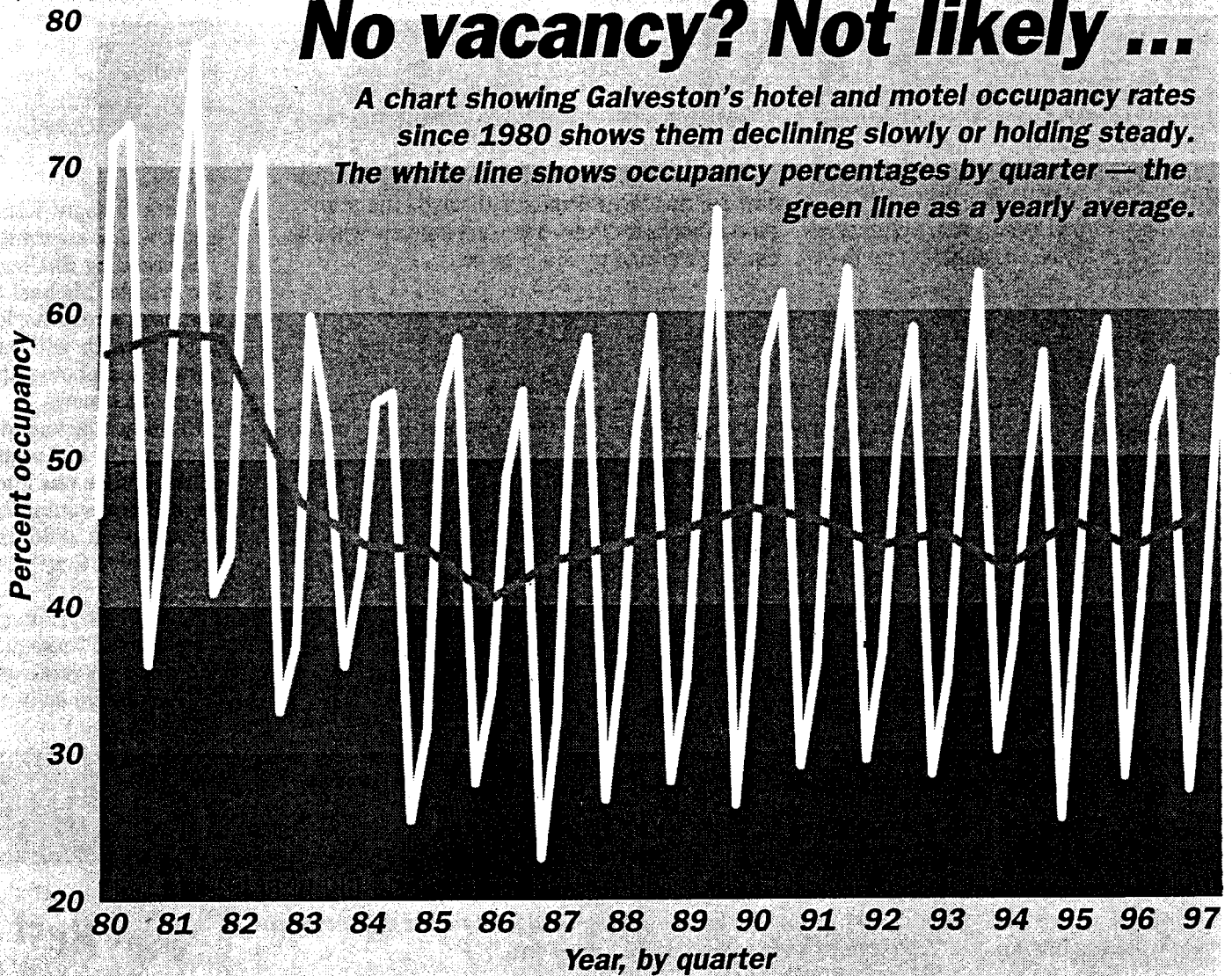
The proposed change affects

## **EXHIBIT "B"**

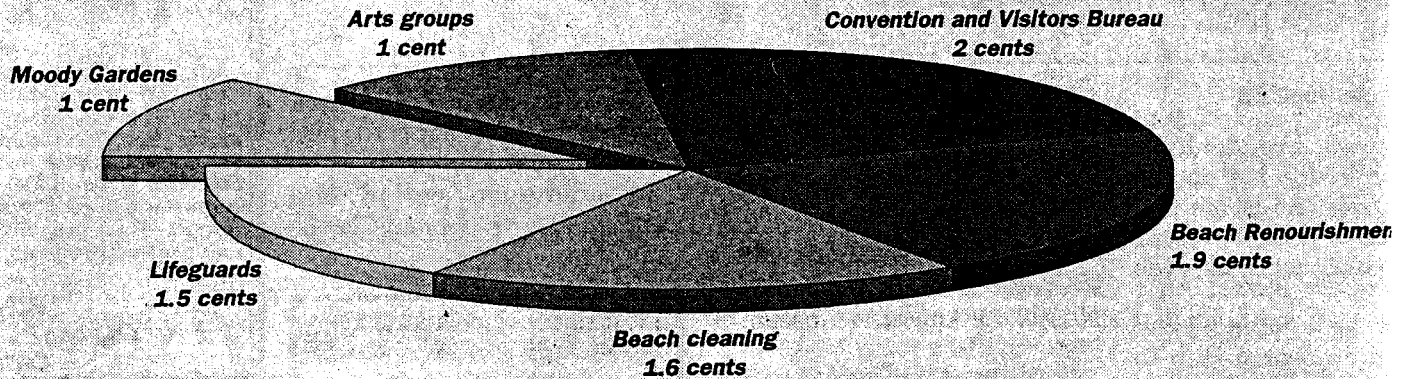
**Articles regarding the tax-exempt development of  
the Moody Hotel**

# No vacancy? Not likely ...

A chart showing Galveston's hotel and motel occupancy rates since 1980 shows them declining slowly or holding steady. The white line shows occupancy percentages by quarter — the green line as a yearly average.



Daily News graphic/Ken Walker



## Where hotel taxes go

Local hotel owners collect a 9 percent tax, which amounts to 9 cents on each dollar of the room price. State law mandates that two of those nine "pennies" be dedicated to beach maintenance. The seven remaining pennies can be used to fund local projects including tourism development, various arts groups and operations of the convention center at Moody Gardens, and beach. The chart shows how each of the nine pennies refunded to Galveston is allocated.

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## A tale of two hotels

By Michael Smith

The Daily News

Published December 30, 1997 12:00 AM CST

GALVESTON -- A first-time visitor to the University of Houston's main campus must look closely to find the Hilton Hotel and Conference Center. The squat building is dwarfed by almost every other structure on the sprawling campus.

The library, the University Center, the twin 18-story dormitory towers, the buildings housing colleges of humanities, fine arts and communication, engineering, natural sciences and mathematics, social sciences, law, education, architecture, optometry, pharmacy, technology and even some of the maintenance sheds offer larger silhouettes.

And you have to look pretty closely to find similarities between the University Hilton and Moody Gardens Hotel, which is still more than a year from completion but already dominates its place on the Offatts Bayou skyline.

But there are similarities, and chief among them is a legal designation that allows both the university and the Moody Foundation, a \$700-million private charity, to be in the hotel business at all.

The same Internal Revenue Service codes that allow private charities to avoid paying income tax demand that they spend their money "exclusively for charitable, scientific and educational purposes."

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Online Guide to  
Galveston Island

"It's my opinion that the designation as a teaching facility was important to our getting IRS approval for the project" said Doug McLeod, the foundation's director of development.

"It would have been difficult without that designation."

And so a key thread in the tight weave of tax laws that allowed the foundation to build the hotel was its designation as an educational facility, just like the University Hilton.

In fact, when Moody Foundation tax lawyers sought IRS approval to build the hotel, they compared its programs to those at "Cornell, Florida State, Michigan State and other universities."

But aside from their legal status and the fact they bear the names of famous people, how alike are the two hotels?

#### The physical plant

Built in 1969 with a \$4.5-million endowment from the Conrad Hilton Foundation, the University Hilton contains about 250,000 square feet of "walking around" space, said Alan Stutts, dean of the Conrad Hilton College of Hotel Restaurant Management.

The hotel has 86 guest rooms, which list for about \$100 a night but usually rent for about \$70. The hotel stays about 70 percent full. Unlike a working hotel, much of the Hilton's 250,000 square feet are devoted to classroom and laboratory space, Stutts said.

For instance, the hotel has a large food production lab where students must study before they venture into one of its two working kitchens, Stutts said.

There is also a computer lab with 90



workstations where students learn several different reservations systems used in the hotel industry, Stutts said.

When the Moody Gardens hotel opens in December 1998, it will be the largest, newest and arguably the best hotel in Galveston. It will also be walking distance from Moody Gardens attractions and The Galveston Island Convention Center at Moody Gardens.

The \$57-million hotel will have 304 guest rooms, more than three times as many as the University Hilton and 61 more than the San Luis, the island's current largest with 243 rooms.

Those rooms will rent for about \$125 a night, McLeod said.

#### The guests

Most of the Hilton's guests are visiting scholars and people who have come to the university for academic conferences, Stutts said. People who have come to give or hear a lecture on the latest advances in superconductivity research, for example.

"It's possible to reserve a room through Hilton's reservation system because we are a Hilton franchise," Stutts said. "We pay the fee to have the Hilton name, but we're not really large enough to be a working hotel."

Like the Hilton, the Moody Gardens hotel will draw most of its guests from among people who were already bound for the gardens, according to the IRS application. But instead of attending a lecture on robotics at the Cullen College of Engineering or a talk on glaucoma at the University of Houston College of Optometry, those folks will have come to take in a film at the IMAX theater or to

take a swim at Palm Beach.

### The students

At any given time, 800 students, or about nine per hotel guest room, are enrolled in the university's hospitality management program, Stutts said. Lectures for all of their major subjects are given in the hotel, along with all of the laboratory work related to hospitality courses.

The students are also required to spend time working in areas of the hotel that actually serve guests, he said. At the end of it all, the students can walk across a stage in caps and gowns and receive diplomas from the University of Houston.

"We offer everything from bachelor of science degrees to a master of hotel management, which is similar to an MBA," Stutts said.

About 3,000 students have graduated from the university program since it began in 1969, Stutts said.

Such details as how many students will be enrolled in programs at the Moody Hotel have not been worked out, McLeod said.

What is clear, is that the students will study under the auspices of both Galveston College and The Moody Hospitality Institute, he said.

Galveston College will develop all educational materials and curriculum and employ certified teaching staff, according to the program outline.

The college will also provide accreditation and "classroom space and culinary lab space necessary for the completion of these program efforts."

What students get is "short-term training in customer service and hospitality-related topics," and "intermediate term non-credit training and credit training for up to one full year" on a variety of topics.

"They'll get classes on how to treat customers," McLeod said. "These programs will provide a badly needed service; there is a critical shortage of well-trained people for the hospitality industry on the island."

The most comprehensive program planned so far will offer students an associate's degree intended to "prepare mid-management and management level employees," according to the outline. But an associate's degree is generally not enough for most hotel chains, Stutts said.

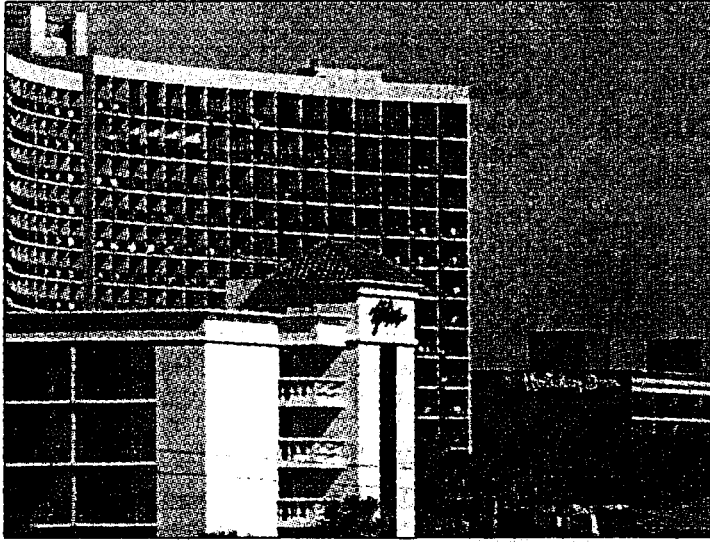
"It's hard to say with complete certainty because it depends, in part, on the philosophy of the company," Stutts said. "Companies are going to have hourly positions for people with associate's degrees. But most are going to require at least a BA for management positions."

While Stutts and other academicians tout degrees, some in the industry say they are less beneficial than working in a well-run hotel.

"There is no substitute for experience," said Don Hansen, executive director of the Texas Hotel & Motel Association. "I would never minimize the value of any degree, but the number of highly successful people in this industry who do not have degrees is absolutely legion."

[Return to top of page](#)

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▲ The island's top hotels — including, clockwise from top left, the Hilton and San Luis, Hotel Galvez and the Tremont House — are expected to feel the pinch when the Moody Gardens hotel opens. (Photos by Kevin Bartram)

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New hotel could signal a new era

By Michael Smith  
The Daily News

Published December 31, 1997 12:00 AM CST

GALVESTON -- For Christa Bugey and others operating high-dollar hotels on the island, a new age will dawn in December 1998. In that month, The Hotel at Moody Gardens will open for business.

With 304 rooms and all the amenities of a high-end resort getaway, it will be the biggest, newest and arguably the best hotel on the island.

It sits on public land a stone's throw from some of the island's main tourist attractions, is exempt from many taxes, is supported by others and can be subsidized by the \$700-million Moody Foundation, a private charity.

The Moody hotel will open in a tourist economy that has seen only 2.3-percent growth in the number of overnight visitors during the last 16 years, and its 304 rooms will add 8 percent to the total number rooms on the island.

But the Moody rooms, which will rent for about \$125 a night, will have an even greater effect on the smaller pool of upscale hotel rooms on the island.

There are 2,512 premium hotel rooms in Galveston, said Bob Warren, director of the Convention and Visitors Bureau. But Robert L. "Bobby" Moody puts the

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number of first-class rooms at about 1,100. So the Moody hotel will add between 12 percent and 27 percent to that inventory.

"I don't think anyone in town is worried that they'll have to close their doors, but we are all concerned," said Bugey, who manages the Tremont House, owned by developer George Mitchell.

Mitchell, along with hotelier Tilman Fertitta, has fought for a year to get concessions from Moody Gardens because of the hotel.

The concern, say Bugey and others, is that the attractions at Moody Gardens will not draw enough overnight visitors to offset the increase in room inventory.

"I've calculated that I'll lose 2 percent of my market share at the Tremont house when the Moody Gardens hotel opens," said Bugey, who is also president of the Galveston Hotel-Motel Association.

#### Study cites slow growth

And a study done for The Galveston County Daily News by San Antonio's Source Strategies Inc., which supplies tourist data to many in the industry, including the Galveston Convention and Visitors Bureau, indicates the hoteliers are right to be concerned.

Over the last 16 years, growth in the number of room nights sold on Galveston Island has lagged slightly behind the statewide growth rate of 2.36 percent and was well behind the rate of other tourist cities, according to Source Strategies.

And Source Strategies' evaluation found there were no major increases in the number of room nights sold after the opening of Moody Gardens Phases I, II and III.

"Further, a graphing of the room nights

sold in the city of Galveston shows no 'spikes' during the introductory periods of Moody Gardens phases," wrote Bruce Walker, president of Source Strategies.

By comparison, San Antonio experienced a 5.4-percent annual growth over the last 17 years, driven in large part by spikes of more than 7 percent between 1988 and 1993, when Sea World and Six Flags Fiesta Texas opened, Walker reported in his company's publication, Market Share.

"Based on the evidence, it is our opinion that Moody Gardens has not contributed significantly to the overall visitation by tourists and business travelers to the city of Galveston," Walker said.

What the numbers mean is that growth in the demand for hotel rooms on Galveston Island has been creeping upward, while the supply is about to soar.

One factor in a "successful lodging market is whether demand is growing," Walker wrote. "If it is not, new lodging can't be built until an older hotel closes."

#### Day trippers

Meanwhile, Moody Gardens officials say that 1 million more people are visiting Galveston each year thanks to the park's attractions, and no one is disputing their count.

The seeming contradiction is explained by the type of visitors attracted to the gardens, Tilman Fertitta said. "That's what we've been saying all along," Fertitta said. "We've looked back at every time they have opened something to see if it has had an effect on business and it didn't.

"Our restaurants have always done well in Galveston when our hotels haven't, and it's because of day trippers coming down from Houston," said Fertitta, who owns the San

Luis and Hilton hotels and is president of the Landry's chain of seafood restaurants.

Fertitta's and Bugey's concerns are unfounded for several reasons, say Moody Gardens officials.

First, the gardens are expected to draw almost twice the number of annual visitors when the 13-story Aquarium Pyramid opens in 1999, said Doug McLeod, director of development for the Moody Foundation and chairman of the gardens' board of directors.

"We expect a lot of the aquarium visitors will be from the Houston area," McLeod said. "But we expect that it will also draw people from all over Texas and from all over the Southern United States."

If that prediction is borne out, it will mean more overnight visitors and more business for local hotels, McLeod said.

Second, the added attractions will make Moody Gardens a two- or three-day excursion instead of a day trip, McLeod said.

Third, the planned convention center at Moody Gardens will allow the island to compete for business meetings and conventions that run for several days, McLeod said.

"That will mean a lot more year-round business for all the hotels on the island," McLeod said.

Does size matter?

But how well Galveston will be able to compete with the likes of Corpus Christi and San Antonio and how much of the island will benefit from the convention center depends on how big it is, Buggy and Fertitta said.



Both say they agree with a \$50,000 study of the island's tourism industry conducted by Chicago-based C.H. Johnson Consulting Inc., which concluded that a city convention center should offer at least 100,000 square feet of exhibition space to attract large conventions.

"If we have a 100,000-square-foot convention center, then I think it's all right to have the 300-room hotel," Fertitta said.

The association has agreed to support a plan calling for the expansion of the convention center at Moody Gardens to 67,500 square feet, Buggey said. The proposed increase would add 30,000 square feet to the existing facility, along with a parking garage for a cost of about \$20 million.

"We will not support a center any smaller than that," Buggey said.

The island's goal should be to have a 100,000-square-foot center, Buggey said.

And until the island has one that large, it will keep losing convention business to grim little burgs in West Texas and the Panhandle, Buggey said.

"Forget Corpus and San Antonio - I think it's just amazing that we continue to lose group business to places like Amarillo and Abilene," Buggey said.

Bigger hotel needed, too?

Moody, meanwhile, says the need for the convention center to attract off-season business proves the need for a hotel at Moody Gardens.

"We need more rooms to attract bigger conventions to the area," Moody said. "Right now there aren't enough first-class rooms to support large conventions."

He and others point to Houston, where officials believe the lack of a hotel near the George R. Brown Convention Center cost the city convention business.

But Fertitta maintains that the hotel will be a liability for the island's private-sector hotels.

"If they wanted to do something good for island, why did they have to build a hotel? They built a hotel because they can suck fees from a hotel.

"This is not going to put me out of business, because I have deep pockets, and we have a good property, and we execute well.

"There needs to be an agreement where this is it - no more rooms. They could keep adding on, and adding on and adding on - there's plenty of room out there.

"They also need to address the rest of the problem of discounting the attractions for their guests. Because what they are going to do is say, 'Come to our hotel and go see the aquarium for free.'"

He said also that he feared the Moody hotel would be able to undercut its competitors because it is not forced to make a profit to survive.

"They'll be able to price their rooms \$10 or \$12 less than anybody else," Fertitta said.

But foundation officials would never allow such a thing, said Irwin "Buddy" Herz.

"We are not going to do anything to destroy or damage the hotel industry on this island," Herz said. "We all live here. We don't want to become outcasts."

Negotiating a deal

Many of Fertitta's concerns are being

hammered out in negotiations among a committee of Moody Gardens and park board staff members. The committee consists of acting Park Board Director Lou Muller, Convention and Visitor's Bureau Director Bob Warren, City Manager Steve LeBlanc and Moody Gardens Executive Director Mike Riley. The four have tentatively agreed on such items as a system that allows the CVB some control over booking conventions into the center and a catering policy.

But more pressing and complicated is the question of how any expansion of the center will be paid for.

Another committee is exploring the idea of using funds generated from the city's hotel-motel occupancy tax to pay for such an expansion.

The city collects a tax of 9 cents on the dollar for every room rented in Galveston, which generates about \$4 million on the year. About 22 percent of those revenues are dedicated by state law to rebuilding eroded beaches, leaving the committee about 78 percent to dig into for cash.

The 13-member committee has met only twice but has designed a tentative plan that could generate about \$700,000 a year to pay debt service if bonds were issued to expand the convention center.

Under the plan, \$100,000 a year would be taken from each of the seven groups that now receive funding from hotel-tax revenue.

The \$700,000 could be used to pay off an \$8-million bond issue.

"This is just an idea the committee has been throwing around," said chairwoman Theresa Elliott, also a park board trustee.

"There has been a great spirit of

cooperation on the committee," Elliott said. "Every one seems to understand how important this is to the city and is willing to give up something."

Elliott warned that the plan was just one of several and was nowhere near being implemented.

"We are just at the talking stage," she said.

And even if the plan were adopted, it's unclear how much could be done with the \$700,000.

"We have not received a firm estimate about what the proposed expansion would cost. Until we get that, we won't really know how much money we need to find. It's possible we'll have to revisit each penny and dig a little deeper."

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## Room at the inns

By Michael Smith

The Daily News

Published December 31, 1997 12:00 AM CST

GALVESTON -- About \$20 million moves through Moody Gardens annually, funding both its daily operations and expansion, but sharp disagreement exists about how much of the money makes it into the local economy.

And questions have been raised about how much of the money makes it into the pockets of the Moody family.

A focal point of those questions is the close relationship between the tax-exempt park and corporate entities controlled and influenced by Robert "Bobby" Moody.

Gal-Tex Management Co.

Gal-Tex Management is a for-profit company that is 50-percent owned by the Moody Foundation, of which Robert Moody is one of three trustees.

In 1990, Moody Foundation, Moody Gardens Inc., the city and the park board agreed to have Gal-Tex manage the park for an annual fee of \$300,000 a year.

While some question the propriety of the close relationship, Moody representatives said there were sound economic reasons for it.

"The park lost a lot of money during the first few years of operation," said Doug McLeod, director of development for the

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... director of development for the Moody Foundation. "The foundation decided they needed to find the most frugal person they could to operate the park, and that person was Gene Lucas."

Lucas, the president of Gal-Tex, has worked for Moody-owned companies for more than 50 years and also is a member of the park board.

Moody representative also say that the gardens are getting a good deal from Gal-Tex. They point to a report done by consultants from Atlanta, Ga., stating that \$300,000 a year is less than the going market rate for the amount of work Gal-Tex does.

**Moody National Bank**

Robert Moody is chief executive officer, director and chairman of the board of Moody National Bank, which in 1997 performed more than \$150,000 in transactions with Moody Gardens, according to a vendor summary.

About \$10,000 of those were purchases of cashiers checks, said Moody Gardens Executive Director Mike Riley, and \$149,053 were deposits from the employee pension fund into the trust division of Moody National Bank.

**Coyote Liquor**

Coyote Liquor is owned by the 3-R Trust, which was established by Robert Moody for the benefit of his children. In 1997, the company sold \$13,157 of goods to Moody Gardens.

While some have questioned the relationships like those among Coyote, Moody National Bank and Gal-Tex with the nonprofit Moody Gardens, attorney Irwin M. "Buddy" Herz says the issue is a lot about nothing.

Herz said that the companies made little profit from their relationship with Moody Gardens and that none of it got back to Robert Moody.

"When you go one by one through all the gobbledygook and the facts which are blown out of proportion to mislead the public, you will see that these terrible things Moody Gardens was supposed to have done were fully disclosed and in all instances done through fair, arm's-length contracts," Herz said.

Herz and others close to Moody Gardens say the real issue is how much money and how many jobs the park creates for the rest of the island.

#### Jobs for locals?

In 1996, Moody Gardens created 819 jobs, which generated more than \$19 million in economic benefit, according to a study commissioned by the Moody Foundation.

But trade unionists say only a fraction of the construction work in progress there goes to Galveston County residents.

And the foundation's own study shows that only a fraction of the millions spent by the gardens each year on such routine items as food and office supplies goes to local companies.

Moody Foundation officials say they've "bent over backwards" to hire local workers and trade with local businesses but are often forced off the island and out of the county to get the best quality at the best price.

The foundation study uses a complex formula to estimate that the gardens directly creates 430 jobs equivalent to full-time positions and indirectly creates six more.

Those jobs in turn create another 383 jobs for a total of 819 full-time equivalent jobs, according to the study.

Another study, using information from the Galveston Small Business Development Center, says the number of people actually employed at Moody Gardens is 198.

That number puts the gardens at 15th among the area's 19 largest employers, behind such others as Fertitta Hospitality, 1,200; Gaido's, 350; and The Tremont House, 234.

And only about 3 percent of an estimated 350 construction jobs at Moody Gardens are going to Galveston County workers, said David Bond of the carpenters union.

"They were willing to give a little work to the pipe fitters, but most of it is going to out-of-town companies," Bond said. "And so those wages are going out of town."

But gardens officials have hired as many local companies as possible, said McLeod.

"A lot of the work is highly specialized, and we've had a hard time finding local labor with the skills to do it," McLeod said.

Many local construction companies also have simply been outbid, McLeod said.

"The local bid for electrical work came in \$700,000 over budget," he said, adding that the gardens board of directors had no choice but to seek the best price for goods and services.

"We have a fiduciary responsibility that is in some regards higher than that of corporate officers; we can't just throw thousands of dollars around."

But Bond and others say the companies



building Moody Gardens can bid the work low because they are paying below market wages and aren't funding fringe benefits.

The foundation's study admits that the garden's indirect economic impact - the business it does with other local businesses - is small.

"This is due to the fact that Moody Gardens purchases only 4.25 percent of its non-labor inputs locally," the study states. "Increasing the number of local suppliers patronized and/or the volume of business transacted with local suppliers would increase the economic impact on the Galveston economy."

But gardens officials face the same problems when they try to execute vendor contracts with local businesses, McLeod said.

"We give local businesses special consideration already," McLeod said.

"But we just can't afford pay a local company what amounts to a 10-percent commission to go to Houston and buy things to bring back here and resell to us when we can go directly to the source."

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Moody hotel plan sparks clash of the tourism titans

By Carol Christian
The Daily News

Published November 02, 1996 10:45 PM CST

GALVESTON -- For many visitors, the gleaming glass Rainforest Pyramid at Moody Gardens is a symbol of Galveston's growing tourism industry. Now, however, as Moody Gardens moves into another three-year development phase -- including a hotel that would be the largest in Galveston -- some others in the tourism industry are crying foul.

Two of the island's major hotel owners say the proposed 303-room hotel, with footings already poured and a projected opening in May 1998, will hurt them financially.

But more than just a businessman's battle over the tourist dollar, the fight that's brewing now promises to involve foes with millions to spend and demonstrates how politics, money, family connections and power influence public policy in Galveston.

Tilman Fertitta, owner of the San Luis Resort and Conference Center says that the alliance between Moody Gardens, city government, the Moody family and the Moody Foundation could drive him out of business.

Fertitta points to the situation in which past and current employees of various Moody enterprises sit on city boards, or

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past and current city park board employees sit on the Moody Gardens board.

Fertitta says the new facility -- for which no feasibility study has been done -- not only will create a glut on the hotel-room market but also will operate from the strong competitive advantage of Moody Gardens' tax-exempt status.

"I've never been as mad about anything in my life as I am about this," Fertitta said. "There's no way I or anybody else can compete against what's going on at Moody Gardens."

Fertitta, who says he has invested \$30 million in private capital here in recent years, now says he will halt further investment until the issue is resolved because he fears the Moody development could drive him and his businesses out of Galveston.

"I sure hope that does not happen, but it's a possibility," he said.

Fertitta and his companies also own the Hilton, Landry's Restaurants, Joe's Crab Shack, Willie G's and other properties.

Fertitta bought his hotels in November 1995 from the Mitchell Energy Corp., operated by George Mitchell, the island's major private developer.

Thus far, several meetings between Fertitta and Moody representatives have failed to produce a compromise. The Moody people say Fertitta wants too much. Fertitta says the Moody side offers too little.

"There's no question it will adversely affect us," said Mitchell, who still owns the Hotel Galvez at 2024 Seawall; The Tremont House, 2300 Ship's Mechanic Row; and The Harbor House at Pier 21.

"Normally, an aquarium will show marine life of the area it's adjacent to," Fraley said.

Douglas McLeod, chairman of the board of Moody Gardens, said he was convinced the development would be good for all the island's businesses, including other hotels.

McLeod noted that construction of the hotel had been planned since 1991, when the Galveston City Council and Park Board of Trustees passed an amended lease for Moody Gardens. The amendment specified plans for the hotel and oceanarium, McLeod said.

A little-discussed feature of the new hotel, McLeod said, is that it will join forces with Galveston College to provide a training ground for the hotel industry.

To be known as the Moody Hospitality Institute, the teaching hotel will be established as part of the arrangement allowing Moody Gardens Inc. to obtain tax-exempt status on the hotel.

Moody Gardens -- a federally recognized, nonprofit entity -- is building the hotel and three other facilities with about \$130 million funding from The Moody Foundation.

The foundation, which was established in 1942 but did not become active until several years after W.L. Moody's death in July 1954, had assets of \$537 million in 1994.

The city's Park Board of Trustees technically owns Moody Gardens, which has an agreement with the park board signed in September 1990. That agreement allows Moody Gardens to manage the entire facility through Dec. 31, 2026. At that time, the improvements on the property revert to the city.

# Local businessman files suit, says Moody misled IRS

By KEVIN MORAN  
Houston Chronicle

GALVESTON — Millionaire Robert L. "Bobby" Moody misled the Internal Revenue Service in a bid to build a tax-exempt hotel financed by grants from his family foundation, Houston businessman Tilman Fertitta alleges in a lawsuit.

The Moody Foundation also has conditioned charitable grant awards

on recipients' patronage of private businesses owned directly or indirectly by the Moody family, Fertitta maintains in the antitrust action filed Friday in U.S. District Judge Sam Kent's court.

The lawsuit represents a total breakdown in months of negotiations among Moody, Fertitta and developer George Mitchell over future convention bookings in this resort city and management of the city's official convention center.

Officials with Moody Gardens and the Moody Foundation could not be reached for comment Friday.

Fertitta, who has invested \$30 million in purchasing and renovating the San Luis Resort and Conference Center on Galveston's seawall in the past two years, reiterates in the lawsuit his earlier claims that Bobby Moody and Moody interests are trying to monopolize island convention business at Moody Gardens.

With an IMAX theater, rain forest

pyramid, space museum and other attractions, Moody Gardens has become one of Galveston's most popular tourist destinations in recent years.

For several years now, Moody Gardens also has served as the city's convention center, subsidized by about \$400,000 a year in municipal hotel occupancy tax revenues. Fertitta has demanded that the city stop the payments, particularly since

See LAWSUIT on Page 36A.

Sat, July 19, 1999

## Lawsuit

Continued from Page 29A.

Moody Gardens began construction of a 300-room, tax-exempt convention hotel on its grounds.

The Moody Foundation, which has financed Moody Gardens, won a 1994 ruling from the IRS allowing it to build the income tax-exempt hotel. Fertitta maintains in his lawsuit that the San Luis cannot successfully compete with the Moody hotel because of its "unfair and illegal monopolistic advantages."

He asks the court to enjoin the Moody interests from operating the hotel, which is scheduled to open next year. The lawsuit also seeks unspecified damages.

The lawsuit follows last week's issuance of a consultant's feasibility study that concluded Moody Gardens should remain the site of the city's official convention center but that control of convention bookings

used to finance a highly successful therapy program and a facility called the Transitional Learning Community for brain-injured people.

Fertitta maintains that the Moody Foundation mischaracterized the nature of Moody Gardens in its statements to the revenue service and now is acting inconsistently with terms of the favorable IRS ruling.

"For example," Fertitta stated in the suit, "despite having explicitly portrayed the Gardens' primary purpose as educational in its presentation to the IRS, the defendants now actively and predominantly market the luxury hotel and conference center, in tandem with the Gardens, for commercial and tourist business."

Named as defendants in the suit along with Moody are Moody Gardens Inc. and Gal-Tex Management Company Inc., which operates Moody Gardens under a management contract. Gal-Tex is owned by the Libbie Shearn Moody Trust, which is controlled by Moody National Bank. Moody is chairman of the bank's board.

The lawsuit represents a breakdown in negotiations over future convention bookings in Galveston and management of the city's official convention center.

should be handled by an independent bureau.

Moody representatives rejected that idea, which Fertitta has favored all along. They also rejected the consultant's call for construction of a huge new convention center to be managed independent of Moody Gardens.

Profits from Moody Gardens are

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## Fertitta vows fight against Moody plans

### Developer slams city, foundation relationship

By Chad Eric Watt  
The Daily News

Published November 15, 1996 12:14 AM CST

GALVESTON -- Speaking at a Chamber of Commerce luncheon on the home turf of his legal enemy, Tilman Fertitta delivered a blistering attack on the Moody Foundation Thursday.

"The three teams of lawyers I've put together have never seen an incestuous relationship like they have in Galveston," Fertitta told those gathered for the noon event at Moody Gardens.

"It's not my desire to be embattled in litigation with a Galveston icon, but I will not let the Moody Foundation compete unfairly without a fight."

A week ago, Fertitta, owner of the San Luis Hotel and Conference Center and other properties, filed suit in district court claiming a tax-subsidized hotel and conference center now under construction at Moody Gardens creates an unfair advantage over existing tourism industry operations on the island.

But representatives of the Moody Foundation maintain Fertitta knew it would soon break ground on the hotel before he purchased the San Luis.

"If Mr. Fertitta made a bad business deal, he needs to take responsibility for his own

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actions," Moody attorney Irwin "Buddy" Herz said Thursday. "The Moody Foundation was trying to provide a world-class tourist attraction for Galveston, if the people of Galveston don't want it, tell us and we'll take it elsewhere."

Even as Fer titta spoke, those attending the Galveston Chamber of Commerce luncheon could hear the thud of heavy equipment driving pilings for the 303-room hotel's foundation, sending ripples through their water, tea and coffee cups.

Moody Gardens Board Chairman Douglas McLeod, who is also the Moody Foundation's development director, said he missed the luncheon because he was gathering data for the upcoming lawsuit.

"It's all one-sided -- he's being critical of us," he said. "We're doing what's best for Galveston and will continue to do so.

"There isn't a city in this state that wouldn't give its right arm for the Moody Gardens development."

Moody Gardens receives about \$400,000 annually from a percentage of the city's hotel occupancy tax to support its operations.

The nonprofit Moody Gardens Inc. contracts with Gal-Tex Hotel Corp., a for-profit hotel management company owned by Moody interests, to operate the tourist attraction.

Fertitta said he wants that money, along with the rest of the hotel occupancy tax put toward building a new convention center on the seawall.

"We don't need another hotel here, we need a convention center," he said.

He said the existing facilities at the San Luis and Moody Gardens were conference

centers, not able to host large conventions.

By comparison, he pointed out that Corpus Christi, Austin, Midland-Odessa and Amarillo all have convention centers more than 100,000 square feet larger than the island's two conference centers.

"Why are we not able to compete with Midland-Odessa, Amarillo and Corpus Christi?" he asked the crowd.

Galveston can attract about 80 conventions with its current facilities.

With a full-size convention center, Fertitta said the island could land attract 200 times more business.

Fertitta said he wanted to do for the seawall what George Mitchell had done for the Strand District and the Moody Foundation is doing at Moody Gardens.

"We need to have a community-wide effort on Seawall Boulevard because that's where everybody goes," Fertitta said.

And Galveston should have a convention center where the people are, he said.

He also took the opportunity to raise concern on what he sees as other problems on the island:

- \* Galveston has the appearance of a city stuck in the 1950s.

- \* The Moody Civic Center at 21st Street and Seawall Boulevard is a "great embarrassment to the city."

He suggested solutions for those problems including:

- \* The island should work with the Houston metropolitan area, and particularly Clear Lake, to attract visitors.



- \* Market Hobby Airport as the "Houston-Galveston Regional Airport" and attract commuter airlines to link Galveston's own municipal airport with other Texas cities.

- \* Make the city-owned Flagship Hotel a premier tourist attraction.

- \* Add a signature golf course to the island.

- \* Develop middle-income housing on the island.

"A foundation has to give away its money -- they're doing no one a favor by building this hotel," he said. "Fair competition would be for (Moody Foundation head) Bobby Moody and Gal-Tex to build their own hotel."

The audience gave Fertitta a standing ovation as he concluded his remarks.

Fertitta said he is not alone in his criticism of the Moody Gardens project.

"A lot of other hotel operators feel the same way, but they don't want to be caught in the crossfire," he said.

McLeod said Moody Gardens and all its attractions are being developed with the best interests of Galveston at heart.

"The purpose of Moody Gardens is so millions can enjoy the facilities," he said.

Fertitta said he also planned to be in on a congressional discussion of tax-exempt organizations.

"I plan to be right in the middle of it," he said.

McLeod said he also could be there to counter Fertitta's claims, if need be.

"Foundations are discussed every session

of Congress," he said. "I can also appear before a subcommittee to testify against what he testifies for."

The Moody Gardens \$130 million-plus fourth development phase, which includes the 303-room hotel, an aquarium, a parking garage and a new I-Max ride.

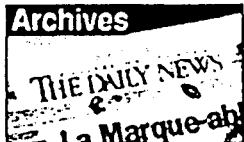
The hotel -- which is planned to be the largest on the island -- was originally scheduled for the complex's eighth and final phase of a 20-year master plan. It was moved up to serve users of the Moody Gardens Convention Center.

Fertitta purchased the San Luis Hotel and adjacent properties from Mitchell one year ago and has put about \$40 million in renovations into the hotel, including adding its own conference center.

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## Competitors fear being left behind

**By Carol Christian**  
The Daily News

Published November 02, 1996 10:46 PM CST

GALVESTON -- Some of the island's major hoteliers are concerned about competing against the new hotel going in at Moody Gardens.

Here are some of the reasons:

Moody Gardens is on property owned by the city of Galveston. No property taxes are paid on the land, which is leased to the Moody Gardens operation through the year 2026.

Because Moody Gardens now serves as the city's convention center, it receives a portion of the city's hotel-motel tax, which last year was about \$400,000.

Moody Gardens operates the facilities under a \$300,000-a-year management contract with Gal-Tex Hotel Corp., a Moody family enterprise.

Moody Gardens buys liquor from a Moody family business, it banks at Moody National Bank and it purchases health insurance for employees from another family related enterprise.

The Moody Foundation has guaranteed it will underwrite any operating losses at the planned hotel.

"Potentially, they can beat anybody on the rates they charge, and with the other attractions out there, why would anyone

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attractions out there, why would anyone choose to go elsewhere?" asked Tilman Fertitta, who owns the San Luis Resort and Conference Center, 5222 Seawall Blvd., currently the island's largest hotel with 240 rooms.

Fertitta, who also owns Landry's restaurants and other island properties, says that private Moody interests will benefit financially from the hotel and other new developments at Moody Gardens, regardless of whether the complex breaks even.

Moody Gardens officials, however, defend the arrangement between the city and the Moody Foundation as one that is both directly and indirectly financially beneficial to the city and private businesses on the island.

Besides the tourist draw it provides and the fact that the foundation has given the gardens to the park board, officials cite the annual lease payment.

For example, the original lease for Moody Gardens with the city was for about a \$50,000 a year, with the provision that each dollar's worth of capital improvements counted one dollar toward the lease payment, said Douglas McLeod, Moody Gardens board chairman.

"Through the years, we were able to prepay the original lease by the millions we put onto the city land with capital improvements," McLeod said.

Now Moody Gardens pays rent for additional tracts it leases for parking. That figure, coincidentally, is also about \$50,000 a year, McLeod said.

But in recent months, Trustee Steve Greenberg of the city's Park Board has raised questions about the current construction phase at Moody Gardens, which over three years will include a

museum, theater, parking garage for the convention center, hotel and aquarium.

Last week, Greenberg was the only dissenter when the park board voted 5-1 to seek a \$1 million federal grant for construction of a parking garage to adjoin the Moody Gardens convention center.

Greenberg acknowledged that the Moody Foundation had done a lot for the city and that Galveston owed the foundation a debt of gratitude.

Nonetheless, he said it was inappropriate for the park board to be caught in a squabble between the Moody Foundation and private developers.

"If it can't be resolved, the park board should give Moody Gardens back to the Moody Foundation and therefore remove the park board's liability in any litigation that may come," Greenberg said.

Fertitta has said he would consider litigation if the hotel goes through according to current plans.

Greenberg said: "I think there is a clause that indemnifies the park board, but why should we be in the middle of it?"

Greenberg said he also had been surprised in September when the park board at its annual retreat had proposed a 15-year extension on Moody Gardens' share of a hotel-motel tax.

At present, the allocation for Moody Gardens must be approved each year.

Although the hotel-motel-tax revenue is for the convention center, Greenberg said it would also benefit the hotel.

"When they build that hotel, you cannot separate that hotel from the conference center."

The Moody Foundation is sensitive to criticism of the project.

Thursday, Moody Foundation attorney Irwin M. "Buddy" Herz called Dolph Tillotson, editor and publisher of *The Daily News* to argue against publication of this and other stories about the controversy.

"The Moody family has given so much to Galveston," Herz told Tillotson. "Do you really think it's fair to throw this kind of criticism at them? This could be very damaging to the community."

Tillotson said he told Herz the story was of legitimate interest to the public and that the newspaper would report it.

Herz also serves voluntarily as chairman of the Galveston Economic Development Corp., founded in the late 1980s to attract economic development to the island.

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## **EXHIBIT "C"**

**Articles detailing the substantial commercial spending and the decline of truly charitable giving by the Moody Foundation. Charity has become incidental to the Foundation's funding and operation of commercial business enterprises.**

## A mix of charity and capitalism

By **MICHAEL A. SMITH**  
The Daily News

**GALVESTON** — When Moody Foundation lawyers sought Internal Revenue Service permission to build a \$57-million hotel at Moody Gardens, they wrote a lot about charity.

The 100-page application is peppered with descriptions about how Hope Arena, aside from being a city convention center, would provide "various types of therapy for the disabled, including hippotherapy." And the application highlights such noble aims as the advancement of "health, science, education advancement and the diffusion of knowledge among the people of Texas."

But over the last 17 years, the facility has gone through a metamorphosis as dramatic and surprising as the one from caterpillar to butterfly.

Moody Gardens budgets show that those much-cited noble aims of education and therapy are dwarfed in comparison to more business-like endeavors of selling food, beverages and day passes to swim at Palm Beach.

And while all agree that Moody Gardens has evolved into a world-class facility, many

say that the facility has abandoned its original purpose and become a tax-exempt business enterprise.

Officials at Moody Gardens and the Moody Foundation, a \$700-million private charity that underwrites its expansion and operating losses, say all of the park's attractions have educational and charitable components.

But of the 1 million people who visited the park in 1996, only 300 went there for therapy at Hope Arena, according to a study done for the foundation. That same report states that only 56,000 of the 1 million visitors were students from Texas and Louisiana.

And while the treatment of most patients at Hope Therapy is underwritten, most also pay some portion of it through private or government health insurance, said Edwina Fraley, director of marketing at Moody Gardens.

And the school children who attend Moody Gardens also are required to pay, although less than other visitors, Fraley said.

Under a ticket price schedule published in March, students on educational trips to the park paid from \$4 each for an hour on the Colonel paddle-wheel boat to \$12 each for a package of any three attractions.



# OPINION

# A12

FEEDBACK: Call Managing Editor Heber Taylor at 1-800-561-3611, Ext. 245 — or send email to heber.taylor@galvnews.com

## OUR VIEWS

# Moody Foundation's gift or rift?

## Provision should be kept to protect city

### The Issue:

Galveston Parks Board considers surrendering provision that allows city to transfer ownership of Moody Gardens.

### We suggest:

Provision is important for both city and parks board.

The Galveston Parks Board of Trustees ought not to surrender the give-back provision in its ownership agreement with the Moody Foundation on the Moody Gardens complex.

Now, this is so complicated that many might never try to decipher it. However, we think the issue is important in Galveston.

Let us begin simply by saying that the provision is an important protection for the parks board and the city.

The board should listen to the foundation's points and try to work out some agreement that satisfies the foundation's needs but retains this vitally important legal and financial protection.

### A tax-free gift

A bit of background: Moody Gardens was given to the Galveston Parks Board of Trustees to allow it to operate tax-free.

As part of that "gift," the foundation agreed to two very important provisions. First, the foundation agreed to fund operating losses at the complex, and those losses have been sizable.

The foundation also agreed that the parks board

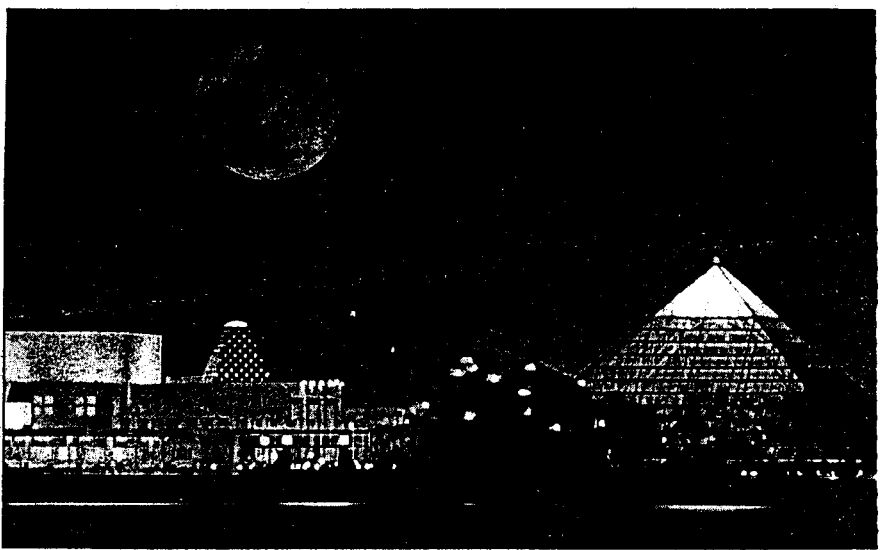
could simply give the complex back to the foundation with 20 days' notice. That was important to protect the parks board and the city in the event that the foundation should choose to abandon the project. Incidentally, the foundation also may cancel its agreement with 20 days' notice.

Now, the foundation is asking the parks board to give up the give-back provision. Board members will discuss the issue on April 29.

Galveston attorney Irwin M. "Buddy" Herz, spokesman for the foundation, said the parks board no longer needs the give-back provision. Now, Herz argues, the provision leaves the foundation vulnerable to the whims of future boards.

Maybe. However, the parks board's role in all this is to protect the interests of the public, not just the foundation's.

Without the provision, foundation spokesmen like Herz would have the whip hand in all negotiations with the board. The foundation could walk away from the complex, leaving the parks board and thus the city of Galveston stuck with



▲ Moody Gardens

an enormous, unmanageable and money-losing enterprise.

The board's choice in that event would be either to shut down Moody Gardens or find some way to fund its losses. Actually, that may be no choice at all. If Moody Gardens is the city's only convention center, Galveston may be in the position of being unable to close it down, even if the city wanted to do that.

### Another money-losing gift

That's not a good deal for the people, and it reminds us a bit too much of the Moody Civic Center. That edifice is another money-losing gift to the city. Financially, all of us would be better off without it. However, because of community politics, the city can't just close the old Seawall Boulevard facility.

Furthermore, without the

give-back provision, the parks board has no bargaining power. Such power may be necessary to mediate between Moody Gardens and other, private hotel and restaurant interests such as Tilman Fertitta. Fertitta filed suit recently against the Foundation, alleging it receives unfair city tax support.

### Need for provision

Ironically, Herz and others associated with Moody Gardens have themselves reinforced the need for the give-back provision.

They have done that by threats to abandon the complex whenever challenged, as in the Fertitta suit.

Let us make a few things clear. First, Moody Gardens is a wonderful asset for Galveston. With its beaches, the rain-forest pyramid, convention center, the coming aquarium and hotel,

it adds much to the community.

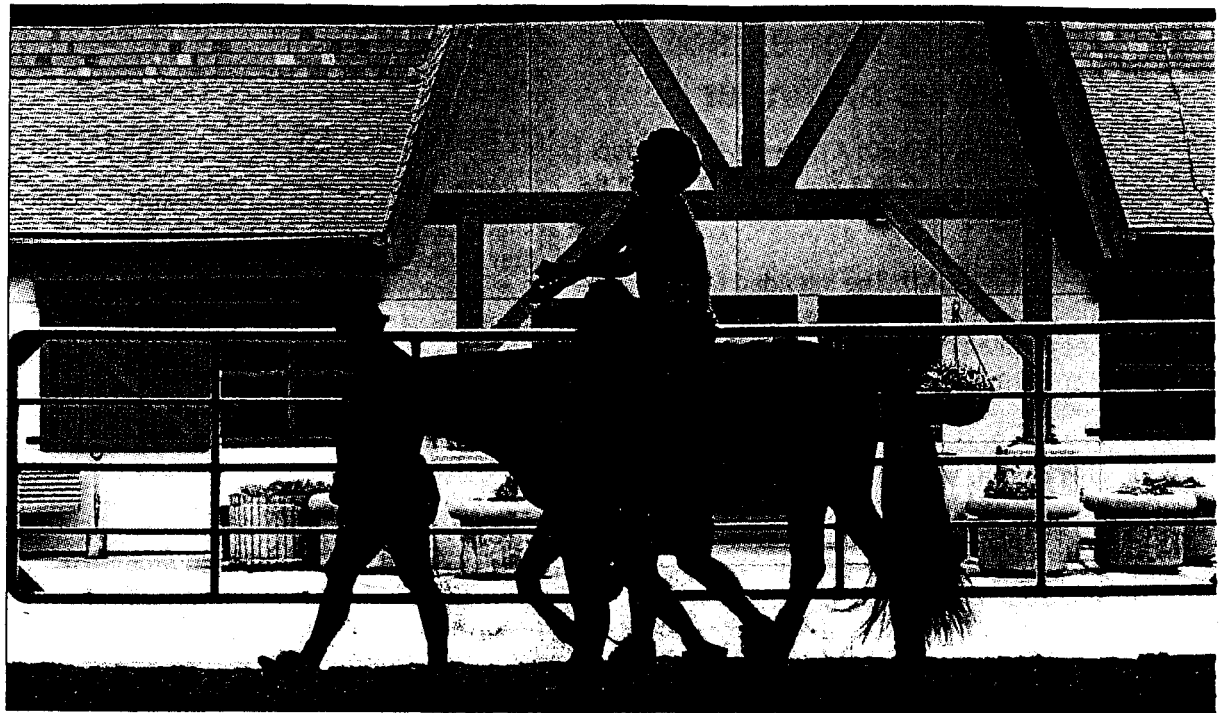
Second, Moody Gardens has the right to expect a secure future and a predictable relationship with the parks board and the city.

The parks board might be able to resolve the foundation's concerns simply by extending the time period in the give-back provision. Now, the board could give the property back to the foundation in 20 days. Make that three months, or even six months.

However, the board should never simply give up the provision because it protects the interest of ordinary citizens.

● This editorial was written by Dolph Tillotson, editor and publisher of The Daily News. His email address is dolph.tillotson@galvnews.com.

# Moody money



▲ Patients at Hope Therapy at Moody Gardens ride in the arena near the convention center. Moody Gardens has been the biggest beneficiary of Moody Foundation charitable gifts. (File photo)

## Most of foundation's giving is to groups run by its trustees

**GALVESTON**

By MICHAEL A. SMITH  
The Daily News

If the Moody Foundation must freeze grants because it faces uncertain expenses, why continue funding its single largest expense?

**GALVESTON** — What has the Moody Foundation done for Galveston lately?

From 1991 to 1996, the 55-year-old foundation pumped \$256,146,718, a full 97 percent of its charitable giving, into operations on the island, according to annual reports and audited financial statements.

Organizations as diverse and worthy as Reedy Chapel A.M.E. Church, the AIDS Coalition of Coastal Texas, Lassie League Softball and the



SPCA benefited from foundation grants.

But a recent disclosure that the foundation has frozen grants until two controversial issues are resolved has some alleging it's using its charitable giving as a club to keep the Park Board of Trustees in line.

And still others complain that while it's true that more

▲ The Transitional Learning Community treats patients with head injuries and is one of the charities supported by the Moody Foundation. (Photo by David Doemland)

● See MOODY FUNDS/Page A12

## Moody funds

Continued from Page A1

than 90 percent of the foundation's outlay goes to Galveston projects, the bulk of that sum stays with organizations controlled by foundation trustees Robert "Bobby" Moody, Frances Moody Newman and Ross R. Moody.

What the numbers show is that from 1991 through 1996, the foundation's largest beneficiaries were Moody Gardens and the Transitional Learning Community, on whose boards Robert Moody serves.

Over that period the two entities received about \$233 million of the foundation's \$264 million in total commitments, while Galveston charitable organizations received just more than \$23 million.

That's a split of 88.38 percent for Moody Gardens and the TLC, almost 9 percent for other Galveston charities and about 3 percent for nonprofit groups around the state.

Each year, from 1991 through 1996, the foundation on average, committed more than 68 percent of its gifts to Moody Gardens and the TLC, while other Galveston charities received an average of 24 percent.

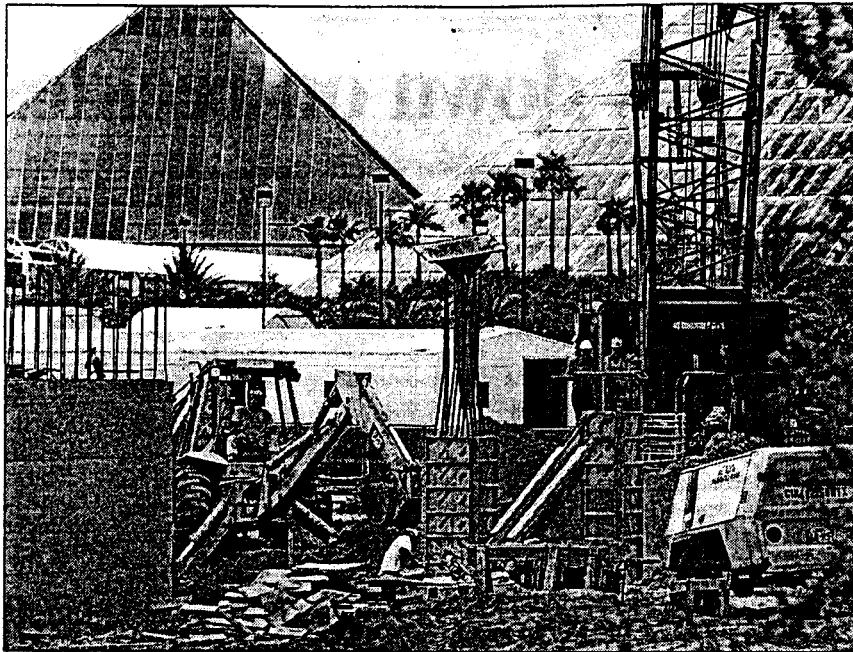
Commitments to those two organizations hit a six-year peak in 1996 when together they received more than \$153 million — more than 97 percent — of the foundation's commitments, while island-based charities got \$3.4 million in commitments and those in other Texas cities split up less than half a percent.

Moody Foundation Attorney Irwin M. "Buddy" Herz said the foundation had to defer allocating grants at least until its trustees meet on June 3.

He said trustees made the decision at their February meeting because a lawsuit and controversy over an agreement with the park board leaves the foundation unsure what its expenses will be.

Hotel owner Tilman Fertitta sued in November claiming a tax-subsidized hotel under construction at Moody Gardens has an unfair competitive advantage over its tax-paying neighbors.

In April, controversy erupted over a request by Moody Gardens Inc. to amend an agree-



◀ Construction crews work on the site of the hotel at Moody Gardens. Research shows that Moody Gardens was one of the Moody Foundation's biggest beneficiaries from 1991 to 1996. (Photo by David Doermland)

### Moody Foundation Commitments 1991 - 1996

● Total commitments 1991-1996 .....	\$264,061,064
● Total to Moody Gardens and Transitional Learning Community .....	\$233,387,137
● Total to other Galveston charities .....	\$23,073,359
● Percent to Moody Gardens and Transitional Learning Community .....	88.38%
● Percent to Galveston charities .....	8.74%
● Average annual commitment 1991-96 .....	\$44,010,177
● Annual average to Moody Gardens and Transitional Learning Community .....	\$38,897,856
● Annual average to Galveston charities .....	\$3,845,560
● Average annual percent to Moody Gardens and Transitional Learning Community .....	68.64%
● Average annual percent to Galveston charities .....	24%

Source: Annual reports and 1996 financial statement

ment that cedes ownership of the garden's facilities to the park board.

As the agreement is written, the board can give the facilities back to Moody Garden's Inc. for any reason with 20 days notice and Moody representatives want it changed so that it can't be returned without cause.

Herz said legal and consulting fees generated from Fertitta's lawsuit and a slate of concessions some park board trustees want in order to support amending the agreement make the foundation's future expenses uncertain.

And as legal and consulting

fees — which have reached about \$500,000 — mount, they begin cutting into the amount the foundation has to give each year, he said.

He said also, however, that Moody Gardens — the foundation's single biggest recipient will continue to be funded, which the begs the question:

If the foundation must freeze grants because it faces uncertain expenses, why continue funding the single largest expense?

Moody Foundation Director of Development Doug McLeod said it would be extremely expensive to halt the huge construction

project already under way at Moody Gardens.

"Moody Gardens has to be funded," McLeod said. "We have construction schedules and we have to be concerned about maintaining economy of scale."

Others, though, worry that aside from freezing charitable grants, the foundation is beginning to commit too much of its efforts to money-generating operations at Moody Gardens.

"I would hate to see them continue giving more and more to the gardens at the expense of real charitable organization," said Park Board Trustee Steve Greenberg.

# The big ten beneficiaries

The Moody Foundation's largest beneficiaries over the last six years have been Moody Gardens and the Transitional Learning Community, which received a combined \$233,049,102.

The top 10 also included the University of Texas Medical Branch at Galveston, Lone Star Performing Arts, Galveston College, the Moody Scholarship Program, Texas A&M University at Galveston, Harbourview Care Center, the Galveston Historical Foundation and the Lone Star Historical Drama Association.

"Whatever sparks the interest of one of the trustees is what gets funded," says Moody lawyer Irwin M. "Buddy" Herz.

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<b>Moody Gardens</b>	<b>\$166,862,846</b>
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<b>TLC</b>	<b>\$66,186,256</b>
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<b>UTMB</b>	<b>\$9,958,816</b>
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<b>Lone Star Performing Arts</b>	<b>\$2,775,000</b>
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<b>Galveston College</b>	<b>\$2,179,414</b>
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<b>Moody Scholarship Program</b>	<b>\$1,900,000</b>
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<b>TAMUG</b>	<b>\$1,750,000</b>
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<b>Harbourview Care Center</b>	<b>\$1,275,276</b>
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<b>Galveston Historical Foundation</b>	<b>\$1,133,309</b>
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<b>Lone Star Historical Drama Association</b>	<b>\$655,000</b>
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MAY 15, 1997

# Moodys back off on grants to Galveston

## Isle Project Graduation among the first affected

By STEVE MAYO  
The Daily News

**GALVESTON** — A park board trustee wonders if the Moody Foundation is freezing grants — including \$5,000 for Ball High's Project Graduation — to force the city board to make concessions on a contract.

"If it's true that they are withholding grants to try to blackmail or threaten the citizens of Galveston, then it's a shame," said park board Trustee Steve Greenberg.

Officials with the Moody Foundation, which gives up to \$30 million in grants a year to island charities, said they were not threatening anyone.

However, foundation attorney Irwin "Buddy" Herz said Wednesday all grant allocations have been put on hold until the foundation can determine the financial impact of a dispute over Moody Gardens.

The Moody Foundation is currently negotiating a lawsuit between it and Galveston hotelier Tilman Fertitta, who claims the gardens will have an unfair competitive advantage when it opens a hotel on tax-exempt property.

The foundation also is asking the park board to modify its contract so that the board can't return ownership of Moody Gardens to the foundation without cause.

The issue over the grants arose after the Ball High School Project Graduation didn't get \$5,000 from the Moody Foundation, which has assets valued at more than \$330 million according to a 1995 audit.

Project Graduation, an alcohol- and drug-free party after graduation, usu-

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ally gets the grant each year.

"I doubt when Mr. (W.L.) Moody (Jr.) set up the foundation he that was trying to see how many people he could hurt," Greenberg said.

When asked if he would like to comment about freezing the grants, Moody Foundation Chairman Robert Moody said, "Not really."

However, Herz said: "I know this was not intended to be a threat. Grants are being postponed until the foundation's controller and lawyers can advise them of their ultimate expenses and liabilities in regard to the park board and the city of Galveston."

But try telling that to Meyer Reiswerg, who called about 20 businesses around town

**"Until a resolution of the lawsuit and all matters which must be decided by either the park board or City Council," Moody Foundation attorney Irwin "Buddy" Herz said in a written statement, "the Moody Foundation is unable to assess the impact of such actions ... on the future financial needs of Moody Gardens and the Foundation's \$250 million investment therein."**

### **GALVESTON**

Officials with the Moody Foundation, which gives up to \$30 million in grants a year to island charities, said they were not threatening anyone.

● **Those interested in donating to or volunteering for Ball High's Project Graduation can contact Alice Martinez at 766-5741.**



Herz

this week to help raise \$5,000 to replace the money that he said the Moody Foundation had promised to Project Graduation.

"This is all for the kids," said Reiswerg, a Strand businessman. "Every dime of the money goes toward the party for the kids."

Herz said he's not sure what the foundation trustees will do if things don't go well in regard to the park board and the city.

In a prepared statement, Herz said, "Any statement made that the Moody Foundation has backed out on a commitment to Project Graduation is untrue."

Herz indicated the foundation had not committed money to Project Graduation this year. He explained that the \$5,000 grant that Project Graduation often receives is not a renewable one.

Each year, project officials have to apply for the grant, Herz said.

Because of current litigation between the foundation, the park board and the city of Galveston, "trustees of the Moody Foundation decided that in furtherance of their fiduciary duties, to impose a temporary cessation and deferral of most grants," Herz said in the statement.

Herz also explained that the board of trustees for the foundation made the decision to withhold grants during a trustee meeting in February.

Both the Ball High graduation and the party will be held at Moody Gardens.

Moody, whose personal worth is estimated at well over \$500 million, is one of the big three island developers who've been involved in a months-long dispute over fair competition, restoration of the old civic center and a study on whether a new center is needed.

The other two are Fertitta, owner of Sar Luis Hotel and other properties, and George Mitchell, developer of The Strand and owner of the Galvez Hotel.

# Moody Gardens budget hasn't faced scrutiny

## \$400,000 monthly losses never discussed by board

By MICHAEL A. SMITH  
The Daily News

### **GALVESTON**

**GALVESTON** — Aside from the rare bugs and exotic Amazon flora housed at the Rain Forest Pyramid, the strangest thing about Moody Gardens may be this fact:

The city of Galveston, through the Park Board of Trustees, owns the complex, which is projected to cost \$270 million by the time current construction is complete.

Yet apparently few park board members know the most fundamental details of its finances or keep close track of its operations and development.

While Moody Gardens supplies detailed monthly and annual financial statements to the board, those have never been a topic of discussion among board members, says Park Board Trustee Steve Greenberg.

"We get detailed budgets, good budgets, and we talk in detail about umbrella concessions, Jet Skis and ticket sales during Operation Committee meetings, but we never discuss the most expensive and extensive operation we own," he says.

Eugene Lucas, who is chairman of the park board's Operations Committee and who is also president of Gal-Tex Hotel Corp., which manages Moody Gardens, confirmed that the Gardens' budgets have never been a topic of discussion during committee meetings.

"We discuss park board operations," Lucas said, adding that the financial information is always available for trustees inclined to review it.

If trustees did look into Gardens budgets, they'd find an operation that logs operating losses of about \$400,000 a month and is on track to end the 1997 fiscal year with a \$4 million loss.

But while a \$4 million loss would be devastating for any other operation, \$4 million is just a number for Moody Gardens be-

While Moody Gardens supplies detailed monthly and annual financial statements to the board, those have never been a topic of discussion among board members, says Park Board Trustee Steve Greenberg.



Greenberg

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## Board

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cause the \$700 million Moody Foundation subsidizes both its operations and capital improvements.

So why should the park board or anybody else care what the gardens' profit and loss statements look like as long as the big checks keep coming from the Moody Foundation?

"I guess it just depends on how much you want to micro-manage," said one source who declined to be named. "Not everybody on the board has as much time to do that like Greenberg does."

But Greenberg said he thinks paying attention to the huge and growing operation on Offatts Bayou is more a matter of guarding the public's future interests than nit-picking the pre-

sent.

"What happens in 20 or 50 years?" he asked. "What happens if, God forbid, something happened to Bobby Moody, and his kids decide they don't care as much about Moody Gardens as he does?"

While it's stretching things to say, as some commonly do, that the Park board owns the gardens, it's less a stretch to say the city does, through an arrangement as intricate as a butterfly's wing.

Moody Gardens Attorney Irwin M. "Buddy" Herz explained the lineage this way:

Once there was a piece of property near the airport that "had nothing on it and was ugly as hell," which the city leased to the Moody Foundation for 50 years.

The foundation built Hope

Arena and Palm Beach on it and then decided to build a "first-class" attraction to bring tourists to the island.

In the course of that project, the foundation assigned the lease, along with the bricks, mortar and butterflies to come, to the park board.

Either party currently can terminate the lease for "any reason whatsoever" with 20 days written notice.

While perhaps farfetched, the scenario nevertheless recently inspired enough concern among Moody Gardens lawyers and executives to send them seeking an amendment to prevent the facility from being given back without legal cause.

If the agreement between Moody Gardens and the Park board ended, the grant money from Moody Foundation would

stop flowing, and the project would have to live on its own income.

And since the city owns the land the whole thing sits on, it could wind up owning the whole thing in about 36 years.

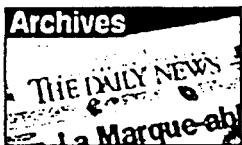
"That why we shouldn't just ignore the place," Greenberg said. "Thirty years is not that long in the life of a city."

While Herz said park board trustees are welcome to scrutinize any Moody Gardens information they'd like, he thinks Greenberg's concerns are unfounded.

"We have always had a good relationship with the park board and plan to continue that," he said, adding that there is little likelihood that the lease between the foundation and city will be allowed to end.

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## Parks trustees allege \$1 million grant vote was mishandled

By Carol Christian

The Daily News

Published November 01, 1996 12:17 AM CST

GALVESTON -- Two trustees on the city Parks Board of Trustees say a vote seeking a \$1 million federal grant to help finance a parking garage for Moody Gardens took them by surprise.

Supporters of the application defended it, saying the money will help improve an important Galveston Island attraction.

"I had no idea what it was about until we got there," said Trustee Steve Greenberg about the vote at Wednesday's meeting of the board. "And if I didn't know, the public certainly wouldn't know."

Greenberg, the lone dissenter in the 5-1 vote, and Trustee Don Mafrige, who abstained, said Thursday they had not known until the meeting that the \$1 million issue would come up. Mafrige also is a Galveston City Council member.

Greenberg said the way the item was posted on the agenda -- "consider economic development grant" -- was possibly illegal because it did not specify what action the board was about to take or who it would benefit.

Wendy Dehnert, the park board's executive director, said all park board agendas are posted within the time frame required by law.

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owned by the Moody Foundation. Robert "Bobby" Moody is American National's board chairman.

Dehnert also is a member of Moody Gardens board of directors.

Buddy Herz, attorney for the Moody Foundation, denied that the Moody family could profit from improvements to Moody Gardens and revenue to Gal-Tex.

"The Moody family doesn't profit one dime from Gal-Tex," Herz said Thursday. "It's owned by the Libby Shearn Moody Trust, a charitable remainder trust."

*But the trust's primary beneficiary is Robert Moody!*

Further, he said that Gal-Tex barely breaks even on the contract to operate Moody Gardens.

Although Robert L. "Bobby" Moody is an officer of Gal-Tex and receives a salary from the company, Herz said "it's a joke" to think that Moody profits from that corporation's revenue.

Any money Moody would get from Gal-Tex, Herz said, would be a pittance.

"It's less than 1/1,000th of 1 percent of Bobby Moody's income."

Lucas said the garage was needed because the current construction at Moody Gardens -- which over the next three years will include a museum, theater, hotel and aquarium -- will take some of the existing parking.

"I think it's an opportunity for us," Lucas said of the grant application. "If there are federal funds available, and if we can get them, we'll have more to spend elsewhere. This is a great project for Galveston Island."

Robertson added that current parking at the Moody Gardens Convention Center



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## Spreading the wealth

By Michael Smith  
The Daily News

Published December 30, 1997 12:00 AM CST

GALVESTON -- The \$700-million private charity, founded in 1942 by W.L. Moody Jr., is now among the country's top-100 private charities in both assets and annual grants. It is also the third largest in the state, behind only the Houston Endowment and Brown Foundation.

The Moody Foundation's three-member board of trustees consists of Robert L. "Bobby" Moody, his mother, Frances Moody Newman, and his son, Ross R. Moody.

Moody's daughter, Frances Anne Moody, will take over as the foundation's chief executive on Jan. 1.

Since 1991, grants from the foundation have funded groups as disparate as the Congregation of Divine Providence in Helotes and the Montrose AIDS Clinic in Houston.

"Whatever sparks the interest of one of the trustees is what gets funded," said foundation spokesman Irwin M. "Buddy" Herz.

Unlike many private foundations, it's impossible to find a coherent political or cultural agenda in the allocations of Moody Foundation grants, Herz said.

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Online Guide to  
Galveston Island

"The trustees are in their 90s, 60s and 30s, so you have a wide range of interests," Herz said.

Grants approved by the foundation's three trustees over the past six years cover the evangelical to the ecological. But as diverse as the list of recent beneficiaries is, it's mundane compared to the slate of programs funded in the early and mid-1980s when Shearn Moody was still on the foundation's board.

Shearn Moody, who fought many rousing, but ultimately losing, battles with the Internal Revenue Service, sponsored such projects as a book on organized crime written by the daughter of infamous Texan Billie Sol Estes.

Over the past six years, the main beneficiaries of Moody Foundation support have been Moody Gardens Inc., The Transitional Learning Community, University of Texas Medical Branch and Texas A&M University at Galveston.

But there are few organizations on the island that have not seen at least one injection of foundation cash.

From 1991 to 1996, the foundation awarded \$264 million in grants to Galveston organizations. And while \$233 million, more than 88 percent, went to Moody Gardens and the Transitional Learning Center, a healthy \$23 million went to other island organizations.

While some would argue that the bulk of the money went to groups at least influenced, if not controlled, by Robert Moody, the money stayed on the island.

The Galveston focus has not always been there, and it won't necessarily continue, foundation officials say.

"For 40 years after it was established, the

foundation gave money to many outside entities all over Texas with only some of the money being retained locally," said Doug McLeod, the foundation's director of development.

Focusing grants on Galveston was a dramatic change in the foundation's philosophy and one for which Robert Moody was largely responsible, McLeod said.

Some close to the Moody family warn that younger generations in line to take over the charity don't share Robert Moody's keen interest in the island.

And Robert Moody himself warns that the future holds no guarantees.

"When I'm dead and gone, I have no idea what the other trustees will want to do," he said. "I hope that they would continue to" fund Moody Gardens.

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## **EXHIBIT "D"**

**Articles regarding the role of the City and the Park Board in the control and operation of Moody Gardens and the Moody Hotel.**

# City gets another offer of a gift it can't refuse

By JACK STENGLER  
The Daily News

**GALVESTON** — Once again the city has been made an offer it cannot refuse.

Through the Park Board of Trustees, the Moody Foundation has offered the city ownership of Palm Beach at Moody Gardens and of The Colonel, a paddlewheel vessel which for tax purposes has been operated as a museum.

The Colonel Museum Inc. operates the vessel, but the IRS has said that in order to maintain this status, more history must be presented in the operations and the moonlight cruise must be discontinued.

Reports from the operator indicate the moonlight cruise was going to be discontinued anyway, because it brought in only a small part of the revenue, and there are plans to share exhibits with the neighboring Elissa museum.

The park board has approved in concept taking over the two facilities, but final approval must come from the city, and an operating agreement must be first worked out with each facility.

The Colonel Museum Inc. is expected to continue operating the vessel, and Palm Beach at Moody Gardens Inc. would operate Palm Beach, should the city decide to accept them.

Palm Beach faces the possibility that its improvements and leasehold will be assessed for taxation by the Galveston Central Appraisal District.

Chief Appraiser Guy Emanis has said if the operation remains the same on Jan. 1, the CAD is prepared to set tax values on the leasehold and improvements.

However, if the facility goes under city ownership, or it is proved the Palm Beach facility should be tax exempt for some other reason, then it would not be placed on the tax rolls. The easiest escape is public ownership.

The Park Board of Trustees, in discussing these two offers, has come up with a new wrinkle to be included in operating agreements, not only for the two new Moody Foundation offers, but also for the operation of Hope Arena, which is operated by Hope Charities Inc.,



City  
beat

but was given to the city.

The trustees think, correctly, that now is the time for these operating agreements to include some type of payment to the park board for the time its employees spend administering these gifts.

With the proliferation of these offers, handling the paperwork could require a significant expenditure by the park board.

It would be hard for the city to refuse to take these gifts, because of the sums of money the foundation has put into a host of city projects, and the favorite cry when a pet activity runs into funding difficulties is, "Let's send an application to the Moody Foundation."

However, the city, through acceptance of these gifts, also is doing a very important service for the foundation, because municipal ownership provides those who run the various facilities a wide latitude of operations not otherwise available.

Accordingly, the city should be compensated for providing these favors.

The bottom line here is that the City of Galveston is helping the Moody Foundation (Palm Beach) to better compete with the Racquet Club by letting the Moody Foundation (Palm Beach) have a broader scope of operations due to the City accepting ownership of Palm Beach!

# Foundation asks Park Board to operate Colonel, Palm Beach

By JACK STENGLER  
The Daily News

GALVESTON — The Moody Foundation has requested the Galveston Park Board of Trustees approve an expansion to Hope Arena, and assume operation of The Colonel paddlewheel vessel and Palm Beach.

Doug McLeod of the foundation and Donald Springer, a principal in the Houston architectural firm of Morris Architects, made these proposals at Wednesday's meeting of the Park Board's budget and audit committee and at a Park Board workshop.

Under rules of the Internal Revenue Service and an opinion by the Texas Attorney General the foundation could operate The Colonel only as a museum and cannot retain the commercial operation of Palm Beach.

"Neither of these facilities are on the tax rolls, so there would nothing removed from city taxable properties," McLeod said.

"Under our (Moody Foundation) non-profit charter we cannot continue to operate these two facilities. These are classed as commercial operations," he said.

McLeod said the foundation proposes enlarging Hope Arena, now operated by the Park Board, with a \$10 million convention and

"Under our non-profit charter we cannot continue to operate these two facilities. These are classed as commercial operations."

Doug McLeod

conference center.

The expansion would be two stories with a total of 40,000 square feet.

Springer said the second floor would contain a 9,500 square foot conference and ballroom facility, which can be divided into nine separate rooms.

It also would have sky boxes with a 106-seat capacity, overlooking the arena area of the facility, and a balcony overlooking Moody Gardens and Palm Beach.

The first floor would include a 6,000 square foot banquet kitchen, and 6,000 square feet for exhibits.

The upstairs facilities would accommodate 1,050 people for a reception and 750 people for a sit-down dinner.

These proposals will be recom-

mended for acceptance by the Park Board, which is expected to take action at its Dec. 21 meeting.

A formal announcement of the proposed Hope Arena expansion, with architects' drawings, will be made in the near future.

In other business, the Marine Corps League asked the parks board to select a site at Seawolf Park for erection of a Vietnam veteran's monument.

The estimated cost of the memorial is \$100,000 and it is to contain the names of all county residents who were killed during the war.

McLeod said the memorial would not cost the Park Board any money, with the Moody Foundation to be asked to provide \$50,000 and the memorial committee to raise the remainder.

Don Schattel, executive director to the park board, reported the Galveston rail trolley system made a net profit of \$3,524.40 during the two-day Dickens' on The Strand earlier this month.

He said the revenues for Dec. 3 were \$3,448.50 and on Dec. 4 were \$1,611.50, or a total of \$5,060. Expenses were \$1,517.60.

Houston Post 12-16-88

# Moody to relinquish paddle-wheeler, beach

Action required to retain non-profit status

By Ken Lanterman

OF THE HOUSTON POST STAFF

GALVESTON — In an effort to enhance marketability and to prevent jeopardizing its non-profit status, the Moody Foundation has requested the Galveston Park Board of Trustees to assume ownership of the Colonel paddle-wheeler and Palm Beach at Moody Gardens.

Foundation officials learned this summer following an audit by the Internal Revenue Service that some of the money-making events conducted by the paddle-wheeler — its moonlight cruises, for example — put the foundation at risk of losing its non-profit status.

They also realized that the foundation's non-profit status prevented Palm Beach, the popular white sand beach on Offats Bayou, from participating in several co-promotional marketing ventures that would have resulted in the foundation receiving grants from private companies — most notably a \$500,000 grant from the Coca-Cola Co.

"We figured that with the entities in the park board's hands they would not be as restricted as we are in doing some of the things we'd like to do," said Doug McLeod, the foundation's director of development. "We feel it (the board) wouldn't be as inhibited as we are in generating the money the two

entities should be making."

The board approved assuming ownership of the beach and paddle-wheeler pending contract negotiations.

McLeod said that under the terms of the contract, the foundation would sign a management agreement with the board allowing it to continue operating the two ventures with the same personnel, and stipulations to reinvest profits in the paddle-wheeler and beach.

"It would be a similar situation we have with them with regard to Hope Arena," he said.

"Since we turned it over to them, the city has been able to use the arena for conventions, which we were not permitted to do."

McLeod said the IRS gave the foundation a clean bill of health in its audit but frowned on the moonlight cruises.

"They said they were too commercial," McLeod said.

Under the foundation's charter, the paddle-wheeler must promote the history of the area on all its cruises for the foundation to maintain its non-profit status.

The moonlight dinner cruises, which McLeod said generate the bulk of operational revenue for the ship, are purely commercial. The history lessons are set aside.

"We asked them (IRS auditors) what we should do and they suggested what we are doing now," McLeod said.

# The Galveston Daily News

Thursday morning, December 22, 1988

## Park Board continuing process to give city Colonel, Palm Beach

By JACK STENGLER  
*The Daily News*

**GALVESTON** — The Galveston Park Board of Trustees on Wednesday approved, in concept, entering into agreements which would give the city ownership of The Colonel paddlewheel vessel and Palm Beach at Moody Gardens.

Under the proposal, the city

would own the facilities but they would be operated, under agreements, by the same entities which now operate them.

The Colonel would be operated by The Colonel Museum Inc., and Palm Beach by Palm Beach at Moody Gardens Inc.

The agreements have yet to be worked out between the Park Board and city, and the two operating entities and the Moody

Foundation.

The Park Board also approved a request from Hope Charities Inc. to expand Hope Arena with addition of a \$10 million, two story, 40,000 square foot convention center.

However, the Park Board wants the agreements to permit the expansion of Hope Arena, and

See PARK BOARD, 13-A

### Park Board

Continued from 1-A

assume ownership of the other Moody facilities to include a provision whereby its administrative costs in connection with the operation of these facilities will be reimbursed.

All the agreements must ultimately be approved by the Galveston City Council and the trustees of the Moody Foundation.

Doug McLeod, representing the foundation, said he sees no problem with the reimbursement of reasonable administrative expenses to the board.

Park Board Attorney Dan Vaughn said it has been agreed that the foundation will pay all attorneys' fees connected with these

transactions.

Don Schattel, executive director to the Park Board, McLeod and Vaughn are to work out how the administrative costs are to be calculated.

The current agreement for the operation of Hope Arena expires in February 1990, and Vaughn suggested negotiations begin on an extension.

McLeod said next summer will be the proper time to begin these talks.

McLeod said the proposal concerning The Colonel and Palm Beach was made because activities are limited under the current ownership.

The Colonel operates as a

museum and has been told that to continue in this status the moonlight cruise would have to be halted and more emphasis placed on historical presentations.

McLeod said under current operations the promotion of Palm Beach is limited. Under city ownership, a wider range of operation is available, he said.



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### Moody Gardens: City has a role in dispute

Published January 04, 1998 12:00 AM CST

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For much of 1997, Galveston residents stayed tuned to a running dispute involving some of its wealthiest citizens. The dispute is over the development of the Hotel at Moody Gardens and over what constitutes fair competition in the tourism business.

During the debate, several good questions were raised. And, this past week, The Daily News published a four-part report, trying to answer questions that have a bearing on who's right and who's wrong in this controversy.

What should the average citizen make of all this?

First, be thankful that the Moody Foundation has pumped more than \$100 million into Moody Gardens and is pumping in a whole lot more.

Galveston's future isn't going to amount to much without people who are willing to invest in it. The Moody Foundation has done that. At the same time, it's vital that Galveston create and nurture a climate that attracts investment, not just from its traditional supporters, but from many others.

Second, hotelier Tilman Fertitta and other businessmen who have complained that the new hotel will have an unfair competitive advantage have a point.

The evidence is overwhelming that the number of hotel visitors on the island has been flat for a long time. People in the hotel business haven't been turning tourists away. And the new hotel at Moody Gardens, which is going to be the island's largest, is going to compete against other properties for tourism business.

What's unfair about that is that the Moody hotel will be operated by interests that are not only exempt from most taxes but are subsidized by others.

Third, the best way to resolve this problem is to have written rules for Moody Gardens. The Hotel at Moody Gardens will enjoy some extraordinary advantages, and it should be willing to live with some reasonable regulations. The rules should protect private business and should

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# Give-back clause guarantees fairness

**The Issue:**

The Moody Foundation withholds donations to projects in Galveston until negotiations are completed.

**We suggest:**

It's beneficial that the parks board has some power over the foundation.

**F**ive hundred million dollars can be a powerful resource for community good — or it can be a powerful weapon.

The Moody Foundation of Galveston is proving it knows how to use money both ways.

Through its development of Moody Gardens and dozens of other important projects in Galveston, the Foundation has done much that is good.

This week, when questions arose about whether Ball High School's Project Graduation would receive \$5,000, the foundation announced it would make no more grants in Galveston until it gets its way on several key issues.

**Moody Foundation trustees:**

- Frances Moody Newman
- Robert L. Moody Sr.
- Ross R. Moody

Of course, the official release was more subtle than that, but the implication was clear: Galveston, play by our rules (and we reserve the

right to make the rules up as we go along), or suffer enormous financial consequences.

The foundation is a defendant in a widely publicized lawsuit filed by Galveston hotelier Tilman Fertitta. Fertitta alleges that Moody Gardens, because of tax exemptions and tax-revenue support, has an unfair competitive advantage against private enterprise — a charge most would agree has some merit.

The foundation also has asked the Galveston Parks Board of Trustees to eliminate an important clause in its contract.

The parks board technically owns Moody Gardens, an arrangement that is crucial to the facility's tax exempt status. However, the board has the power to give the facility back to the Moody Foundation with no cause and with only 20 days notice.

That provision is critical to providing the city and the parks board some degree of control over the manner in which Moody Gardens operates.

The Moody Foundation is saying, in effect: "Trust us. With no controlling power whatsoever, you can trust us to behave in an ethical, non-bullying and fair way."

Ironically, that appeal — "Trust us" — is in sharp contrast to the foundation's actions, which send a different message.

"Trust us," that other message goes, "and if you don't, you won't get another penny of foundation money."

In a carefully worded release from the office of Moody attorney Irwin M. "Buddy" Herz, the foundation said: "Until a resolution of the lawsuit and all matters which must be decided by either the park board or City Council, the Moody Foundation is unable to assess the impact of such actions, or lack thereof, on the future financial needs of Moody Gardens and the foundation's \$250,000,000 investment therein.

"Therefore, the trustees of the Moody Foundation decided, in furtherance of their fiduciary duties, to impose a temporary cessation and deferral of most grants including but not limited to grants within the city of Galveston (except Moody Gardens)."

That's a dose of lawyerly doubletalk, but it doesn't take a lawyer to understand the threat.

It's hard to imagine how the foundation could have come up with a worse public relations ploy.

Interestingly, because of these and other machinations, the foundation has converted what looked like an uncontested slam-dunk into a very iffy vote.

Parks board members are like the rest of us. Nobody likes being bullied, especially when the bully also happens to be the rich kid on the block.

The give-back clause is the only wedge the city has to ensure decent and fair competitive behavior in the way Moody Gardens operates now and for decades in the future.

As supporters of charitable organizations found out this week, it's a wedge Galveston may someday need.

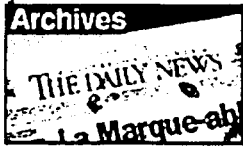
● Dolph Tillotson is editor and publisher of The Dally News. His email address is [dolph.tillotson@galvnews.com](mailto:dolph.tillotson@galvnews.com).

Foundations make gifts, not investments?



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## Provision should be kept to protect city

Published April 16, 1997 9:35 PM CDT

The Galveston Parks Board of Trustees ought not to surrender the give-back provision in its ownership agreement with the Moody Foundation on the Moody Gardens complex.

Now, this is so complicated that many might never try to decipher it. However, we think the issue is important in Galveston.

Let us begin simply by saying that the provision is an important protection for the parks board and the city.

The board should listen to the foundation's points and try to work out some agreement that satisfies the foundation's needs but retains this vitally important legal and financial protection.

A bit of background:

Moody Gardens was given to the Galveston Parks Board of Trustees to allow it to operate tax-free.

As part of that "gift," the foundation agreed to two very important provisions. First, the foundation agreed to fund operating losses at the complex, and those losses have been sizable.

The foundation also agreed that the parks board could simply give the complex back to the foundation with 20 days notice. That was important to protect the parks board and the city in the event that the foundation should choose to abandon the project. Incidentally, the foundation also may cancel its agreement with 20 days' notice. *Conditional gift not a real gift*

Now, the foundation is asking the parks board to give up the give-back provision. Board members will discuss the issue on April 29.

Galveston attorney Irwin M. "Buddy" Herz, spokesman for the foundation, said the parks board no longer needs the give-back provision. Now, Herz argues, the provision leaves the foundation vulnerable to the whims of future boards.

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Maybe. However, the parks board's role in all this is to protect the interests of the public, not just the foundation's.

Without the provision, foundation spokesmen like Herz would have the whip hand in all negotiations with the board. The foundation could walk away from the complex, leaving the parks board and thus the city of Galveston stuck with an enormous, unmanageable and money-losing enterprise.

The board's choice in that event would be either to shut down Moody Gardens or find some way to fund its losses. Actually, that may be no choice at all. If Moody Gardens is the city's only convention center, Galveston may be in the position of being unable to close it down, even if the city wanted to do that.

That's not a good deal for the people, and it reminds us a bit too much of the Moody Civic Center. That edifice is another money-losing gift to the city. Financially, all of us would be better off without it. However, because of community politics, the city can't just close the old Seawall Boulevard facility.

Furthermore, without the give-back provision, the parks board has no bargaining power. Such power may be necessary to mediate between Moody Gardens and other, private hotel and restaurant interests such as Tilman Fertitta. Fertitta filed suit recently against the Foundation, alleging it receives unfair city tax support.

Ironically, Herz and others associated with Moody Gardens have themselves reinforced the need for the give-back provision.

They have done that by threats to abandon the complex whenever challenged, as in the Fertitta suit.

Let us make a few things clear. First, Moody Gardens is a wonderful asset for Galveston. With its beaches, the rain-forest pyramid, convention center, the coming aquarium and hotel, it adds much to the community.

Second, Moody Gardens has the right to expect a secure future and a predictable relationship with the parks board and the city.

The parks board might be able to resolve the foundation's concerns simply by extending the time period in the give-back provision. Now, the board could give the property back to the foundation in 20 days. Make that three months, or even six months.

However, the board should never simply give up the provision because it protects the interest of ordinary citizens.

This editorial was written by Dolph Tillotson, editor and publisher of The Daily News.

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Clause causes concern from island officials

By Michael Smith  
The Daily News

Published April 15, 1997 12:00 AM CDT

GALVESTON - A move afoot to delete a single clause in the contract between the Moody Foundation and the Park Board of Trustees is causing:

- Concern among two local officials;
- Comments from an attorney representing the foundation that the officials are playing politics with the issue.
- Warnings from an attorney representing hotel owner Tilman Fertitta that the change is designed to remove any leverage other hoteliers have over how Moody Gardens is operated.

The contract in question codifies an arrangement by which the foundation gave Moody Gardens to the city's Park Board of Trustees to avoid paying taxes on the property, and by which the park board in turn leased the operation back to the foundation.

At issue is a single clause that allows the board to return Moody Gardens to the foundation for any reason with 30 days notice.

Attorneys at the firm Greer, Herz and Adams, which represents the foundation, want to discuss deleting the clause during the board's April 29 meeting.

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Both trustee Steve Greenberg and City Councilman Don Mafrige, who serves on the park board, say that has them concerned.

Greenberg said he's puzzled about why the idea has arisen now - when the board, the city and Moody Gardens are being sued by Fertitta.

Fertitta's suit is in large part over the city's relationship with Moody Gardens, which he says gives the Gardens an unfair advantage over other players in the island's tourism industry.

He, Robert "Bobby" Moody and George Mitchell, who also owns hotels on the island, have been trying to negotiate a settlement ending the suit for about six months.

"I think it would be irresponsible for the park board to remove this clause with no good reason and without negotiating something for the city in return," Greenberg said.

"If Moody, Mitchell and Fertitta can resolve the lawsuit, and there's a good reason to delete the clause then maybe it would be OK. Otherwise, it needs to stay in."

Mafrige said he's only "mildly concerned" about the idea and for much different reasons.

"I'm concern that these same representatives of Mr. Moody's have failed to deliver on some commitments I believed they made regarding Moody Civic Center," Mafrige said.

Mafrige said he understood that Moody was going to put up money for the center's repair and operation if the city bought out a lease held on the center by Robert Greig.

"The city paid \$100,000 for that lease, but so far they have not put up any money," Mafrige said.

Attorney Irwin "Buddy" Herz said the clause was written into the contract at a time when no one knew how the arrangement would work, has become obsolete and puts the Moody Foundation in an unstable and risky position.

"There are a whole list of just-cause reasons in the contract that the board can use to end the agreement," Herz said.

"All we want to remove is the one that says they can do it for any reason with 30 days notice.

"It makes Moody Gardens susceptible to politics because the way it is now, four people on the park board can wake up one morning and say 'let's stick it to the Moodys' and vote to give it back for no good reason.

"Then we have all kind of tax problems."

"Stevie and Don want to keep the leverage on us so they can play politics with it," Herz said.

"They can beat up on the Moody Foundation all they want but I don't think they would do this to anyone from out of town who'd spent \$250 million and was ultimately going to provide 1,200 jobs."

Steven Scheinthal, vice president and general counsel of Fertitta Hospitality Corp. said the issue is indeed about leverage, but offered a different twist.

Scheinthal said changing the contract is an attempt by Moody's lawyers to shield the foundation from pressure applied by other island hotel owners, including Fertitta.

He said the Moody Foundation is using



tax-supported attractions such as the Rain Forest Pyramid and conference center to gain an unfair business advantage.

For instance, he said, Moody wants to offer free admission to attractions at the Gardens to guests at a 300-room hotel now under construction.

"If they would agree in writing not to do things like linking the attractions to their hotel, then we wouldn't oppose deleting the clause," he said.

"But they have refused to do that. So deleting it would remove the only leverage any of the other hotel owners on the island have to make them operate fairly."

Park Board Executive Director Wendy Dehnert confirmed that she's received a request to add the item onto the April 29 agenda, but said the decision to do so had not been made.

She said she would have to review the request with the Gene Lucas, chair of the board's operations committee.

Lucas is with Gal-Tex Hotel Corp., which operates several Moody-owned hotels across the county.

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# Isle's park board defers action on Moody Foundation contract

## GALVESTON

The move came after a long debate filled with allegations of conflicted interests and unfair business practices.

By MICHAEL A. SMITH  
The Daily News

**GALVESTON** — Park board trustees Tuesday deferred until June 3 action on a controversial plan to delete the "give-back" clause in its Moody Gardens contract with the Moody Foundation.

The move came after a long debate filled with metaphorical hammers and swords and literal allegations of conflicted interests and unfair business practices.

The clause in question allows the

board to return ownership of Moody Gardens to the Moody Foundation "for any reason whatsoever" with 20 days' notice.

Doug McLeod, chairman of Moody Gardens' board, says the clause is outdated and makes the charitable organization vulnerable to Galveston's unpredictable politics.

Others, however, say the clause is the only lever the city has to make the deep-pocketed foundation play fair with private-sector members of the tourism industry.

The proposed change affects only one of several termination clauses in a contract by which the Moody Foundation gave the gardens to the city, which then leased its management to Moody-owned Gal-Tex Hotel Corp. for \$300,000 a year.

The arrangement allows the foundation to forego paying taxes on the \$130 million property while the island's tourism industry benefits from the garden's facilities and attractions.

The foundation would suffer extreme tax woes and its planned \$140

million "Phase IV" expansion would be jeopardized if the park board gave the gardens back, McLeod said.

Tuesday's meeting was barely under way when board General Counsel Dan Vaughn recommended that Trustee Vic Ferritta declare a conflict of interest and abstain from the amendment vote.

Ferritta, who was sworn in as a trustee only minutes before, is the father of hotel owner Tilman Fer-

● See PARK BOARD/Page A12

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THE DAILY NEWS

WEDNESDAY, APRIL 30, 1997

## Park board

Continued from Page A1

titta, who is suing the city, the park board and Moody Foundation over a tax-subsidized hotel under construction at Moody Gardens.

Vaughn said it was Vic Ferritta's "personal decision" to vote or abstain after being informed of the potential conflict.

City Councilman Don Mafrique came to Ferritta's defense, saying he'd like a second opinion from another attorney.

Ferritta, who owns the Seawall Holiday Inn, ultimately voted for the deferral.

Tilman Ferritta, who asked the board to hold off on approving the amendment until after Robert L. "Bobby" Moody settles the lawsuit, said he thinks Vaughn has a conflict of interest in the matter.

Vaughn's firm, McLeod, Alexander, Powell & Apfel, does legal work for Moody companies.

"You need to hire an attorney who can explain the agreement to you," Ferritta said. "Because right now you don't have one without a conflict."

Ferritta said he, Moody and George Mitchell are close to an agreement to settle the suit, but warned that it would fall apart if the give-back clause were deleted from the contract.

"I'm against the amendment until the agreement is signed," Ferritta said. "If you vote on this today there will never be an agreement, because the hammer will be gone."

Steven Scheinthal, general counsel for Ferritta Hospitality Corp., read a letter from Mitchell stating his opposition to the amendment.

## Moody Foundation lawyer threatens suit over Ferritta vote

**GALVESTON** — Moody Foundation lawyer Irwin M. "Buddy" Herz says he'll file charges against park board Trustee Vic Ferritta over a vote Ferritta cast Tuesday if the board itself doesn't.

"We believe that the park board should have an immediate meeting to discuss Mr. Ferritta's vote and to decide whether or not to file charges," Herz said. "If they don't, we will."

Ferritta voted with a board majority Tuesday to defer action on a contract amendment requested by Herz for the Moody Foundation.

Board General Counsel Dan Vaughn recommended that Ferritta declare a conflict and abstain from the amendment vote.

Ferritta, who was sworn in as a trustee only minutes before, is the father of hotel owner Tilman Ferritta, who is suing the city, the park board and Moody Foundation over a tax-subsidized hotel under construction at Moody Gardens. He could not be reached for comment late Tuesday.

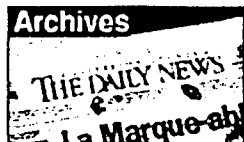
MICHAEL A. SMITH/The Daily News

Attorney Irwin M. "Buddy" Herz, who represents Robert Moody, said the idea that the city needs protection from Moody is "hogwash."

"Nobody needs to hold a sword over our heads," Herz said. "We live here, Bobby Moody lives here. Our principal place of business is here."

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## Dolph Tillotson

One year later,  
nothing changes

**By Dolph Tillotson**

The Daily News

Published September 14, 1997 12:00 AM CDT

After nearly one year of furious debate and legal wrangling over the Moody Gardens Convention Center, some people may not have noticed a central fact -- Nothing has changed.

Construction of the facility has not slowed, and community interests have no more role in setting policy at "the community's" convention center today than they did before Tilman Fertitta began the debate last fall.

There are many loose ends fraying in the wind. There is the appearance of debate and movement, but it's without substance. To recap a few events:

Park board Executive Director George Van Etten resigned recently under pressure.

Board members and attorney Dan Vaughn have so far refused to divulge the details publicly, but it's clear they had something embarrassing on Van Etten.

One issue on which Van Etten was working before his abrupt departure was the issue of convention booking policy at Moody Gardens Convention Center, now under construction.

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Discussion of that issue apparently is at stalemate. For now, the city has no way to oversee community-wide policies for convention bookings in a facility that, in theory at least, belongs to Galveston.

Galveston attorney Irwin M. "Buddy" Herz, who represents the Moody interests, said the issue of bookings at the convention center will not be on the table until Fertitta's federal court lawsuit goes away. Herz's comment links discussions with a public body (the park board) to resolution of a private lawsuit.

Fertitta, who owns hotels and restaurants here and many other places, says Moody Gardens has an unfair competitive advantage because: It operates tax free; its losses are paid by a tax-exempt foundation; it receives direct tax subsidies from the city of Galveston. He's not budging, and there's nothing the city can or should do to make him.

Texas Monthly did a piece of Fertitta's verbal and legal fisticuffs with the Moodys. One would have thought that Fertitta brought the Moody folks to their knees. Actually, no one's conceded anything to anyone.

After a year of fighting and statewide attention and coverage, the Moody interests are gliding towards completion of the convention center exactly as originally planned.

Van Etten's gone, and the outspoken Steve Greenberg's term on the park board will be up next summer. Fertitta's lawsuit is uncertain in outcome and may take years to resolve.

It's not likely those remaining on the park board or the City Council will have the courage even to fight for token oversight of the convention facility.

# City, Moody Foundation renew fight

## Property ownership, taxes at source of new dispute

By **MARTY SCHLADEN**  
The Daily News

**GALVESTON** — Just as city officials and representatives appeared to be reaching an agreement on who would pay what for a \$20-million expansion to the convention center at Moody Gardens, the foundation is proposing a condition that could further stall the deal.

Critics of the new proposal said it would remove any leverage the city had to get the mammoth, not-for-profit foundation to comply with its wishes. They fear Moody Gardens, which already is building a hotel on its premises, will use its tax-free status to gain a competitive advantage over its tax-paying counterparts.

After calling off negotiations with the city last week, Moody Foundation attorney Irwin "Buddy" Herz appeared before the park board Friday

morning to say the climate for making a deal had improved.

"It's good to be back among friends," Herz said.

While the argument between the foundation and the city last week hinged on what portion of the hotel tax would go to fund convention center activities (Herz wanted three-fourths of a cent, and the city wanted to give the

### **GALVESTON**

Under the present arrangement, the city owns the facility, while a company employed by the foundation runs it. This allows the facility to be exempted from property taxes.

### **what's your view?**

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## Moody

Continued from Page A1

foundation five-eighths), officials on both sides appeared to agree Friday there wasn't much difference in their positions.

"We're really down to two and a quarter, or two and an eighth, the way I see it," City Manager Steve LeBlanc said, referring to the total percentage of the hotel tax that would go to retire the city's debt on the convention center and what it would pay to operate it.

But among the contractual requests by the foundation is that the city be required to give a reason for giving Moody Gardens back to the Moody Foundation. Under the current arrangement, the city owns the facility, while a company employed by the foundation runs it. This allows the facility to be exempted from property taxes.

Under the current arrangement, if facilities sprung up at Moody Gardens that city officials thought posed an unfair threat to other city businesses, it could simply hand ownership back to the foundation, forcing it to pay taxes on a facility that is expected to be worth \$200 million after it is improved.

Under the Moody proposal, the city would have to battle the foundation in court.

"You never want 'with cause' to go into that document," Tilman Fertitta, a major Galves-

tion hotelier and restaurateur, said of the most recent proposal. "You don't have a hammer any more if you do."

A similar provision in the past stalled agreements between the city and the Moody Foundation.

Fertitta's father, park board member Vic Fertitta, asked whether Moody interests planned to expand the hotel at Moody Gardens along with the convention center. Park board member Gene Lucas, who runs the management company in charge of Moody Gardens, said the hotel would not be expanded for at least 20 years.

Tilman Fertitta said he wanted that promise in writing.

The park board will consider the Moody proposal during its regular meeting at 9:30 a.m. Tuesday.

A14

**THE DAILY NEWS**

SATURDAY, MARCH 28, 1998

# Convention deal sought by April's end

## Park board members oppose Moody Foundation demands

4/4/98  
By MARTY SCHLADEN  
The Daily News

### GALVESTON

GALVESTON — The Moody Foundation is pushing to complete by April 30 a deal with the city to build a \$20-million expansion to the convention center at Moody Gardens.

But some members of the park board of trustees say they're opposed to conditions the foundation is demanding from a future contract. They say the deal will sap the city's leverage to keep the tax-free foundation from building facilities with a competitive advantage over private businesses.

Others refused to state a position until they heard more about the matter, which has been intermittently discussed for several years.

"Most people are afraid of the Moodys," said Tom Cook, who owns a racquet club and fitness center next door to Moody Gardens.

The park board will have a special meeting at noon Monday to consider the matter.

"There's two sides in this story," board member Theresa Elliott said this week. "One is the money, and the other is the deal. We've got to do the money before we do the deal."

Negotiators are only about an eighth-cent of the city's hotel tax — about \$62,000 this year — away from reaching agreement on the amount the city will pay to build and operate the expanded center. But the two sides appear far apart on whether the city should retain its ability to return ownership of

Negotiators are only about an eighth-cent of the city's hotel tax — about \$62,000 this year — away from reaching agreement on the amount the city will pay to build and operate the expanded center.

## Moody

Continued from Page A1

Moody Gardens to the foundation, thus endangering the gardens' tax-exempt status.

The Moody interests want the issue taken to court before ownership can be handed over.

"I don't think it will be an issue," Irwin "Buddy" Herz, representative of Robert Moody, said after this week's park board meeting.

But he conceded that his group was unlikely to back away from its demand that the park board could dump ownership of the facility only after going to court and justifying its position.

"That's a very strong part of our position," he said.

To Herz and those he represents, it's an unacceptable risk to contemplate a city council having the power to capriciously hand back ownership of a \$300-million facility, jeopardizing its tax exemption. Herz referred to the prospect as a "bad dream."

But to board members Vic Fertitta and Steve Greenberg, the city needs to maintain its leverage over the Moody Foundation.

Board members Don Mafrige, John Knust and Ed Russell this week declined to take a position on the matter.

Fertitta and his son, Tilman, own Galveston hotels they fear will be put at a disadvantage if a tax-free hotel at Moody Gardens is expanded while taxpayers help pay to expand the convention center there.

The Fertittas, along with city councilman David Bowers, say they also want guarantees that facilities that compete with existing Galveston businesses won't start popping up at Moody Gardens.

Cook agrees.

The number of swim-only memberships at his club dropped from 275 to about 60 in a six-month period, said Cook, a former employee of Robert Moody.

That was the same period the Palm Beach swimming facility opened at Moody Gardens. Cook said Palm Beach memberships were \$25 per person per season, while he has to charge a \$199 initiation, plus \$29 a month, plus tax, if he wants to stay in business.

Now he's worried about a fitness center that's being built for hotel guests only. If it's ever opened to the general public, Cook fears his fitness customers will disappear the same way his swimming customers did.

"It's the park board that's doing all this because the park board owns it," he said.

Herz said the park board would have to pass on the contract for the civic center and the finance package, while city council would have to pass on the finance package as well.

While Bowers said he wanted tough non-compete conditions in the contract, councilmen Mafrige, Rudy Gonzales and Bill Fullen, as well as Mayor Henry Freudenburg, have taken no position.

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## There's nothing wrong with questions

Published October 10, 1997 12:00 AM CDT

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When Doug McLeod and Buddy Herz spoke to Galveston Rotarians about Moody Gardens on Wednesday, it was a bravura performance. That's especially so for Herz, an attorney who represents Moody family interests. His speech was emotional, even histrionic.

Herz promoted the Moody Gardens complex, defended his employers, struck back at Moody critics (among whom he apparently included this newspaper) and even sought to shame some in the audience and the community.

"It is deeply troubling when an editorial appears in the local newspaper advocating, 'Keep a hammer to the Moody Foundation,' and no one in the community speaks up," he said. "It was as if no one knew what the Moody Foundation was or had forgotten if the Moody Foundation had ever done any good. That hurt, and it still hurts us today."

Herz, if not his audience, seemed near tears as his words lingered dramatically in the pregnant silence.

"We thought we had a few friends in the community," he said, "we just didn't know how few."

Herz also said he was a "warrior," armed for battle when walking into the Galveston Park Board of Trustees "where I know there will be three votes against us come hell or high water."

It was deeply dramatic stuff, and it made for excellent theater. Still, Herz and perhaps some others should balance the histrionics with a few counter-observations.

Most in the community did not feel compelled to defend the Moody family or Moody interests because, to be honest, there has been little real attack upon them.

It is true that a business competitor, Tilman Fertitta, filed suit against the Moody Gardens project. However, most of the discussion of the project has

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Online Guide to  
Galveston Island

been couched in respect.

For our own part, while we disagreed with some aspects of Moody efforts to modify various contracts, we took pains often to point out that the Moody Gardens project holds many benefits for Galveston.

Herz, and perhaps some of the Moody family, should learn to distinguish between critics and those who just want to ask questions.

The fact that some members of the park board now are willing to ask questions is a good thing, not a bad thing. It is constructive, not mere "negativism," as Herz branded it.

He obviously misses the old days when he could walk into that board assured of a unanimous positive vote on almost any issue.

There is an unfortunate tendency among some close to the Moody interests to view any difference of opinion as an attack. For example, consider Herz's comment about our editorial on keeping a "hammer to the Moody Foundation."

First, "hammer" is the lawyer's word, not ours. We suggested, politely we thought, that the park board should not remove an important give-back clause from its contract with the Moody Foundation.

Our point was this: Without the clause the park board has little room to negotiate issues related to the management of Moody Gardens and its planned convention facility.

Because the community owns the facility, after all, we felt Galveston should retain some small degree of control over its property.

We believe the wisdom of keeping that clause was apparent later in Herz's speech.

He announced that after a year of talk, the Moody Gardens board voted to accept a seven-part agreement on bookings and other management issues at the new convention center now under construction at Moody Gardens.

The agreement, if and when it's finalized, provides a framework for fairness and will be an important step forward for the whole community.

Chances are good that agreement would not have materialized without the give-back clause in the contract and without the efforts of some in the community, including the newspaper, to ask questions.

We are proud of our role in that process, not embarrassed by it.

Let us add here a note that now is standard in these commentaries: Moody Gardens is a good thing for Galveston.



The Moody family deserves praise for its generosity in this and other projects. We do not intend to imply criticism of Bobby Moody, his ancestors, his heirs or assigns.

Still, we defend our right and the right of others to make suggestions in the community interest and to ask questions aggressively.

That's what a newspaper must do, and following that practice can help head off bankruptcy for a community.

It can help to redirect a badly misguided public housing authority, or it can provide a needed check against all kinds of abuses of power. They are all part of the same thing.

Sometimes it takes courage for a newspaper or others to ask tough questions of a family that ranks, deservedly, as one of Texas' oldest, wealthiest and most influential.

Respectfully, we offer this: We're going to keep right on doing our job as we see it.

No matter what.

This editorial was written by Dolph Tillotson, editor and publisher of The Daily News.

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## **EXHIBIT "E"**

**Letters to the editor expressing concerns about unfair competition, use of public funds for tax-exempt businesses, and the Foundation's abuse of its tax-exempt status.**

2nd draft

NEWSPAPER: GUEST COLUMN

**THE DAILY NEWS: HERALD OF TRUTH**

Like many others, we have read, with much concern, The Daily News' accounts of some of the controversies surrounding the planned developments at Moody Gardens. The Racquet Club is very concerned that because of the Foundation's their tax exempt status some developments at Moody Gardens may unfairly compete with The Racquet Club and force it out of business. The Foundation is aware of our concerns but thus far has been unwilling to commit to not putting us out of business.

A recent article in the Daily News quoted a Moody Foundation representative as saying that "half-truths and untruths" had crept into the news coverage regarding the convention center development at Moody Gardens. This is not true. To the contrary, no position taken by The Daily News has been unwarranted, unfounded in fact, or inappropriate. Those who oppose the printing of the truth may disagree or claim it is negative reporting. The truth can put one in a positive light or a negative light. The facts of one's actions control the light. The Foundation is 100% responsible for the press it receives. In past years many good things were written about the charity of the Foundation.

But somewhere along the way the Foundation lost sight of its charitable purpose and began to concentrate on operating commercial businesses that could compete with local taxpayers. The Foundation would have you believe that their operation of commercial businesses is only incidental to their charitable and educational purposes. The facts, however, are quite different. In 1996, as reported in The Daily News, 97% of all Moody Foundation grants went to businesses controlled by Foundation trustees and only 3% went to charities not controlled by Foundation trustees. In 1996 alone, it could be said that the Foundation's charitable purposes have become wholly incidental to their main focus of funding the operations of commercial businesses under their control.

At times, the Foundation actually behaves more like a taxpayer than a charity. The Foundation has often claimed that it must protect its investment at Moody Gardens, which implies a return on investment, a term which applies to taxpayers, not charities. A true charity makes gifts, not investments. A true charity has no business purpose and no investments to protect from competition. The Foundation's new direction has also resulted in its need to influence and control the decisions of local governing bodies. The results of their actions have placed them in the light they now find themselves. That light is viewed by them as negative press.

But this new direction is what has created the concern and worry of the public, particularly businesses that don't share in the benefits and advantages afforded a tax exempt foundation. It is this concern and worry that keeps the public from voicing its support for the Foundation. That lack of support may "hurt" those who represent the Foundation, but they have earned it. Just as quickly as support and praise have vanished, the Foundation can earn them back by simply returning to its charitable purposes and

removing itself from competition with our local taxpaying businesses. The Daily News has done an admirable job of reporting the facts and taking positions that are in the best interest of our entire community. Our governing bodies, who heretofore have been reluctant to voice opinions different from those of the Foundation, have responded by taking a close look at the issues and the concerns of our taxpayers who are hurt by the Foundation's tax free competition. So, the truth is that The Daily News has performed an invaluable service to our community by causing the important issues to be brought out for discussion and resolution in a manner which will be in the best interests of the entire community.

All citizens should be concerned about the abuse and financial harm suffered by tax paying businesses as a result of tax exempt foundations using their tax free wealth to compete unfairly. The only reason to grant tax exempt status to a foundation is to enable it to perform its charitable duties. There is no valid reason for a foundation to be free of tax if that foundation engages in commercial businesses and thereby uses its tax exemption to compete unfairly with our taxpayers. A foundation that operates commercial businesses should pay taxes on all of its income and assets just like all other business enterprises. This would create a level playing field for everyone.

Apparently, tax free foundations have found a large tax loophole in the Internal Revenue Code. This loophole, permits tax free foundations to go beyond their original charitable purposes and allows a foundation to fund operations of commercial businesses controlled by trustees of the foundation. This loophole must be closed.

A national movement exists to curb the abuse by private foundations and public charities of their tax exempt status and this national movement exists for good reason. The impact on taxpayers, their families, their businesses, and the tax revenue lost as a result, is enormous and simply unfair and wrong. All of you who are tired of carrying the burden of those who abuse you and the system, please copy this article and forward it to each senator and representative in Washington DC and Austin, Texas, asking them to stop this abuse and close this loophole.

When the voice of the people is heard, government will react. The voices which were silent in the praise of the Foundation need to make themselves heard in order to eliminate this terrible disparity in treatment and the discrimination it endorses by wrongly showing favoritism to non-taxpayers. The Daily News has been and must continue to be the herald for the voice of, and the ambassador for, the people, and not the tool of special interests.

*Tom Cook  
Galveston, Tx.*

## LETTER TO THE EDITOR

It was sad to read the commentary in The Daily News by a representative of the Moody Foundation. He said: "We thought we had a few friends in the community, we just didn't know how few." He thinks of himself as a "warrior" armed for battle when walking into a Park Board meeting "where I know there will be three votes against us come hell or high water." The problem may lie in one's definition of a friend. It is helpful to consider three words when considering this problem: friend, enemy, and rubber stamp. If one defines a friend as someone who, (a) never questions you, (b) never argues with you, (c) never tells you when you are wrong, (d) supports your position even when you are wrong, then one always has only a few friends. But that definition is more the definition of a rubber stamp than a friend. Also, that definition of friend requires one to consider most people to be an enemy, and that's not true. It can be very misleading to believe that a rubber stamp is your friend. A rubber stamp is most likely neither your friend nor your enemy. A true friend won't tell you what you want to hear; won't rubber stamp approval of your actions. A true friend will give you his honest opinion and will tell you what he believes is best for you, and a true friend appreciates that candor. Just because a person disagrees does not make him your enemy. If the representatives of the Foundation understood and appreciated that fact, their frustrations would be removed from their emotions and their minds cleared to make decisions freely and fairly.

## GALVESTON PARK BOARD MUST KEEP BARGAINING CHIP

The agreement between the Park Board and the Moody Foundation gives the Park Board the right, upon 30 days notice, to give Moody Gardens back to the Foundation. It is imperative that the Park Board retain this right. If the Park Board didn't have this right it would be weak and helpless with no bargaining advantage with the Foundation. The Park Board, by agreeing to own Moody Gardens has a fiduciary duty to exercise control over the businesses to be operated at Moody Gardens. This control is absolutely necessary to protect local taxpaying businesses. The Park Board must ensure that businesses developed and operated at Moody Gardens are in the best interests of Galveston and its citizens. The Park Board must have the power to dictate fair play and ensure a welcome, thriving business climate for the City's present and future taxpayers. Remember the old saying, "What's good for General Motors is good for the country". Well, that was only true if you were General Motors. The same is still true for our city and the Foundation. What's good for the Foundation is not necessarily good for our City.

If the Park Board abdicates its control by deleting the give-back clause, then the Park Board should give Moody Gardens back to the Foundation. Then the Foundation can operate whatever businesses it wants to and pay taxes like the rest of Galveston businesses. Why should the Foundation get to operate going businesses and be treated differently than other taxpayers? The Park Board should not take sides with a tax exempt foundation against our taxpayers who provide the funds to run our City. By agreeing to own Moody Gardens, the Park Board has created a hybrid business entity, a business that can operate without the expense of taxes and keep its operating profits without paying taxes. No normal business has that competitive advantage. Cloaked in Park Board ownership, Moody Gardens can openly compete with local taxpayers, make a profit, and pay no rent, no income taxes, no sales taxes on purchases, no school taxes, and no property taxes. Since the Park Board has created this rare entity which could potentially become a monster, the Park Board must control it. Otherwise, who will make the Foundation behave if it acts unreasonably or irrationally and gets out of control? As long as the Park Board owns Moody Gardens it must maintain the ultimate control, a normal incidence of ownership. The 30 day give-back clause is ultimate control.

Somewhere along the way the Foundation appears to have gotten confused over its role. Somehow it must have seemed to be a better idea to use Foundation money to operate businesses rather than to just engage in charitable giving. Maybe being charitable got boring, not enough sizzle. But the real problem is this: a charitable foundation cannot be both a charity and at the same time own and operate business entities unless they pay taxes like the rest of our heavily burdened businesses.

The Park Board has every right, and without any guilt, to return Moody Gardens to the Foundation if the Foundation refuses to be reasonable. The Park Board must determine what is reasonable. Moody Gardens must never dictate "reasonableness" to the Park Board.

Assume the Park Board, due to unreasonableness on the part of the Foundation, gifts Moody Gardens back to the Foundation? The Foundation does not suffer. If it works out best for the Foundation to operate the business and pay taxes like other

businesses, it can elect to do so. If the Foundation doesn't want to pay taxes it can sell Moody Gardens, say to Disney or someone else, who will put it on the tax rolls and operate it. The City would benefit and the Foundation would suffer no harm. The Foundation would continue being the charitable foundation it was intended to be in the first place. It's role of giving its money away is intact and unharmed. The money in the Foundation belongs to the people of Texas. It should make no difference to the Foundation whether it gives its money to UTMB, Moody Gardens, American Cancer Society, Boys and Girls Club, American Heart Association or hundreds of other truly deserving charitable causes. The fact that \$200 million went to Moody Gardens over some period of time during the Foundation's life has no more consequences than \$200 million going to cancer research over a period of time. It's like a single grain of sand on the beaches of Galveston when compared to the total gifts of several billion dollars over the infinite lifetime of the Moody Foundation during these 50 past years and hundreds of years in the future. The citizens of Galveston and the current trustees of the Foundation will surely die, but the foundation will live and make its required annual charitable gifts forever.

The Galveston Daily News reported that foundation representatives have raised the following arguments to justify to the Park Board that they delete the 30 day give-back provision in the contract:

1. The give-back clause was written into the contract at a time when no one knew how the arrangement would work out, and now the clause is obsolete.

**Response:** This is far from the truth and the clause will never be obsolete. The Park Board will never know the total scope of the construction projects at Moody Gardens. The foundation has placed no limits upon itself and would have the absolute right to build whatever it wants whenever it wants, regardless of the best interests of the City. Since the Park Board protects the interests of ordinary citizens, it must have the leverage to give Moody Gardens back to the foundation, should the foundation become unreasonable.

2. The 30 day clause puts the Foundation in an unstable and risky position.

**Response:** Not true! The Foundation can abandon Moody Gardens or take ownership away from the Park Board on a 30 day notice. There is no risk. To the contrary, the Foundation can walk away from the project at any time, just the same as had the Foundation given \$200 million to cancer research and then decided to stop in favor of funding a different charitable cause. The Foundation has threatened to abandon Moody Gardens many times when anyone challenges them. They even threaten to move American National Insurance to South Shore Harbor.

3. The 30 day clause makes Moody Gardens susceptible to politics because of any day four members of the Park Board can wake up and say, "let's stick it to the Moodys", and give Moody Gardens back for no good reason.

**Response:** The Park Board members are appointed by elected City Councilmen and it has always been a political body. The Park Board did not go to the Foundation and ask to be given Moody Gardens. To the contrary, the Foundation directly approached the Park Board and urged the Park Board to accept ownership of Moody Gardens because the Foundation needed a legal scheme to avoid income and other taxes. The I.R.S. fully intended that the Foundation pay income taxes if it persisted in operating businesses at Moody Gardens, including the Colonel Paddlewheeler. Such operations created unrelated

business income to the Foundation. The Foundation chose the political body, the Park Board, to enable it to carry out its scheme of tax avoidance.

4. If the Park Board gives Moody Gardens back to the Foundation, the foundation has all kinds of tax problems.

**Response:** What's so bad about taxes? Everyone who operates businesses must pay them. If the Foundation wants to operate businesses and generate unrelated business income then it should pay taxes like everyone else. After all, big tax problems are created by big income or lots of assets, a problem everyone would like to have. The Foundation is much luckier than the rest of the businesses in Galveston. The Foundation has the choice of whether it elects to operate businesses or not. If it elects not to operate businesses then the Foundation still has hundreds of millions of dollars tax free to live on and carry out its grant programs. Galveston businesses have no choice. They must operate and pay taxes, many times just to earn a meager living and survive. Many businesses have failed and declared bankruptcy. It is very important that Moody Gardens not add to Galveston's tax base problem by instituting unfair competition against existing taxpayers. This may cause many of these businesses to fail and be removed from the tax rolls.

5. The Park Board wouldn't do this to anyone from out-of-town.

**Response:** Yes they would. And, they would do it much faster and come down much harder. The out-of-towners have no representatives on the Park Board who have conflicts of interest as does the Foundation both now and in the past. No other city would allow a powerful tax exempt foundation to just come in, build up tax exempt businesses which compete with local businesses, and then dictate to the city what it can and cannot do. Before long only the tax exempt businesses would be left and there would be no money to run the city. It is highly illogical and very short sighted. The Park Board has always treated the Foundation like royalty, with enormous respect and much favoritism. That's how it should be unless the Foundation becomes unruly and begins to dictate to the City and the Park Board.

Because of its vast amounts of money, the Foundation wields enormous power over everyone in the community. The Park Board must not add to this power by giving up the 30 day clause. The Park Board must continue to protect the interest of ordinary citizens. Giving up the 30 day clause would relegate the Park Board to a mere servant of the Foundation. And, it would produce devastating results to the ordinary citizen who would be left with no representation at all. Such an action by the Park Board could be tantamount to treason against the ordinary citizens of Galveston. They demand and are entitled to have strong representation. Finally, but by no means least, the Park Board has a duty to the taxpayers and taxpaying businesses to protect them from unfair competition from a deep pocket, tax free entity operating businesses that are inherently unrelated to its charitable purposes.



**Saturday**

January 24, 1998

**THE DAILY NEWS**

# OPINION

**FEEDBACK:** Call Managing Editor Heber Taylor at 1-800-561-3611, Ext. 245 — or send email to [heber.taylor](mailto:heber.taylor@dailynews.com)

## LETTERS TO THE EDITOR

### **City and park board were never supposed to fund Moody Gardens**

The park board is looking for funding for the Moody Convention Center?

I thought the Moody Foundation was the charity giving to the park board. Now the Moody Foundation wants the park board to fund the expansion of the convention center to benefit the foundation's development at Moody Gardens.

The city and the park board were never supposed to pay one penny for the developments at Moody Gardens. The city has no money and cannot afford to borrow the money.

Next the city will raise our property taxes and for what — to pay for the convention center expansion to help fill up the rooms at the tax-exempt Moody hotel.

Results published in our newspaper prove that Moody Gardens has made little impact in several important areas.

It must be helping the Moodys, or they wouldn't want it so badly. The city's obligation is to help the taxpayers.

The Moodys have a wealthy charity with plenty of money to help themselves and everyone else.

Vito Sabatelli  
Galveston

parks board, the Moody Foundation will be able to create a health facility on its property.

Some 23 years ago, local citizens built a taxpaying business, the Galveston Health and Racquet Club, for approximately \$1.5 million. Their life dream will come to an end if the parks board passes this amendment.

It doesn't make any sense to destroy the livelihood of dedicated loyal citizens and then turn around and duplicate the same facility just a quarter of a mile away.

Eddie Marx  
Galveston

### Does city care whether businesses live or die?

Dolph Tillotson's editorial on May 4, was absolutely correct. Galveston's economy is in terrible shape and it will only get worse unless our city leaders discard the failed theories and practices of the past.

Galveston needs to nourish and protect our taxpaying businesses. A city cannot punish and frighten its taxpaying businesses and hope others will come here to take the place of those businesses who go broke or just give up.

A good example of this is happening now. A large charitable, tax-exempt foundation is asking the city and the Park Board to give the foundation incredible powers to develop tax-free businesses at Moody Gardens which can compete unfairly with local taxpaying businesses.

What message does that send to our taxpayers? A simple, truthful one: the city does not care if you live or die, financially speaking.

The City and the Park Board must refuse the foundation's request.

Tom Cook  
Galveston

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*The Moody Foundation has asked the Galveston Parks Board of Trustees to amend its contract for operating Moody Gardens. Moody Gardens representatives say they need added protection to protect the huge investment in the gardens from Galveston's politics. Some Parks Board members have opposed the amendment, saying the city needs to retain some leverage over the foundation to keep it from competing against private businesses. The following letters are from the manager and owner of the Galveston Health and Racquet Club.*

### Amendment One would threaten a private business

On behalf of the Galveston Health and Racquet Club, its owners and its 45 employees, I would like to express my concern about Amendment One, a contract between the Moody Foundation and the Galveston Parks Board.

If Amendment One is passed by the

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Day showed 56 per  
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# COMMENTARY

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*The Moody Foundation has asked the Galveston Park Board of Trustees to eliminate an important clause in its contract. The park board owns Moody Gardens, an arrangement that is crucial to the facility's tax-exempt status. However, the board has the power to give the facility back to the Moody Foundation without giving a reason on 20 day's notice. That provision gives the city and park board some control over the manner in which Moody Gardens is operated.*

## Park board should return gardens to Moodys today

Everyone forgets that the Moody Foundation was created to protect Moody money.

Then when the game is not played by their rules, Bobby Moody wants to take his bat and ball and go home.

Well, let him.

Let him go to New York and Chicago and play with the big boys, and see what his temper tantrums get him there.

The park board should return ownership of Moody Gardens to the foundation today. Let's see what happens now.

Ralph Lapaugh  
Galveston

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## Charities shouldn't expect a return on 'investments'

The Moody Foundation complains that it needs the assurance that comes with the elimination of the "give-back" clause because of, and to protect, its current and future "investment" totaling \$240 million.

An investment is made by a person or entity with the expectation of a return of capital value. In other words, there is a financial expectation inherent in an investment.

The Moody Foundation, Hope Arena, Palm Beach at Moody Gardens and Moody Gardens are all charitable organizations.

Charity is giving without any expectation other than gratitude and the satisfaction of knowing the project was beneficial to the charitable recipients and the cause was just.

Charity and financial return are opposite ends of the spectrum.

The foundations have no reason to anticipate or expect any return on the funds it has given to the park board and the citizens of Galveston.

Tom Cook  
Galveston

WEDNESDAY, JANUARY 14, 1998

Some critics contend that Moody Gardens, which is exempt from most taxes and supported by hotel taxes, is competing with private businesses.

### **Moody Gardens an asset, but should not get subsidies**

There are too many tax-exempt organizations

There are many critics of the Moodys and their tax-exempt foundation.

Moody Gardens is very much an asset to our city but should not be given tax subsidies.

To be commended are tax-paying businessmen such as Tilman Fertitta and George Mitchell, investing huge sums on their visions and man enough to accept the consequences good or bad.

This is the true American way to grow.

There are new tax-exempt and nonprofit organizations emerging every day.

Tax-paying citizens and businesses must be on alert and stop abuse of this tax-free status.

Galveston County and Texas have prospered well these past few years; no way should taxing entities ask the Central Appraisal District for higher appraisals or raise taxes.

The correct move is to identify those that don't pay taxes and collect. Simplifying it: "The bills must be paid; no free riders allowed."

**Fred R. Schoeffler**  
Galveston

**DOLPH TILLOTSON**



**Sunday**

July 20, 1997

● Dolph Tillotson is editor and publisher of The Daily News. His email address is [dolph.tillotson@galvnews.com](mailto:dolph.tillotson@galvnews.com).

## Isle economy has a chance

**T**here is good news and bad news for Galveston in the city's recently released convention study by C.H. Johnson Consulting, Inc.

The bad news is that the city has not done enough to compete for conventions. The good news is that it is not too late to do so.

One of the most interesting parts of the report compares Galveston's economy and convention set-up to that in three other similar cities — Myrtle Beach, S.C., Savannah, Ga., and Mobile, Ala.

The following comes directly from the report:

"All three of these cities have done a better job than Galveston at creating a resort market and overall destination appeal, either through further advancement of historical renovation and preservation, or through development of golf ...

"None of the three ... enjoys proximity to a major metropolitan market the size of Houston, has a single tourist attraction like Moody Gardens or an economic powerhouse like UTMB ...

"Galveston will suffer because it has not developed its tourism, middle class, retiree and golf sectors the way these model markets have. However, if Galveston employs such an economic development strategy and leverages both Houston and UTMB, its demand potential is equal to or better than these markets."

That's the good news. Galveston has a chance.

The report also makes clear that what happens at Moody Gardens in the next year or two is critical to whether Galveston succeeds of lan-

The report concludes that because of its financial resources and money already spent developing the facility, Moody Gardens should be the city's convention center. Then it makes three very important recommendations:

● Convention facilities planned at Moody Gardens are not large enough and should be expanded.

● Much consideration must go to improving transportation from the facility to the rest of the island.

● It is crucial to develop public oversight and controls at Moody Gardens in order to protect all the parties who have an interest in conventions and to protect "public investment in a private facility."

So far, Moody spokesmen have not committed to any of the three recommendations, and they have opposed the recommendation on public oversight and control.

If the city can't get proper assurances on these issues, it has just one course of action — It should give Moody Gardens back to the Moody Foundation, which it has the power to do, and start over.

That would be a real setback. However, it would not mean that Moody Gardens would have to close. It would only mean that the facility would have to pay property taxes as do other Galveston hotels, motels and meeting facilities and it might lose some direct tax support it now receives as the city's convention facility.

There just has to be some mechanism now and in the future to ensure that Moody Gardens operates in the best interests of all the people of Galveston. It's a point that should be non-negotiable.

## **EXHIBIT "F"**

**Sheriff Taylor, the most powerful and respected law enforcement officer in Galveston County, becomes hired enforcer for the Moody Foundation and its commercial enterprises.**

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## Greenberg: Sheriff should resign directorships

By [MICHAEL A. SMITH](#)

The Daily News

Published September 04, 1997 12:01 AM CDT

GALVESTON -- Sheriff Joe Max Taylor should resign two lucrative corporate directorships so people won't think he's a hired enforcer for wealthy interests, says Park Board Trustee Steve Greenberg.

The comments came Wednesday at a Park Board meeting where trustees accepted Executive Director George Van Etten's resignation and formed a committee to find his replacement.

Van Etten resigned Friday after a week of turmoil that began when Taylor released copies of a letter stating Van Etten never earned a college degree.

Taylor said he investigated Van Etten's credentials because he was irritated by comments he'd been told Van Etten made about the Beach Patrol and by the way he'd dealt with a list of complaints lodged against the patrol by three lifeguards.

Greenberg stopped short of defending Van Etten Wednesday, but said his academic career only became an issue because he questioned the Beach Patrol's budget and aspects of a proposed deal to put a city convention center at Moody Gardens.

"The sheriff makes \$50,000 to \$75,000 in fees and benefits from the Moodys and \$35,000 from Fertitta," Greenberg said.

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"I wish it was that much," Taylor said.

He said he makes \$350 for each of the Moody Gardens board's 12 annual meetings and that he makes \$35,000 a member of Landry's board.

"That's exactly right," Taylor said. "I've been a member of that board since it was founded, and I'm very proud of that. Landry's does a lot good for this county's employment and taxes."

Taylor said he's been an elected official "for longer than he (Greenberg) has been alive" and has always conducted his and the county's business in a professional manner.

"Who is he to tell me how to run my business?" Taylor asked. "I could I ask him to do the same and resign from the park board. That would do us all good."

Van Etten advocated having the Park Board's Convention and Visitors' Bureau control bookings at a city convention center.

Moody representatives are adamant that they should control the bookings as long as they are compelled to underwrite the center's losses.

Van Etten's fate proves the sheriff is willing to use his official power to settle a personal score, Greenberg said.



"I don't know if (Van Etten's stand on bookings and Taylor's investigation of his credentials) are related," Greenberg said.

"But I do know that George Van Etten was instructed to negotiate for the board and he never got to make the first meeting."

That meeting was held Tuesday between acting Park Board Director Lou Muller and Moody Gardens Executive Director Mike Riley. Riley was reluctant to discuss the bookings because they are part of litigation, Muller told trustees Wednesday, referring to a federal antitrust lawsuit filed against Moody Gardens by Fertitta.

"The lawsuit has nothing to do with the park board," said Trustee Vic Fertitta, Tilman Fertitta's father. "Don't let Buddy Herz tell you that it does."

Herz said Tuesday "no one in the Moody organization played any role in, or had any knowledge of about" Taylor's actions.

Vic Fertitta said the next Park Board executive director is likely face a lot of heat in the wake of Van Etten's resignation.

"You'd better set that chair in concrete and put some clamps on it," Vic Fertitta said. "That's what it's going to take to keep the next executive director there. That's how much pressure he'll be under."

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Sheriff Taylor defends his income from corporate boards

By Michael A. Smith
The Daily News

Published September 07, 1997 12:00 AM CDT

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Van Etten resigned Aug. 29 after a week of turmoil that began when Taylor released copies of a letter stating Van Etten never earned a college degree.

Taylor said he investigated Van Etten's credentials because he was irritated by comments he'd been told Van Etten made about the Beach Patrol and by the way he'd dealt with a list of complaints lodged against the patrol by three lifeguards.

Park Board Trustee Steve Greenberg, who supported Van Etten, last week suggested Taylor should resign from corporate boards controlled by Robert L. "Bobby" Moody and hotelier Tilman Fertitta.

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Taylor's salary as county sheriff for this year was \$85,095, according to the county budget.

State laws governing conflicts of interest come into effect when a local public official receives more than 10 percent of his gross income from a business entity.

That law requires that the official file an affidavit and abstain from voting or making decisions that would benefit the business entity.

Taylor said he's never filed an affidavit because he's never had a conflict. ?

He said that when he votes as a corporate director, he does so for the good of the corporation -- and when he acts as sheriff,

he does so for the good of the community.

Van Etten's stand on bookings at the convention center have "absolutely nothing whatsoever" to do with his decision to investigate Van Etten, Taylor said.

"This was 100 percent about the Beach Patrol," Taylor said. "The Beach Patrol, Vic Maceo and the Sheriff's Department were being attacked. It's just pathetic for anybody to think it was something else."

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You can't criticize a man for just doing his job

Published August 28, 1997 12:00 AM CDT

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Nope. Instead, Van Etten had the misfortune to anger one of Galveston County's most powerful politicians - Sheriff Joe Max Taylor. Ironically, the sheriff apparently is angry because Van Etten did what most taxpayers would want him to do - namely, his job.

Van Etten, who took office in June, asked questions about a pet program of Sheriff Taylor's, the sheriff's department's Beach Patrol. It so happens that the patrol commands a substantial portion of Van Etten's annual operating budget and a substantial portion of the hotel-motel tax funds generated in the city.

Of course, Van Etten was not alone; members of his board asked questions, too. The sheriff, instead of launching a probe of the politically appointed members of the board, took his best shot at Van Etten. He checked Van Etten's resumé and found that the new parks executive does not have a college degree.

Now, the resumé did not say he had a degree; it simply said he attended college, which he did. Van Etten apparently never said in interviews that he had a degree. No one asked the question.

It is true that the resumé might have been clearer about the fact that he did not receive a degree, and we do not argue that Van Etten should not have done more to clarify the issue.

But once again, let's be clear - the whole issue of Van Etten's college background is a smoke screen. No one has argued that Van Etten lacks the qualifications for the job he holds, and no one checked his college record until the fuss arose with the sheriff.

Here's a brief synopsis of what happened:

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Such questions are legitimate and answers are in the public interest. The park board has a budget of roughly \$7.7 million, and the Beach Patrol gets about 8.3 percent of that money \$640,000.

However, this particular sacred cow is sacred to Taylor, the well-connected and long-time sheriff of the county.

The sheriff said questioning the Beach Patrol is "like saying you don't need apple pie or baseball."

We differ strongly with the sheriff's approach. The executive director of the park board should scrutinize every line of the board's operating budget. He should seek ways to make better use of every cent of the limited funds available. That's his job, for heaven's sake.

In a community that barely has the money to promote tourism and conventions, Van Etten would be a failure if he took any other approach.

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It's downright depressing to see this old tendency rearing its ugly head once more. We hope everyone, including the sheriff, will back off and give this man a chance to succeed in a very difficult job.

This editorial was written by Dolph Tillotson, editor and publisher of The Daily News.

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Park board chief comes under attack

George Van Etten subject of sheriff's investigation

By Michael A. Smith The Daily News

Published August 27, 1997 12:00 AM CDT

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Taylor investigated Van Etten's academic credentials and Tuesday gave trustees a letter from Sam Houston State University stating Van Etten does not have a college degree.

The investigation was prompted by calls from park board employees and trustees concerned about Van Etten's qualifications, Taylor said, and because he was "aggravated" by "little remarks" he's been told Van Etten made about the Beach Patrol.

"Van Etten said we don't need a Beach Patrol," Taylor said. "Everybody here loves the Beach Patrol. That's like saying you don't need apple pie or baseball."

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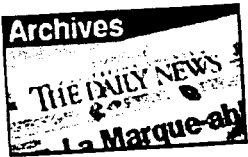
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Published August 28, 1997 12:00 AM CDT

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# Park board chief comes under attack

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By Michael A. Smith

The Daily News

Published August 27, 1997 12:00 AM CDT

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This editorial was written by Dolph Tillotson, editor and publisher of The Daily News.

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year in hotel tax money it receives through the park board.

"It's not just George who's asking the questions, it's the whole board," Greenberg said. "All George did was mention that they don't have lifeguards on Padre Island. He didn't say we shouldn't have a Beach Patrol or that the Beach Patrol isn't doing a good job."

Taylor said the letter from San Houston State proves Van Etten was illegally hired and that he falsified his resume.

"The packet they sent out states that a bachelor's degree is required and master's degree is preferred," Taylor said. "What about all the people who didn't have degrees who didn't make the short list of candidates? It seems to me the board is open to a lawsuit."

Van Etten listed a date he attended Sam Houston State University on his resume and a grade point average, but didn't explicitly claim to have degree from the university.

Taylor said he's never before investigated the academic credentials of a public employee such as Van Etten.

"I've never had this kind of trouble with them before," he said. "Before you had people who grew up in the system."

Greenberg said Van Etten never claimed to have a degree and was never questioned about it when interviewing for the job.

"This was the typical way a bureaucrat responds -- distort one issue by drawing attention to another issue," Greenberg said.

"Van Etten has the courage to stand up and ask questions about public funds and unfortunately some people feel that if you

can't control or manipulate a person the best thing to do is attack them."

Van Etten said he was surprised by Taylor's comments, which came during a budget hearing held by the board's operations committee, and that he never claimed to have a degree.

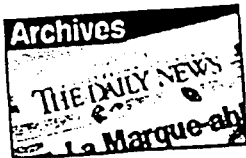
"I thought it was a little peculiar that the sheriff's department would investigate something like that," Van Etten said.

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## Views on departure of Van Etten differ

"I would say that if there is anything to be learned from this it's that you don't want to mess with the sheriff." -- Don Mafrige, council representative on the Park Board

By MICHAEL A. SMITH  
The Daily News

Published August 31, 1997 12:01 AM CDT

GALVESTON -- The resignation Friday of Park Board Executive Director George Van Etten wasn't the first such ousting islanders have witnessed of late -- but it was the quickest and the cleanest.

Van Etten now resides on a wall already displaying the removed heads of all the island's key public entities -- the city, the housing authority, the city again and the Wharves Board.

But compared to the others -- whose departures were long, often heated affairs -- Van Etten went quietly.

What led to the other leaders' downfalls were all complex issues and subjects of continuing debate among residents and attorneys.

Van Etten's mistake was a simpler matter -- he got crosswise with Sheriff Joe Max Taylor, who is among the county's most powerful politicians.

The official spin on Van Etten's resignation, provided Friday by Park Board attorney Dan Vaughn, is that

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publicity surrounding revelations about Van Etten's lack of academic credentials was too hard on his family.

And the resignation came amid reports, supported by former park board Chairman Carl Kelly, a Sheriff's Department bailiff, that Van Etten had claimed to have a degree when he did not.

"He did claim to have a degree," Kelly said Friday. "I heard him and I've seen a copy of his resume that stated he did."

But what inspired the county sheriff to investigate Van Etten depends on who you ask.

Taylor says he was annoyed by "little remarks" Van Etten had reportedly been making about the Beach Patrol and the way he handled a list of allegations lodged by three lifeguards against the Beach Patrol.

Last week, Taylor said he first turned to City Councilman Don Mafrige to help set Van Etten straight.

"He (Van Etten) needs to understand that when he drops these little remarks, they are going to make it back to me," Taylor said he told Mafrige.

Taylor said some Park Board employees and trustees urged him to investigate Van Etten's academic credentials.

Mafrige said he did talk with Taylor but recalled that the conversation was general.

"I would say that if there is anything to be learned from this it's that you don't want to mess with the sheriff," Mafrige said.

Trustee Steve Greenberg said Van Etten's real transgression was the questions he asked about the more than \$600,000 in hotel tax money used to fund the Beach Patrol each year.

Views differ on Van Etten departure

More than \$8,000 of that money goes to offset Taylor's \$85,000 county salary and benefits package, and another \$88,000 of it pays the salary and benefits of two deputies, according to the Beach Patrol contract between the county and Park Board.

"This is typical of what happens to people who stand up and ask questions about public funds," Greenberg said.

But Trustee Raymond Lewis Jr., who was a prime-mover in Van Etten's ousting, said Taylor was right to investigate and Van Etten holds the final responsibility for his own demise.

"He should have made sure there was nothing there to find," Lewis said. "I'm not worried about the sheriff or anyone else looking into my credentials."

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*Thomas E. Cook*

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- Section G.** Questions to ponder.
- Section H.** In 2004, here they go again. With the Park Board membership loaded with paid Moody employees, the Foundation coerces the Park Board to endorse the Moody Gardens resolution that, in essence, states that Moody Gardens relieves burdens of government. Nothing could be further from the truth. Moody Gardens is a burden to Galveston government and does not deserve I.R.S. tax exempt status.

## **SECTION A**

**Open letter to I.R.S. Please save the ordinary citizens and tax payers of Galveston, Texas, from the abuse of Tax Exempt Status being perpetrated by Moody Gardens under an exemption granted by the I.R.S. to Moody Gardens.**



OPEN LETTER TO IRS

8/3/04

Internal Revenue Service  
TE/GE Room 4010  
P.O.Box 2508  
Cincinnati, Ohio 45201

Re: Continuing Tax exempt status of Moody Gardens

To Anyone Who Can Help Save Galveston, TX from Abuse of Tax Exempt Status by Moody Gardens:

About 10 years ago, the Park Board of Trustees and the City of Galveston each forwarded letters to the Internal Revenue Service supporting a tax-exemption Request for Private Letter Ruling made on behalf of Moody Gardens, Inc. At that time several of those members of the Park Board and City Council had direct financial ties to Moody Interests and additionally, the attorney for the Park Board was conflicted since he also derived legal fees from Moody Foundation and other Moody Interests. Circumstances since those letters were sent and representations made therein have drastically changed. Specifically, all of the reasons set forth by both the Park Board and the City presented to support the tax-free status of the Moody Gardens Hotel are no longer valid. The character of Moody Gardens has changed such that its operations have now become solely, a commercial business enterprise. As a result, a business enterprise has been allowed to be constructed using tax-exempt private foundation funds and to maintain operations completely free of federal, state, and local taxes, and our community is being deprived of significant tax revenues annually that it sorely needs for the education, public services, safety, and welfare of its citizens. Presently, as of August 3, 2004, **four (4) out of nine (9) members of the Park Board have direct financial ties to Moody Interests, and it is clear that they have as their agenda, to seek to perpetrate the tax avoidance posture of Moody Gardens to the detriment rather than the benefit of the local government and community.**

The following facts and assertions listed in the letter written about 10 years ago by the Park Board of Trustees, in support of that revenue ruling request are no longer applicable or factual, and Moody Gardens has become a serious and harmful burden to government.

**1. The leasehold improvements and equipment at Moody Gardens are owned by the Park Board.**

- In fact, the Park Board merely holds title to the leasehold and improvements at Moody Gardens, with none of the benefits and attributes of ownership. **In the truest sense of the word, the Park Board serves as "straw man" being used by Moody Gardens as a shield to avoid taxes.**
- The equipment is owned by Moody Gardens.
- The benefits of ownership are owned exclusively by Moody Gardens and not the Park Board. The Park Board derives neither rent nor income from the business operations conducted by the Moody Foundation at Moody Gardens complex. The fact that the Park Board receives nothing confirms that it is

merely a "straw man" being used by Moody Gardens as a shield to avoid all income and property taxes.

**2. The Park Board is the primary municipal agency involved in the development and operations of this multi-phase civic improvement.**

- The Moody Gardens complex is not what one would consider a "civic improvement". It is a commercial business complex comprised of a hotel, convention center, aquarium, sight seeing faux paddle wheel boat, white sandy beach/lagoon/chlorinated pool, all of which are operated as business enterprises in competition with private commercial developments.

**3. Neither the Park Board nor the City of Galveston has the funds to create the kinds of facilities at Moody Gardens.**

- A large number of private development enterprises have come to Galveston and have developed hotels, attractions, convention centers, and businesses of the same type, class, and quality of Moody Gardens.
- Neither the Park Board nor the City are in need of funds to create the kinds of facilities at Moody Gardens because private enterprise has significantly developed in Galveston and Moody Gardens tax-free existence and operation has become an unfair competition and an impediment to continued private business development.

**4. One of the Park Board's major objectives is to attract visitors and conventions to Galveston through the Moody Gardens complex.**

- Since September, 1994, private development has blossomed in Galveston, substantially increasing the attraction of visitors to the Island.
- The need for the Park Board to engage in business enterprises in order to attract visitors to the City has ended, and the continued participation of the City and Park Board in substantial business activities, that are normally and are currently engaged in by private, tax paying enterprises, will have the effect of detracting continued development rather than enhancing it, and will have the further detrimental effect of diminishing of the available tax base for the community.
- The City of Galveston has, in partnership with private developers, established its own Convention Center and receives 50% of all profits generated.
- Neither the Park Board nor the City of Galveston receive any direct benefit from the Moody Gardens hotel, convention center, or other entertainment venues, compared to the incredible revenues generated by those operations that inures to the sole benefit of Moody Gardens and its insiders and affiliates.

**5. Galveston is an economically depressed area that suffers from both unemployment and underemployment.**

- As a result of the significant, private, commercial development in Galveston since September, 1994, Galveston has seen the addition of a large number of new hotels, restaurants, and attractions which draw and attract visitors and which have significantly increased the number of jobs and demand for workers to fill those jobs.

**6. Primary objectives of the Park Board with respect to Moody Gardens is to provide and utilize the facilities to maximize recreational and educational benefits to the public.**

- Most educational projects at the Moody Gardens Hotel and Convention Center have been terminated.
- The Seaside Safari Petting Zoo is gone.
- The Hope Therapy program utilizing horses to help rehabilitate head injury patients was terminated.
- The Culinary Institute has been eliminated.
- The Moody Hospitality Institute program to teach hotel management to students has been terminated.

The Park Board and the City of Galveston entered into the arrangement with the private foundation to allow the private foundation to continue to operate and develop Moody Gardens as a tax-exempt operation; something that the I.R.S. had opposed in 1988 because those operations were too commercial. The effect of the arrangement was, however, to give the appearance that the Park Board and the City of Galveston were acquiring a public asset from which they would derive direct revenues and economic benefit. However, in actuality, the Park Board and the City acquired assets in name only. They derive no direct revenue from operations at the Moody Gardens complex; derive no tax benefit from the development itself and have, effectively, no direct participation in the businesses operated at the Moody Gardens complex. All of those benefits inured to the benefit of the private foundation, insiders employed by and managing Moody Gardens, affiliates of the foundation's trustees, and a company, Gal-Tex Hotel Management Company, 100% controlled by Moody Foundation Trustee, Robert L. Moody. Ironically, in 1988 and continuing through the decade of the 1990's the attorney for the Park Board had a major conflict since he also represented and derived legal fees from Moody Interests. Also, many serving as Park Board Trustees during that period also had financial ties to Moody Interests. Obviously, it was in all of their best interests to be sure that the Park Board carried out the wishes of the Moody Foundation regarding the tax exempt status of the commercial businesses operated at Moody Gardens.

Today, Galveston is in the midst of an economic development explosion. It is enjoying the increase of significant private, tax-paying, development. Moody Gardens as a result of the arrangement with the Park Board and the City of Galveston has been placed in a position of economic favoritism over that of private business development. Moody Gardens is, as a result of the arrangement with the Park Board and the City of Galveston, able to directly compete with the newly developed, and future, private business operations using an unfair tax-free advantage, and the grant of all necessary of construction capital from the vast resources of the Moody Foundation, a tax-exempt charitable, private foundation. Because of this arrangement, Moody Gardens is able to acquire the necessary development capital from its mother foundation, the Moody Foundation, without cost of investment; it is able to operate without the cost of property taxes on its improvements; it is able to operate without the burden of sales taxes on its disposables and equipment purchases; it is able to operate without employment taxes,

franchise taxes, and income taxes. **As a result, this unfair competition acts as an impediment to private development and results in substantial revenue loss to local government and school systems.**

Initially, Moody Gardens was portrayed by the Park Board and the City as an entity that would relieve or assume burdens of government. The simple truth is that Moody Gardens created the burdens, and then insisted on assuming them in the name of the Park Board as owner. The City and Park Board decided that it was not necessary to expand the operation and size of the Hotel and Convention Center at Moody Gardens as such expansion would adversely affect the operation of the City's own convention center. Ironically, Moody Gardens sued the Park Board and the City to force the expansion of the Moody Hotel and Convention Center which the City and Park Board did not want. How could expansion of facilities the City did not want constitute assuming burdens of government? If the city had to be sued to force it to build something it did not want, then by definition, the expansion did not relieve a burden of government. It was itself a burden of government.

As it operates today, **Moody Gardens creates a burden to local government as a result of the loss of tax revenue on the equipment and improvements, and loss of sales taxes attributable to the operation's purchases.** In addition, it adversely impacts the private business environment with its advantageous tax-free competitive position and access to private foundation grants from the Moody Foundation.

Accordingly, most citizens and taxpayers of the City of Galveston, believe that the reasons supporting the Private Letter Ruling approving the operations of the Moody Gardens complex are no longer applicable and that the tax-exemption allowance regarding the operations of the Moody Gardens complex should be revoked in light of the current operations and circumstances. Moody Gardens should be treated, for tax purposes, the same as the private businesses with which it competes, and the revenues that would go to the local community but are lost by the current status of Moody Gardens are staggering and sorely needed. **Please help us end the abuse of Galveston taxpaying businesses by this tax exempt "so called" private charity. Please end the hoax being perpetrated on Galveston through the joint efforts of the Park Board and Moody Gardens, Inc. to use Moody Foundation grant funds to build a huge commercial business complex that primarily benefits only the Moody Interests while operating totally free of all taxes whatsoever.**

Very truly yours,

*Thomas E. Cook*

Thomas E. Cook, III  
Concerned Taxpayer residing in Galveston,  
Texas

(409) 744-2195

## **SECTION B**

**The Truth. The Real Deal. Moody Foundation grants provide private inurement to Robert Moody, his family, and Moody businesses. Follow the Money.**

COVER LETTER FOR FOLLOWING SECTIONS RELATED TO PROOF AND  
SUBSTANTIATION OF CLAIMS MADE HEREIN

From day one it has been obvious to any Moody watcher that the real objective of Moody Foundation Trustee, Robert L. Moody, Moody attorney, Buddy Herz, and Moody representative, Doug McLeod, and other close confidants including attorney, Mike Wiley, was to devise a scheme that would utilize grants from the private Moody Foundation to be used to fund and operate tax-exempt commercial businesses that could in some way benefit Robert Moody, his family, attorneys, friends, and affiliates. One scheme decided upon was Moody Gardens. However, in 1988, the IRS threw a monkey wrench in their grandiose scheme by holding that Palm Beach at Moody Gardens and the Colonel Paddle Wheeler were too commercial to be owned and operated by Moody Foundation. The Moody schemers, not to be out done, devised a plan utilizing the Park Board of Trustees and the City of Galveston, both of whom had members with financial ties to Moody, to circumvent the IRS. Moody and his tax attorneys decided that the Park Board would own the Moody Gardens complex but receive nothing from Moody Gardens. By acting as an accommodation owner or "straw man", the Park Board enabled the Moody Foundation to transfer over \$450 million dollars to Moody Gardens in order to fund commercial tax free businesses that would be managed by Gal-Tex Hotel Management Company, a company 100% controlled by Moody Foundation Trustee, Robert L. Moody, with the result being that all benefits would go to Moody Interests and nothing would go to the Park Board. Buddy Herz, attorney for the Moody Interests, in a late July, 2004, presentation to the Park Board of Trustees, stated that the 40 year lease with the City for the land on which Moody Gardens sits must be renewed every time there is only 35 years left on the lease, so that in all cases the lease would always have 40 years to run. This is really a lease in perpetuity and in reality the City will never derive any benefits, only the Moody Interests will derive any and all benefits. This is further reinforced by the fact that the Moody Foundation can take back Moody Gardens at any time it chooses to do so.

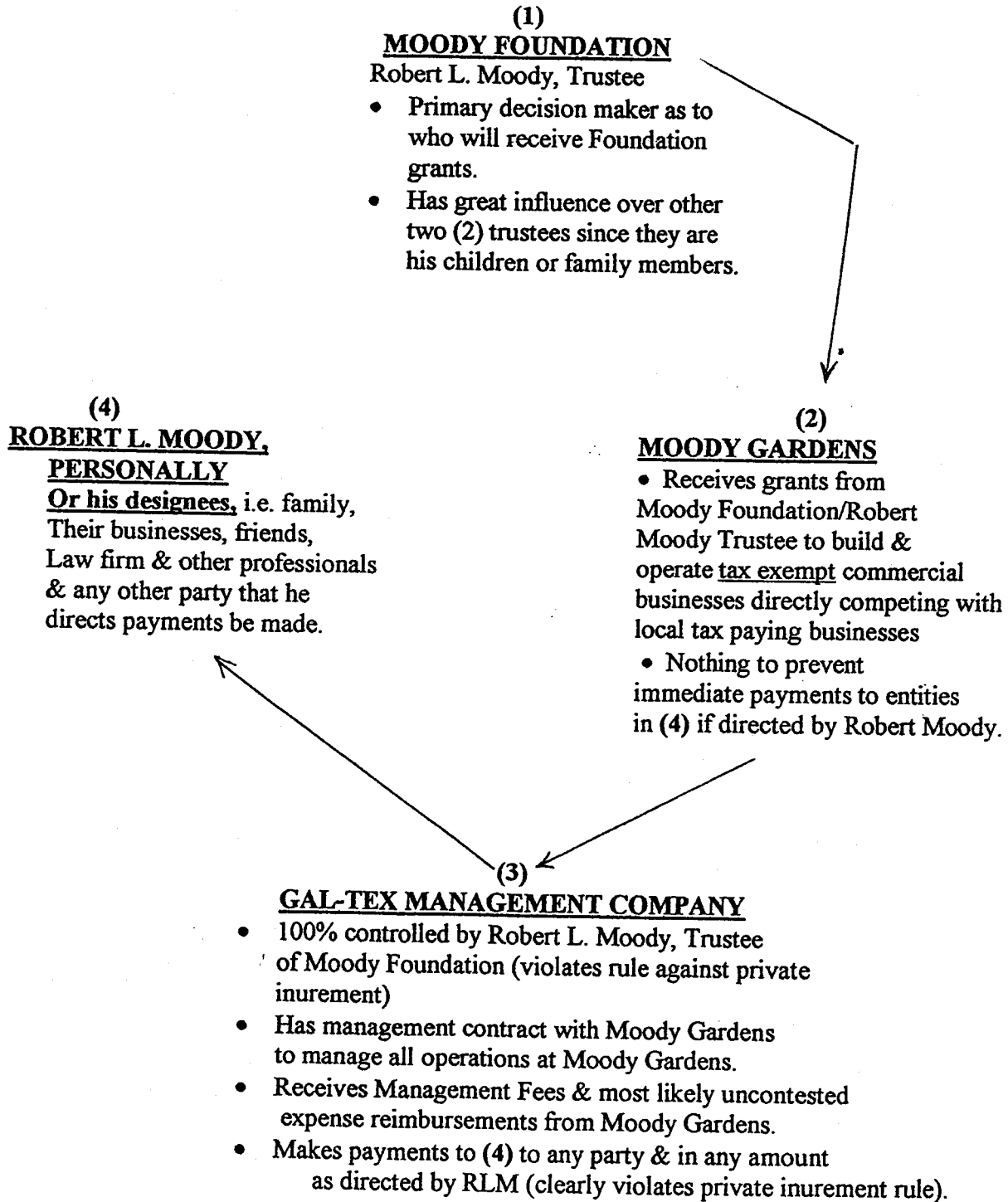
In reality, Moody Gardens has been a hoax all along. It has been perpetrated upon the IRS and the citizens of Galveston who erroneously have been duped to believe that Moody Gardens is just another charitable endeavor by the Moody Foundation. Sadly, the citizens of Galveston never had a chance; never even got to understand the real deal; never got to vote on whether Moody Gardens should be tax-exempt. This is because when most decisions were made that were bad for the City and its tax payers: (1) several Park Board members had financial ties to Moody Interests and therefore pushed the Moody agenda, and (2) the attorney for the Park Board also derived legal fees from Moody Interests and he too pushed for the Moody agenda. The city and the taxpayers were duped and deceived and the Park Board conspired with Moody Foundation in order for the Moodys to achieve their goal of operating tax-exempt commercial businesses funded by foundation grants with benefits flowing only to the Moody Interests.

In watching the events unfold in Galveston, I have come to believe that Moody Gardens is the biggest, most selfish misuse of a private, charitable foundation's assets to my knowledge. Private inurement and self dealing by Moody Foundation Trustees has run rampant. For fifteen (15) years, Moody Gardens has paid no income taxes, no franchise taxes, no sales taxes, no property taxes and virtually no rent of its lease of City land. The hoax has continued for too

long. Moody Gardens has been tax-exempt for too long. It needs to be stopped. The whole revenue ruling related to Moody Gardens should be collapsed and the Moody Foundation's income should be taxable by I.R.S. This is only fair.

The articles and information following this letter and throughout this presentation will offer proof to substantiate the position that Moody Gardens is in reality a creation by the Moodys to siphon off grants from the Moody Foundation to be used to derive financial gains which mostly benefit only the Moodys. The Park Board, many of whose members have financial ties to Moody, has been used as a "straw man" to perpetuate the hoax on the I.R.S. and the citizens of Galveston. Because of the financial ties to Moody, many Park Board and City Council members are too intimidated and the Moody threats cause them to vote however Moody wants them to. And the Moodys are always threatening to cut off all charitable gifts if they don't get their way. It is pretty sick charity, at best.

**FOLLOW THE MONEY: (1) to (2) to (3) to (4)**  
**Foundation Trustees benefit from grants/obvious violation of the Proscription against private inurement which mandates that Foundation Trustees must not derive personal benefits from the grants they make.**





Enclosed are a few items you asked me to send to you and probably some which you didn't. It is my fondest hope to provide you with enough information eventually to lead you to the true conclusion about Robert Moody, Doug McLeod and Buddy Herz's real plan to disperse as much Moody Foundation funds to themselves and others as quickly and in as large volumes as is possible.

First of all you must be convinced, as I am, that Robert Moody's main goal in life is to see to it that most of the Moody Foundation's money is transferred out in such a way as to benefit Robert Moody, his relatives, and his business associates.

The best way to do this is to picture the Moody Foundation as a pitcher of orange juice. The orange juice represents the money or assets of the Moody Foundation. Now, Shearn Moody's way was to create phony foundations that could receive grants from the Moody Foundation so that those grants could be converted to his own use. But Robert Moody's way is to start up a series of "going concerns" (businesses) and then have the Moody Foundation give each of them grants (usually through the vehicle of the Transitional Learning Center). Typical new businesses are 4-M Laundry, Palm Beach at Moody Gardens, Hope Arena, 3-D Imax Theater, Tropical Biome, and a Luxury Hotel, etc.

Then, because it is illegal from both a state and federal point of view, for a Foundation to both own and operate these businesses, Mr. Moody makes a gift of each business to the Galveston Park Board, but always retaining the right to operate the various businesses. It is that right to operate these businesses that Robert Moody wants - because after "letting" all the contracts to construct these businesses the only thing left to milk funds from the Foundation is through the day to day operations of the businesses which are now owned by the Galveston Park Board. Robert Moody, his relatives, attorneys and other associates now receive salaries, director fees, car allowances, travel expenses and any other expense that their imagination can dream up (and there is no limit to these). In his small mind this is the best way to siphon out the Moody Foundation's assets.

Now I think you can follow my pitcher of orange juice scenario to its logical conclusion. All the businesses started by Robert Moody at first represent empty orange juice glasses. They require orange juice (assets) so they can let contracts to construct the assets that comprise each business. Then they will naturally lose money so each glass will need more orange juice (money) each month or year, etc. And, because Robert Moody insists on it, the Moody Foundation responds by giving more and more money to these businesses and the businesses pass on much of the money to Robert Moody, his relatives, and associates. There is no requirement that a business make money - losses are just as acceptable, since they require more orange juice. Now, in the unlikely event, that a business makes a profit, there is joy throughout the Moody Empire, for now Moody can draw out the profits for himself and the others.

And there is room to start another business that will (1) require a Moody grant for start up expenses and to let contracts for construction of business assets (2) will violate state and federal laws once operations are commenced, so it must be given to the Galveston Park Board and (3) be given a contract by the Park Board to be operated day to day by the Moody Foundation (or its assignee) so that a constant stream of Moody Foundation funds can be channeled into those business for division among Robert Moody, his relatives, and his associates.

George, simple as it seems, this is Robert Moody's way to siphon off Moody Foundation assets without any problem from the Texas Attorney General - AS YET. I hope that will change once Mattox leaves office. If you can help me with any of this "quietly" I would greatly appreciate it. The Moody group (including Gene Lucas) is going to build a resort hotel and then give it to the Park Board and secure a management contract from the Park Board to operate the hotel.

~~THE BIG LIE!~~

GALVESTON DAILY NEWS  
FRIDAY, NOVEMBER 1, 1996  
PAGE 16A

"The Moody family doesn't profit one dime from GAL-TEX", Herz said Thursday. "It's owned by the Libbie Shearn Moody Trust, a charitable remainder trust."

Absurd! A total distortion of the truth! A lie! It is true that GAL-TEX Hotel Corporation is owned by the Libbie Shearn Moody Trust. But, the real truth is, with the exception of a share to Moody Methodist Church, the Moody Family and the Moody Family alone has profited /benefited from GAL-TEX and the Libbie Shearn Moody Trust since the Trust's creation in 1943. For 53 years the Libbie Shearn Moody Trust has been making annual distributions every year to members of the Moody Family or their designees, as well as to the Moody Methodist Church and the Moody Foundation.

Upon her death in 1943, Libbie Shearn Moody (Mrs. W. L. Moody, Jr.) set out in her Will that approximately 1/2 of the community estate belonging to she and W. L. Moody, Jr., be transferred to the Libbie Shearn Moody Trust for the benefit of her living children at that time: W. L. Moody, III, Mary Moody Northern, and Libbie Moody Thompson, and to the children of her deceased son (Shearn Moody), those children being Bobby Moody and Shearn Moody, Jr.

Her Will also provided that a portion of the Libbie Shearn Moody Trust be given to the Moody Methodist Church. It is thought that upon the death of the last Moody beneficiary, the Church will receive at least 25% of the Trust's stockholdings in American National Life Insurance Company - approximately \$120 million.

Each beneficiary, all of whom are Moody Family members, received a life estate in the Libbie Shearn Moody Trust, meaning that upon the death of each beneficiary their rights to receive income ceased. When all five of the Moody family members in the Trust die, the Trust ends and all Trust assets, save the Church's 25% share, will be transferred to the Moody Foundation.

As of this date and because of the deaths of the other four Moody family beneficiaries, only Bobby Moody receives annual distributions from the Libbie Shearn Moody Trust. The distributions to Bobby Moody consist of income earned by Libbie Shearn Moody Trust from American National Insurance Company stock dividends, GAL-TEX earnings, oil and gas income and other.

~~So~~ So, Herz's statement is absolutely false. Bobby Moody <sup>was</sup> is an officer of GAL-TEX and receives a salary from GAL-TEX. In addition, Bobby Moody receives GAL-TEX earnings through annual distributions to him from the earnings accumulated in the Libbie Shearn Moody Trust from all sources each year. Additionally, Bobby Moody completely controls the Libbie Shearn Moody Trust since the Trustee of the Trust is the Moody National Bank, an entity owned and controlled by Bobby Moody.

*now 6, William L. Moody IV is also a beneficiary*

*and WL MOODY IV*

## THE SECOND BIG LIE!

GALVESTON DAILY NEWS  
FRIDAY, NOVEMBER 1, 1996

Page 16A

“Buddy Herz, attorney for the Moody Foundation, denied that the Moody Family could profit from improvements to Moody Gardens and revenues to GAL-TEX.”

The truth: Bobby Moody directly benefits from the Moody Gardens development. How: (1) Moody Foundation, of which Bobby Moody is controlling Trustee, votes to invest Moody Foundation money in Moody Gardens projects.

(2) Moody Gardens then hires GAL-TEX Hotel Corporation to manage Moody Gardens and pays a large fee to GAL-TEX which in fact goes to Libbie Shearn Moody Trust, the true owner of GAL-TEX.

(3) Bobby Moody declares himself a salary directly out of GAL-TEX (he is an officer of GAL-TEX).

(4) Bobby Moody pays himself annual distributions from Libbie Shearn Moody Trust consisting partly of GAL-TEX earnings in Libbie Shearn Moody Trust. Moody National Bank is Trustee of Libbie Shearn Moody Trust and as such Moody National Bank determines how much and when to distribute to Bobby Moody. And, Bobby Moody owns Moody National Bank; a real neat arrangement, carefully planned.

This may be a violation of Texas Private Foundation Law. Bobby Moody is controlling Trustee of the Private Moody Foundation. There are two other trustees: (1) Bobby Moody's mother and (2) Bobby Moody's son, (Ross); but Bobby Moody controls both of them, absolutely.

Bobby's son, Ross, cannot possibly overrule with him since Bobby provides Ross' sole support. Bobby's mother is up in years, probably 90 years old and doesn't really understand the schemes going on at the Moody Foundation.

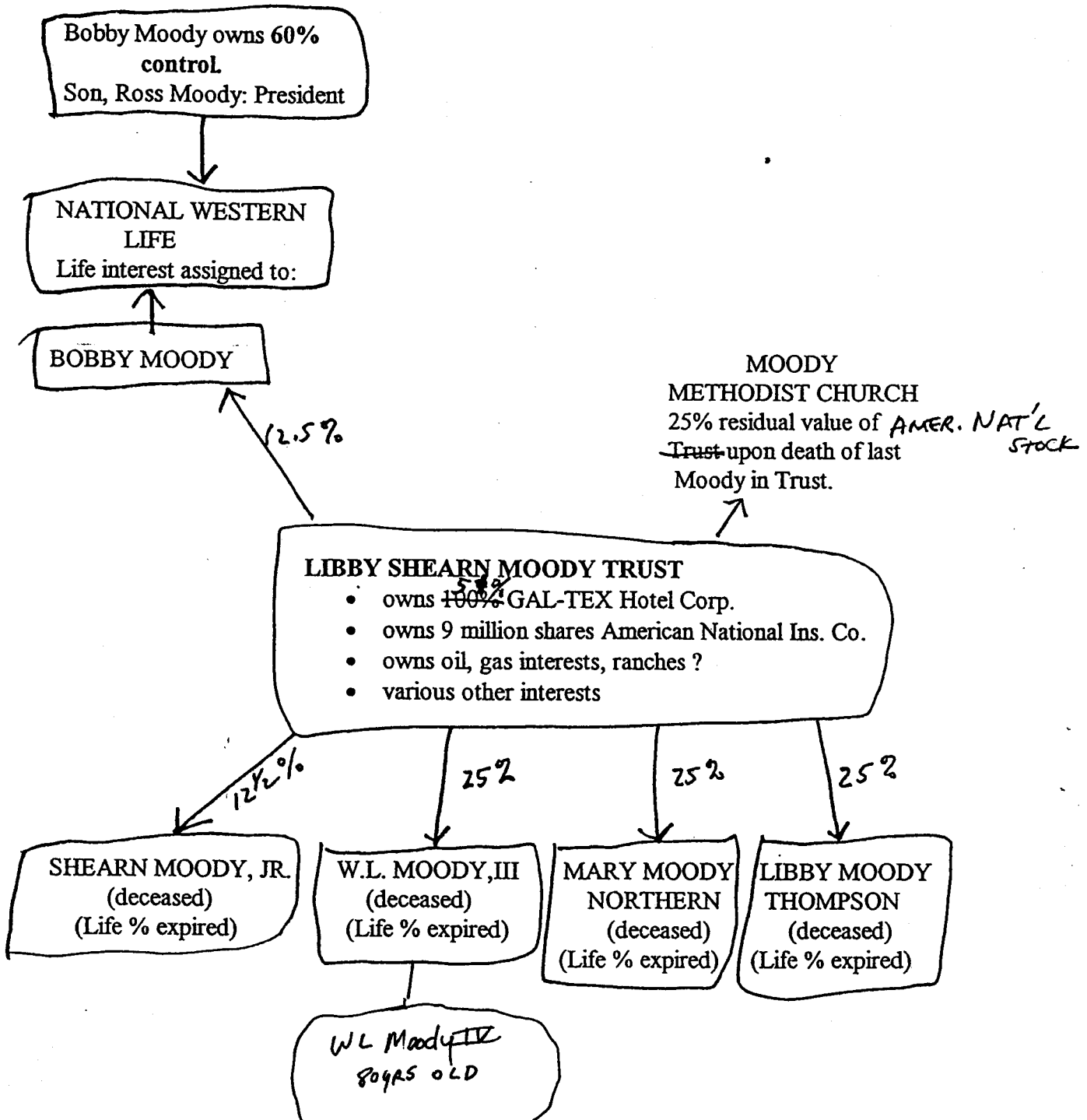
Bobby Moody also personally benefits from the Moody Foundation gifts to Moody Gardens since many members of his family are paid by Moody Gardens as well as directly out of the Moody Foundation, or out of other grant money provided by the Moody Foundation.

Texas Private Foundation Law should be studied to determine if it is legal for a Foundation Trustee to personally benefit from the grants made by that Foundation. If it is illegal, the Attorney General of Texas could remove Bobby Moody from his position as Trustee of the Moody Foundation and could make him provide restitution to the Foundation for his self-dealing and conflicts of interest. Clearly the people of the State of Texas are being used and abused.

(Trust 57)  
 Libbie Shearn Moody Trust is  
 a Charitable Remainder Trust.

LIFETIME BENEFICIARIES

OF  
LIBBIE SHEARN MOODY TRUST



## **SECTION C**

### **HOW THE FARCE/SHAM TRANSACTION BEGAN.**

**In 1988, the I.R.S. determines that Palm Beach, Colonel Paddlewheeler, and Hope Arena are too commercial and do not qualify for Moody Foundation Grants.**

**Moody attorneys devise a tax avoidance scheme to circumvent and defeat the I.R.S. positions. The Scheme utilizes the Galveston Park Board of Trustees to act as "Straw Man" owner of Palm Beach, Colonel Paddlewheeler, and Hope Arena, while at the same time, the Moodys continue to manage all the operations and derive all financial benefits which flow from these operations. They have concocted a form over substance charade; in reality, nothing of real substance or consequence has occurred. There is no change; only perceived change.**

# Foundation asks Park Board to operate Colonel, Palm Beach

By JACK STENGLER  
The Daily News

GALVESTON — The Moody Foundation has requested the Galveston Park Board of Trustees approve an expansion to Hope Arena, and assume operation of the Colonel paddlewheel vessel and Palm Beach.

Doug McLeod of the foundation and Donald Springer, a principal in the Houston architectural firm of Morris Architects, made these proposals at Wednesday's meeting of the Park Board's budget and audit committee and at a Park Board workshop.

Under rules of the Internal Revenue Service and an opinion by the Texas Attorney General the foundation could operate The Colonel only as a museum and cannot retain the commercial operation of Palm Beach.

"Neither of these facilities are on the tax rolls, so there would be nothing removed from the city taxable properties," McLeod said.

"Under our (Moody Foundation) non-profit charter we cannot continue to operate these two facilities. These are classed as commercial operations," he said.

McLeod said the foundation proposes enlarging Hope Arena, now operated by the Park Board, with a \$10 million convention and

"Under our non-profit charter we cannot continue to operate these two facilities. These are classed as commercial operations."

Doug McLeod

conference center.

The expansion would be two stories with a total of 40,000 square feet.

Springer said the second floor would contain a 9,500 square foot conference and ballroom facility, which can be divided into nine separate rooms.

It would also have sky boxes with a 106 seat capacity, overlooking the arena area of the facility, and a balcony overlooking Moody Gardens and Palm Beach.

The first floor would include a 6,000 square foot banquet kitchen, and 6,000 square feet for exhibits.

The upstairs facilities would accommodate 1,050 people for a reception and 750 people for a sit-down dinner.

These proposals will be recom-

mended for acceptance by the Park Board, which is expected to take action at its Dec. 21 meeting.

A formal announcement of the proposed Hope Arena expansion, with architects' drawings, will be made in the near future.

In other business, the Marine Corps League asked the parks board to select a site at Seawolf Park for erection of a Vietnam veteran's monument.

The estimated cost of the memorial is \$100,000 and it is to contain the names of all county residents who were killed during the war.

McLeod said the memorial would not cost the Park Board any money, with the Moody Foundation to be asked to provide \$50,000 and the memorial committee to raise the remainder.

Don Schattel, executive director to the park board, reported the Galveston rail trolley system made a net profit of \$3,524.40 during the two-day Dickens' on The Strand earlier this month.

He said the revenues for Dec. 3 were \$3,448.50 and on Dec. 4 were \$1,611.50, or a total of \$5,060. Expenses were \$1,517.60

# Moody to relinquish paddle-wheeler, beach

Action required to retain non-profit status

Houston Post  
12-16-88

By Ken Lanterman

OF THE HOUSTON POST STAFF

GALVESTON — In an effort to enhance marketability and to prevent jeopardizing its non-profit status, the Moody Foundation has requested the Galveston Park Board of Trustees to assume ownership of the Colonel paddle-wheeler and Palm Beach at Moody Gardens.

Foundation officials learned this summer following an audit by the Internal Revenue Service that some of the money-making events conducted by the paddle-wheeler — its moonlight cruises, for example — put the foundation at risk of losing its non-profit status.

They also realized that the foundation's non-profit status prevented Palm Beach, the popular white sand beach on Offats Bayou, from participating in several co-promotional marketing ventures that would have resulted in the foundation receiving grants from private companies — most notable a \$500,000 grant from the Coca-Cola Co.

"We figured that with the entities in the park board's hands they would not be as restricted as we are in doing some of the things we'd like to do," said Doug McLeod, the foundation's director of development. "We feel it (the board) wouldn't be as inhibited as we are in generating the money the two entities should be making.

The board approved assuming ownership of the beach and paddle-wheeler pending contract negotiations.

McLeod said that under the terms of the contract, the foundation would sign a management agreement with the board allowing it to continue operating the two ventures with the same personnel, and stipulations to reinvest profits in the paddle-wheeler and beach.

"It would be a similar situation we have with them with regard to Hope Arena," he said.

"Since we turned it over to them, the city has been able to use the arena for conventions, which we were not permitted to do."

McLeod said the IRS gave the foundation a clean bill of health in its audit but frowned on the moonlight cruises.

"They said they were too commercial," McLeod said.

Under the foundation's charter, the paddle-wheeler must promote the history of the area on all its cruises for the foundation to maintain its non-profit status.

The moonlight dinner cruises, which McLeod said generate the bulk of operational revenue for the ship, are purely commercial. The history lessons are set aside.

"We asked them (IRS auditors) what we should do and they suggested what we are doing now," McLeod said.

FORM OVER  
SUBSTANCE  
SHAM!

MONDAY MORNING, DEC. 26, 1988

# City gets another offer of a gift it can't refuse

By JACK STENGLER  
The Daily News

GALVESTON — Once again the city has been made an offer it cannot refuse.

Through the Park Board of Trustees, the Moody Foundation has offered the city ownership of Palm Beach at Moody Gardens and of The Colonel, a paddlewheel vessel which for tax purposes has been operated as a museum.

The Colonel Museum Inc. operates the vessel, but the IRS has said that in order to maintain this status, more history must be presented in the operations and the moonlight cruise must be discontinued.

Reports from the operator indicate the moonlight cruise was going to be discontinued anyway, because it brought in only a small part of the revenue, and there are plans to share exhibits with the neighboring Elissa museum.

The park board has approved in concept taking over the two facilities, but final approval must come from the city, and an operating agreement must be first worked out with each facility.

The Colonel Museum Inc. is expected to continue operating the vessel, and Palm Beach at Moody Gardens Inc. would operate Palm Beach, should the city decide to accept them.

Palm Beach faces the possibility that its improvements and leasehold will be assessed for taxation by the Galveston Central Appraisal District.

Chief Appraiser Guy Emanis has said if the operation remains the same on Jan. 1, the CAD is prepared to set tax values on the leasehold and improvements.

However, if the facility goes under city ownership, or it is proved the Palm Beach facility should be tax exempt for some other reason, then it would not be placed on the tax rolls. The easiest escape is public ownership.

The Park Board of Trustees, in discussing these two offers, has come up with a new wrinkle to be included in operating agreements, not only for the two new Moody Foundation offers, but also for the operation of Hope Arena, which is operated by Hope Charities Inc.,



City  
beat

but was given to the city.

The trustees think, correctly, that now is the time for these operating agreements to include some type of payment to the park board for the time its employees spend administering these gifts.

With the proliferation of these offers, handling the paperwork could require a significant expenditure by the park board.

It would be hard for the city to refuse to take these gifts, because of the sums of money the foundation has put into a host of city projects, and the favorite cry when a pet activity runs into funding difficulties is, "Let's send an application to the Moody Foundation."

However, the city, through acceptance of these gifts, also is doing a very important service for the foundation, because municipal ownership provides those who run the various facilities a wide latitude of operations not otherwise available.

Accordingly, the city should be compensated for providing these favors.

*PARK BOARD + CITY COUNCIL, MANY OF WHOSE MEMBERS ARE CONTROLLED BY MOODY, ENTER INTO A CONSPIRACY TO ENSURE IRS TAX EXEMPTION FOR MOODY GARDENS WHICH ITSELF ACTS AS A FUNNEL TO RECEIVE GRANTS FROM THE MOODY FOUNDATION AND THEN PASS SOME FINANCIAL BENEFITS BACK TO MOODY, HIS FAMILY + BUSINESS ASSOCIATES. (VIOLATES PROSCRIPTION AGAINST PRIVATE INUREMENT). THIS WHOLE THING IS A SHAM!*



Galveston County

# City takes over Colonel

By JACK STENGLER  
The Daily News

GALVESTON — The Galveston Park Board of Trustees accepted The Colonel, a replica of a Mississippi River paddlewheeler, Wednesday as a gift from The Colonel Museum Inc.

The vessel comes under the ownership of the city, through the Park Board, in an agreement between the museum organization and the Park Board.

The pact is for three years and Park Board Chairman Don Mafrige said the move should not result in any cost to the Park Board.

The Colonel will continue to be operated and managed by The Colonel Museum Inc.

The vote was not unanimous, however, with board member and attorney C. G. Dibrell III opposing entering into the agreement.

"I'm against the whole thing," Dibrell said.

Attorney Irwin Herz, attorney for the museum, has said The Colonel no longer can be operated as a museum if it continues to make evening or moonlight cruises.

Herz said the Internal Revenue Service has said that museums cannot do these things.

Under the city ownership, however, the operation can conduct the cruises, where Herz says the major income is derived, and retain its non-profit status.

"The Colonel has to continue to conduct the cruises for this is where the major portion of its income is derived, otherwise the Moody Foundation will have to subsidize it," Herz said.

Dibrell said he believes there are others who could operate the vessel and while the Park Board is in the business of attracting tourists to Galveston, it also has to make some profit for its operation.

"The Colonel has never made a profit and there is a slim chance that it will," Dibrell said.

Herz said the annual net loss of the operation has been reduced from 4400,000 to \$114,000 in three years and there is some hope it will break even this year.

Dibrell said taking over the vessel puts the Park Board in a position of potential heavy liability should an accident occur, but the Park Board hinged acceptance on the operator getting an additional \$60 million of liability insurance coverage.

This would be added to its present \$40 million coverage.

Herz said this seems acceptable to him, but the foundation board will have final say.

Dibrell also was critical that under the agreement the Park Board has no management control over the vessel and its operation.

He added that it is ironic that the Park Board was asked to vote on the agreement Wednesday and the Moody Foundation board is expected to consider the Park Board request for a \$50,000 grant for 1989 Mardi Gras expenses Saturday.

Trustee Jim Yarbrough said The Colonel was never set up to make money and that the agreement provides \$300,000 in an escrow account to cover expenses.

*NOW, MOODY FOUNDATION  
TRUSTEE, ROBERT MOODY  
IS FREE TO MAKE  
GRANTS TO THE COLONEL  
AND THEN PERSONALLY  
BENEFIT FROM THOSE  
GRANTS SINCE ALL  
COLONEL REVENUES ARE  
UNDER HIS CONTROL.*

## **SECTION D**

**Nothing new for Moody Foundation Trustees.**

**Moody Foundation Trustees engaged in prior schemes to defraud Moody Foundation and use its grants for their personal benefit.**

# 2nd Moody is cited in conspiracy

## Brother Robert, bank must pay estate costs

By **DIANNA HUNT**  
Houston Chronicle July 10, 1991

Galveston millionaire Robert L. Moody knowingly participated in the same bankruptcy scheme that sent his brother, Shearn, to prison, a federal judge has ruled.

In an order released Tuesday that concludes a 5-year-old lawsuit, U.S. District Judge Sim Lake ruled that both Robert and Shearn Moody "conspired with malice" to divert \$201,000 in funds that should have been applied toward payment of debts in Shearn Moody's bankruptcy case.

Lake also ordered Robert Moody and Moody National Bank of Galveston to pay the bankruptcy estate at least \$736,000 in costs and damages resulting from the scheme. The bank was found liable for the damages because Robert Moody's position as chief executive officer helped further the conspiracy, Lake ruled.

"Robert L. Moody orchestrated, or at a minimum agreed to, this scheme, was aware of its purpose and voluntarily participated in it," Lake said in his 31-page ruling.

Robert Moody's attorney, E.D. Vickery, said his client was disappointed in the judgment but did not yet know if he would appeal the decision.

"We think the decision is clearly wrong," Vickery said.

U.S. Attorney Ron Woods said his office will investigate the civil ruling to determine if the case merits further criminal investigation.

"I'll familiarize myself with this new order and the past prosecution and see if anything needs to be done," Woods said.

Woods was not U.S. attorney when Shearn Moody Jr. was convicted in 1989 of bankruptcy fraud, and none of the prosecutors involved in the case is still working for the office.

The lawsuit, filed in 1986 by W. Steve Smith, the court-appointed trustee overseeing Shearn Moody's bankruptcy case, stemmed in part from the \$500,000 sale of land that once housed a Galveston bowling alley.

The land was owned by Seaside Lanes Partnership, made up of Robert and Shearn Moody and their mother, Frances Moody Newman. The proceeds from the sale were placed in Moody National Bank under the control of Robert Moody, the managing

# Moody

Continued from Page 11A.

partner.

In 1984, however, despite repeated attempts by the bankruptcy trustee to obtain Shearn Moody's portion of the funds for paying creditors, a check for \$201,000 was turned over directly to Shearn Moody and converted to his personal use.

The transaction led to Shearn Moody's conviction in 1989 on bankruptcy fraud and a five-year sentence to federal prison. He was released earlier this year after serving 18 months.

In his sharply worded ruling, Lake concluded that Robert Moody also defrauded the bankruptcy estate by knowingly helping Shearn divert the funds from the estate.

In several cases, Lake questioned the truthfulness of Robert Moody's testimony about the case.

"The court does not find Robert L. Moody's testimony regarding his good faith belief to be credible because it is contradicted by all of the contemporaneous written evidence of which he had knowledge," the judge ruled.

"Robert L. Moody's conversion of \$201,000 from the bankruptcy estate was willful, knowing and made in bad faith."

The judge also concluded that former Moody aide Norman Revie helped divert \$30,000 of the funds from the bankruptcy estate when he accepted a cashier's check in that amount from Shearn Moody. Revie is ordered to repay those funds.

Attorney Ben Floyd, who represented the bankruptcy trustee in the lawsuit, said the judge's ruling effectively ends the case. A ruling several months ago settled another dispute over \$1 million in funds allegedly missing from the estate.

In the earlier ruling, Floyd said, Lake ordered Revie and James Stoker to pay about \$500,000, including interest, to the estate. The lawsuit had contended the funds were diverted from Shearn Moody Holding Co., which at the time was controlled by Revie and Stoker. Stoker is described in the lawsuit as a longtime companion of Shearn Moody.

Of the other defendants named in the lawsuit, the Galveston law firm of Dibrell & Greer was found not liable in the case and Moody National Bank President Tom Mayfield was dismissed as a defendant at the onset of the trial.



R. Moody

July 10, 1991

# Robert Moody judged liable in conspiracy

GDN 7/11/91

AP and staff reports

HOUSTON — A federal judge has ruled Galveston millionaire Robert L. Moody conspired with his brother to divert funds that should have gone to pay debts in Shearn Moody Jr.'s bankruptcy case.

Robert Moody and two other defendants must pay at least \$736,000 to the bankruptcy estate, U.S. District Judge Sim Lake ruled in an order released Tuesday.

Robert Moody could not be reached for comment Wednesday.

Moody's attorney, E.D. Vickery of Houston, said his client was disappointed in the judgment but has not yet decided if he will appeal the decision.

The bankruptcy scheme resulted in Shearn Moody being convicted of bankruptcy fraud in 1989 and sentenced to five years in prison. He was released last month after serving 18 months.

Lake found that Robert L. and Shearn Moody "conspired with

malice" to deprive the bankruptcy estate by diverting \$201,000 to Shearn Moody.

This judgment is the latest development in a 5-year-old lawsuit filed by W. Steve Smith, the court-appointed trustee and receiver for Shearn Moody's Empire Life Insurance Co. The suit stemmed in part from the \$500,000 sale of land that once housed Seaside Bowling Lanes.



R.L. Moody

The bowling alley land was owned by Seaside Lanes Partnership, consisting of the two Moodys and their mother, Frances Moody Newman. The proceeds from the sale were put in the bank under control of Robert Moody.

In 1984, despite repeated at-

See MOODY, 13-A

Moody <sup>GDN</sup> 7-11-91

Continued from 1-A

tempts by the bankruptcy trustee to obtain Shearn Moody's portion of the funds to pay creditors, a check for \$201,000 was turned directly over to Shearn Moody and converted to his personal use, according to the findings of the court.

"Robert L. Moody Jr. orchestrated, or at a minimum agreed to, this scheme, was aware of its purpose and voluntarily participated in it," Lake said in his 31 pages of findings of fact and conclusions of law.

The judgment orders Robert L. Moody and the Moody National Bank to pay \$201,000 to Smith, as trustee of the estate.

The judge found the bank liable for the damages because Robert Moody's position as chief executive officer helped further the conspiracy.

The federal judge also ordered that the estate trustee be paid an additional \$402,000 by Moody and the bank.

The judgment states the trustee is to recover prejudgment interest on the \$201,000 at the rate of 10 percent per annum, compounded daily, from Dec. 21, 1984, to July 8, 1991, the day of the judgment.

The trustee also is to recover from Robert L. Moody attorney's fees of \$133,000, plus an additional \$15,000 if the case is appealed to the Fifth Circuit Court and an additional \$15,000 if it is appealed to the Supreme Court.

The trustee, under the judgment, is to recover post-judgment interest of 6.39 percent per annum on the \$201,000, \$402,000 and 10 percent interest rate amounts.

# Former Moody lawyer testifies

## Witness says grants paid legal fees

By PATRICIA MANSON  
Post Reporter

A lawyer testified Friday that charitable grants from the Moody Foundation were used to pay the personal expenses of Galveston financier Shearn Moody Jr.

Jane Ford, one of Moody's former bankruptcy lawyers, said she was present on two occasions when Moody associates discussed obtaining charity money to cover his legal costs.

Ford said she and Moody were at a meeting in Washington in November 1984 when others talked about getting Moody Foundation grants to pay another lawyer's fees.

She said Moody associates discussed getting grant money for yet another attorney in a meeting she attended in early 1985. Moody also was present at that meeting, Ford said.

Ford, who was granted limited

immunity from prosecution, took the stand in U.S. District Judge Ross Sterling's court during the seventh day of testimony in Moody's fraud trial.

Prosecutors claim Moody and four other men milked the Galveston-based Moody Foundation of more than \$1 million while Moody was a trustee of the philanthropic trust established by his family.

The defendants allegedly set up several bogus non-profit entities — including the Hamilton Law Institute, the M.T. Carlson Foundation and the Earl Foundation — that were to get charity money.

Those purposes included the payment of Moody's lawyers and of investigators who tried to "dig up dirt" on judges involved in Moody's bankruptcy case or the receivership of his company, Empire Life Insurance Co. of America, according to prosecutors.

Moody, 54, faces up to 85 years

in prison if convicted of 17 counts of mail or wire fraud.

Charged with Moody are his longtime aide, Norman Revie, and Howell C. Willis of Lewisville.

The other defendants in the case, William R. Pabst and Vance Beaudreau, are fugitives.

Ford testified Friday that when money for her legal fees ran short in late 1984, Moody told her Pabst would arrange for a grant so she could continue working.

Pabst arranged for her to be paid \$200 an hour through a research grant and she eventually received \$35,000, Ford said.

She said she returned about \$30,000 of the money in September 1985 after an official of the organization Pabst headed — the Centre for Independence of Judges and Lawyers in the United States Inc. — said the money had been doled out before the grant was approved.

# Former Moody lawyer tells of funds misuse

By DIANNA HUNT  
Houston Chronicle

A former bankruptcy lawyer for Galveston insurance heir Shearn Moody Jr. testified Friday that Moody knew that Moody Foundation grants were being used improperly to finance his case.

Over objections from Moody lawyers that the testimony violated attorney-client privilege, Austin attorney Jane Ford told jurors she attended a 1984 meeting with Moody where plans were made to use grants to pay another bankruptcy lawyer in the case.

Moody raised no objections to the plans, said Ford, who has been granted limited immunity by federal prosecutors for her testimony.

Moody is standing trial with two other men in U.S. District Judge Ross Sterling's court on 17 counts of mail and wire fraud for allegedly defrauding the Moody Foundation out of nearly \$1.5 million in grants.

Moody, ousted earlier this year as a Moody Foundation trustee, is accused of abusing his then-position on the board to funnel grants to foundations that would not otherwise have received them.

The funds were kicked back to him and the others to pay personal and legal expenses, the indictment charges.

Moody and co-defendants Norman Revie and Howell Willis have pleaded not guilty to the charges.

Two others charged, convicted con man William R. Pabst and his associate, Vance Beaudreau, are fugitives.

Ford, Moody's lawyer from 1983 to 1985, testified Friday that she attended a meeting in the fall of 1984 with Moody in which plans were made to pay attorney L.T. "Butch" Bradt of Houston to help out with Moody's case.

The meeting included Moody, Pabst, Bradt and others, Ford testified.

Ford said she already had court approval to be paid from a Moody trust fund that was not, at the time, part of the bankruptcy case.

But Ford said Moody and others were worried that the judge would not approve additional payments to Bradt.

Pabst then began discussing a plan to funnel Moody Foundation grants through other foundations to pay Bradt, Ford said.

"If money did come from the Moody Foundation," Ford quoted Pabst, "it wasn't going to go directly to Mr. Bradt. It was going to go through other founda-

tions."

Ford said Moody never objected to the plan.

Ford said Bradt soon began working on Moody's case but was never listed as the attorney-of-record.

Months later, when the bankruptcy trustee cut off Ford's source of funding, Moody suggested she likewise turn to Pabst, Ford said.

"He said he could get me a research project through Mr. Pabst," Ford said.

Ford said she received about \$35,000 from Pabst and his Center for the Independence of Judges and Lawyers in the United States Inc. for conducting research about bankruptcy cases. But she said she returned about \$30,000 at a CIJL employee's request after resigning from Moody's bankruptcy case.

Ford said she also received about \$40,000 from a Bradt account for the research.

Ford is the first of several former Moody lawyers who reportedly have been granted immunity to testify against him.

Ford's testimony came just hours after Judge Sterling lashed out at Moody defense lawyers for using innuendo and misleading questions in an attempt to discredit witnesses.

"I'm not going to put up with any more of this," Sterling said harshly. "I want an end to this stuff."

Sterling was particularly peeved at a question from Willis' lawyer, Richard Frankoff, to witness David Hollaway, a former CIJL employee.

"Isn't it true that you are nothing but a thief and a liar who has made a deal with the prosecution so you wouldn't be prosecuted in this case?" Frankoff asked.

"I wouldn't say that," Hollaway replied.

"Mr. Frankoff, I'm surprised at you and that last cheap shot you took," Sterling said later.

"If a prosecutor did that, I'd probably declare a mistrial."

Hollaway had testified that Moody tried to hire him to "cripple" another Houston attorney who had raised allegations about him.

But defense attorneys tried to paint him as frequent liar who exaggerated his schooling, military history and experience.

Sterling, however, refused to allow several documents, including Hollaway's military record and school records, to be presented to the jury.

# Sterling lambasts attorneys

HOUSTON — U.S. District Judge Ross Sterling lambasted defense attorneys in the Shearn Moody Jr. fraud trial Friday, saying he came close to declaring a mistrial because of questioning tactics.

Sterling accused the attorneys of attempting to confuse and manipulate the seven-woman, five-man jury, and said he was no longer going to tolerate such action.

The judge's reprimand was delivered after a 15-minute break, outside the presence of the jury. His anger was sparked by a question attorney Richard Frankoff posed to a witness before the break.

Defense attorneys spent the morning questioning David Hollaway, a former employee of the Center for the Independence of Judges and Lawyers, who had stated that defendants Moody, Norman Revie and Howell Willis all knew of a plan to defraud the Moody Foundation.

"Isn't it true that you're a  
See STERLING Page 15A

## Sterling

Continued from Page 1

thief and a liar that made a deal with the prosecution so you would not be prosecuted in this case?" Frankoff asked loudly and contemptuously. Prosecution did not object to the question, and Hollaway was left to respond.

"I don't believe so ... no," he finally answered.

Sterling later let his disdain for the question be known.

"Mr. Frankoff, I'm surprised at you," the judge said, adding that if the government would have objected to the question, "I would have had to declare a mistrial. I want this stuff stopped."

Defense attorneys Marian Rosen, representing Moody; Michael Maness, representing Revie; and Frankoff, representing Willis; had spent considerable time asking Hollaway about his having registered the names of non-existent businesses at the county courthouse. The names were used only for check cashing purposes, and the companies were never actually operated, testimony showed

"There is nothing wrong or illegal about that," the judge said, adding that it is a common business practice used primarily for tax purposes. He scolded the defense attorneys for continually questioning the practice, saying they were trying to suggest an impropriety that did not exist.

During the Thursday and Friday cross-examination of Hollaway, the defense has tried to ask about his military history, birthdate and the address he uses on various documents.

Assistant U.S. attorneys Evan Spangler and Mitchell Lansden have continually objected to the admission of such questions, saying the answers are immaterial to the case. Defense has maintained that the information discredits Hollaway, since he uses different birthdates, apparently bogus addresses and has presented himself as an esquire.

In most cases Sterling has ruled that the items are irrelevant to the case, and he has not allowed the items to be admitted into evidence.

The jury was kept outside of the courtroom for about 20 minutes Friday, while the defense attorneys asked Hollaway all the questions the judge would not allow.

Attorney Robert Hirschorn, co-counsel for Moody, later explained that the information was placed in the record so an appellate court could overturn the decision, "in the unlikely event he (Moody) is not acquitted."

# Attorney testifies Moody knew of fraud plan

By ARLENE BATTISTA  
News Staff Writer

HOUSTON — Shearn Moody Jr. was present at a discussion on defrauding the Moody Foundation, and he said nothing against the plan, testified an attorney who previously worked for the island insurance heir.

Jane Ford, who represented Moody in bankruptcy proceedings from 1983 to 1985, testified that she, Moody and others were at a Washington, D.C. meeting when the fraud scheme was discussed.

Ford, the seventh witness in the federal fraud trial involving her former client, has been granted limited immunity from prosecution in exchange for her testimony.

Moody, his administrative aide Norman Revie and Hamilton Law Institute Director Howell Willis are accused of scheming to defraud the Moody Foundation of \$1.3 million. Others named in the 17-count indictment include William Pabst and Vance

## MOODY ON TRIAL

Beaudreau, who are believed to be hiding in Mexico.

Moody is alleged to have abused his former post as foundation trustee by helping obtain grants for the law institute, the M.T. Carlson Foundation and the Earl Foundation. Once funds were received, money was allegedly sent to the Center for the Independence of Judges and Lawyers, which allegedly used much of the money on Moody's behalf.

Ford testified that on Nov. 27, 1984, she attended a meeting at Shearn Moody's suite at the Hotel Washington. Discussion turned to how attorney L.T. Bradt would be paid for his services to the island financier, she said.

Bradt was to assist with the  
See MOODY Page 15A

## Moody

bankruptcy proceedings, but since there were already two attorneys officially on the case it was doubtful that the court would agree to hiring a third lawyer, she testified. William Pabst, CIJL director, offered a solution.

Pabst said he had access to several foundations, and through them he could pay the attorney, Ford testified. He said the money from the Moody Foundation would have to go through other foundations before it would reach Bradt.

Prosecutors allege that CIJL fabricated grant applications for the three foundations named in the indictment. Once approved, the grantee kept as little as six percent of the funds and CIJL received the rest.

Moody's attorney, Marian Rosen, objected to the admission

of statements from the meeting, saying the disclosure would violate the attorney-client privilege between Moody and Ford.

U.S. District Judge Ross Sterling allowed the statements, saying the meeting included others who were not directly involved in the bankruptcy proceedings. Ford testified that Pabst, his wife, Rosario Montes, and others were present at the meeting.

Ford said Moody also was present and privy to the conversation, and that he made no response to the statements.

Ford testified that she was representing Moody in the bankruptcy proceedings, filed in North Carolina in relation to his now-defunct Empire Life Insurance Co. of Alabama. A trustee had been named to oversee Moody's

assets and the holdings of the insurance company, and her salary was paid through that trust. The case absorbed much of her time, and she was basically representing no other clients for much of the 1983 to 1985 period.

Ford's salary was placed in jeopardy in early 1985, when Revie refused to cooperate with the bankruptcy trustee, she testified. When Moody learned she would be forced to accept other clients, he told Ford she could do work for CIJL and that "Pabst could get money from foundations."

In February 1985, she was contacted by Pabst and asked to do bankruptcy research for CIJL, she said. She was told that, in order to receive payment, deposits would be made into a CIJL account and

Continued from Page 1  
she could withdraw her salary from that account.

Over the next few months, \$36,000 was deposited into the account, much of which she withdrew, she said. That account was closed in March 1985, and she then received about \$40,000 from the L.T. Bradt trust account.

Ford testified that in mid-1985 she stopped representing Moody, and was then contacted by Diane Simon from CIJL. Simon indicated that much of the money Ford received needed to be repaid. As per her instructions, she sent checks totaling \$30,000 to the Earl Foundation.

Testimony ended at 1:30 p.m. Friday. Questioning of Ford is slated to resume at 9:30 a.m. Monday.



## **SECTION E**

**Examples of Moody Foundation threats to withhold charitable gifts to local charities unless Moody Foundation gets its way at Moody Gardens.**

**Examples of how all charitable endeavors at Moody Gardens were cancelled and eliminated by Robert Moody, Trustee of Moody Foundation.**

**Examples of bad deals forced upon the City of Galveston by Moody Foundation and those members of the Park Board of Trustees and the Galveston City Council who have financial ties to Moody.**

Wed, 10/18/00

.....  
Representatives of the Moody Foundation told the city council last week that if the city cuts off \$600,000 in annual hotel tax revenues now going to the Moody Gardens convention center, the foundation might have to scale back some of its charitable giving. !

### **Moodys threaten to pull charity after Fertitta wins**

Whoa, how does it feel to have a gun placed to your head, Galveston?

Sour grapes? What I'm talking about is the Moody Gardens Inc., the great and wonderful tax-exempt, philanthropic, charitable organization that is threatening to curtail its charitable works such as the Transitional Learning Center and Hope Therapy rehabilitation if it doesn't receive the one-cent hotel tax.

Galveston, we all know why the Robert L. Moody Community House and Transitional Learning Center was built. We all know that the Hope Arena represents one-tenth of that huge "nonprofit, tax-exempt" complex on the West End.

Face it, Moody Gardens Inc. — Tilman Fertitta built a better mousetrap or convention center package.

You lost, now you're gonna take your marbles and run?

Competition is good for the island and healthy for the soul. I personally hope the one-cent tax goes to the "new" convention center on the island.

Joseph Barnett  
Galveston

threats →

The Moody offer has prompted calls to park board trustees from representatives of Fertitta and developer George Mitchell and from city council members — all worried that it jeopardizes the election, said board Chairman Melvin Williams.

"I don't think that's the case at all," he said. "I think they feel they need a new facility."

Williams, who supports the Moody proposal, gave it a 50 percent chance of success in Tuesday's meeting. He gave it no chance of success if side issues were attached.

"I can guarantee if they come in saying we want to build more rooms or a fitness center, they'll lose," Williams said. "It will be a unanimous vote."

Under Moody Gardens' operating agreement, the park board must give its permission for any expense of more than \$1 million.

● Carter Thompson can be reached at (409) 683-5230 or [carter.thompson@galvnews.com](mailto:carter.thompson@galvnews.com).

*to enable Moody to have more hotel rooms!*

## Moody charities looking at cuts due over revenue

By CARTER THOMPSON  
The Daily News

**GALVESTON** — Moody Gardens did well last year, reaping \$3 million in profits. And now the Moody Foundation, the funding muscle for the tourism attraction, wants to spend \$14 million to expand the Galveston Island Convention Center at Moody Gardens.

Moody Gardens does not appear to be hard up for money. So why did foundation officials earlier this month warn of cuts — including in the charitable purposes that spawned the facility — at Moody Gardens if the convention center lost its \$670,000 of city funding?

Doug McLeod, the foundation's director of development and chairman of Moody Gardens' board of directors, said the budget year that ended in Sept. 30 was the first in which Moody Gardens posted a profit.

Over the previous 10 years, the foundation has backed \$22 million of losses at Moody Gardens, he said.

Revenues generated by Moody Gardens have tripled since 1998, with nearly all the gains attributable to the opening of the hotel and aquarium.

Moody Gardens officials say they plan to plow a good share of last year's profits into developing new attractions.

If not, people will stop coming to Moody Gardens,

and that would threaten its profitability.

McLeod said Robert L. Moody, family patriarch and foundation trustee, placed a premium on self-sufficiency.

"We hope we at least break even next year," McLeod said. "But what if we don't?"

Moody officials earlier this month made their case to the council to keep the penny of hotel-occupancy tax — worth \$670,000 last year — at Moody Gardens at least until the seawall facility opened. The presentation included testimony of recipients of Hope Therapy, where horses are used to help disabled children and people who have suffered brain injuries.

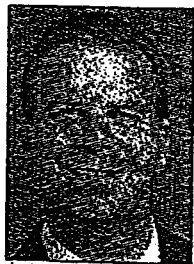
It struck some observers as a threat that if city leaders took away the hotel tax penny, the Moodys would reduce their charitable giving.

McLeod said that was not the intent.

The Moody Foundation and Moody Gardens would have to make budgeting decisions as any other entity would, that suffered a \$670,000 loss, even if the cuts nicked the original mission of Moody Gardens.

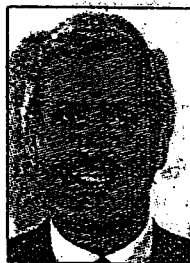
"I think if we had to make some hard choices, we would have to trim across the board," he said. "Hope Therapy loses \$500,000 a year. It's very expensive to underwrite. I can't say right now whether that program would be trimmed by 5 percent or what."

→ **W**here is the gift? Moody Gardens has made \$7 million in the last two years and the city's gotten nothing for it, even though the city owns it.



Tilman Fertitta

**W**hy would the people of Galveston go out and give Tilman Fertitta \$2.5 million a year for 30 years?"



Doug McLeod

OCT 16, 2000

## Moody representatives ought to be ashamed

**M**oody Foundation representatives put on quite a show for the Galveston City Council last week.

They marched in people who benefit from the foundation's many programs to plead that the city not take away funding for them.

What a crock.

Doug McLeod, chairman of the Moody Gardens board, was the ringmaster for what might have been the most shameless display ever organized by the Moody interests. The message was clear: If the city council turns off the tap for that \$600,000 in annual hotel tax revenues now going to the Moody Gardens convention center, the foundation might turn off the tap for some of its charitable giving.

"We are worried about the money," McLeod told the council. "You might not think that has much credibility from an organization like the Moody Foundation, but we have to make plans."

McLeod is right. We don't think the foundation's cry of poverty has much credibility. The foundation has almost \$1 billion in assets. There are a lot of places it can find \$600,000 without cutting its charitable programs.

According to the financial statements Moody Gardens provided to the park board, the operation had a net income of almost \$2.4 million for the first 11 months of the current fiscal year. And it's going to have to raid the funding for scholarships to make up for the loss of \$600,000?

What this whole thing sounds like to us is blackmail. The foundation seems to be saying that if the city doesn't bow to its power, innocent people will suffer.

We are floored by the audacity of it.

● This editorial was written by Kelly Hawes, associate editor of The Daily News. His email address is [kelly.hawes@galvnews.com](mailto:kelly.hawes@galvnews.com).

.....  
*A representative of Moody Gardens told the Galveston City Council that a number of charity programs funded by the Moody interests could be cut if the city diverts \$600,000 in hotel tax money toward building a convention center.*

### Moody officials say anything for deal

Let the propaganda begin. It seems that officials at Moody Gardens will say anything to ensure their "little cash cow" will keep coming through for them.

The idea that \$600,000 from the city is the only thing that is keeping charitable therapies from occurring at Moody Gardens is ludicrous.

Anyone who is familiar with Moody Gardens or has read its literature knows that it began as a place for therapy with horses.

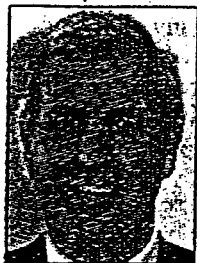
For Moody Gardens to now state that the denial of monies from the city will end the very program on which Moody Gardens was founded is an insult to the intelligence of everyone.

Robert Compean  
Houston

October 14, 2000

# Moody programs could suffer if Fertitta deal done

OCT. 14 2000



Doug McLeod: "(Moody Gardens is) worried about the money."

By MICHAEL A. SMITH  
The Daily News

■ Neighborhood scared/A6

**GALVESTON** — Charity programs might be cut if the city diverts \$600,000 in hotel tax money toward building a convention center, a Moody Gardens official said Thursday.

The information was delivered by Doug McLeod, chairman of the Moody Gardens Inc. board of

directors, just minutes before city council members voted to pursue a convention center project.

Moody Gardens Inc., along with George Mitchell's MBP Corp. and two companies headed by Tilman Fertitta, had bid to build the convention center.

The park board of trustees voted in September to negotiate with Fertitta for a new conven-

tion center to be built behind the San Luis Resort and the city council followed suit Thursday.

At issue now is revenue from a one-cent slice of the taxes charged on hotel and motel rooms in the city.

One cent of the tax rate generates about \$600,000 a year that now goes to Moody Gardens to operate the city's existing convention center.

The plan being negotiated with Fertitta calls for that money,

along with revenue from a proposed tax increase, to be earmarked for construction and operation of a new center.

McLeod said he was not speaking against the deal but warned that charitable programs might be cut if Moody Gardens lost the \$600,000.

Those programs include Hope Therapy, where horses are used to help disabled children and people who have sustained serious brain injuries.

"We are worried about the money," McLeod said. "You might not think that has much credibility from an organization like the Moody Foundation, but we have to make plans."

The Moody Foundation, which has more than \$700 million in assets and earns hundreds of millions a year from American National Insurance Co. stock, subsidizes Moody Gardens Inc.

Please see MOODY/BACK PAGE

## Moody

Continued from Page A1

Moody officials want the \$600,000 to stay with Moody Gardens at least until the new convention center opens, McLeod said.

"It's just not fair to ask us to subsidize the city convention center at Moody Gardens while the new one is being built," he said.

Fertitta spokesman Steve Greenberg said revenue from the contested penny was needed to build the center.

"We need that penny," Greenberg said. "The project just won't work without it."

He said giving up the revenue would force Fertitta to scale back the project.

"A center smaller than the

planned 40,000 square feet would not benefit any of the other hotels. Mr. Fertitta has already said he does not want to use public money on a project that will only benefit his hotel."

Mayor Roger "Bo" Quiroga told McLeod the council would have an answer about what would happen to those revenues in about two weeks.

City council members on Thursday instructed the city attorney to seek federal approval for an election on the convention center.

If all goes as expected, voters will be asked to approve a two-cent increase in the hotel tax during an election on Jan. 20, 2001.

# Foundation cuts off program

By CARTER THOMPSON

The Daily News

3/23/2001

**GALVESTON** — The Moody Foundation's decision not to continue to fund Galveston College's hospitality program has the future of the program in question.

William Johnson, the college's president, told college regents on Wednesday that the foundation had declined to fund the program in its 2001-2002 grant cycle.

"We now have to consider whether that program will be continued or not," he said.

The college program has used the hotel as a real-life classroom for students training for careers in the hospitality industry.

→ The educational presence at the 303-room luxury hotel was probably vital to the construction of the hotel, Moody officials have said.

"It's my opinion that the designation as a teaching facility was important to our getting IRS approval for the project," Doug McLeod, the foundation's director of development, said in 1998.

Federal tax codes allow private charities to avoid paying income tax but demand that they spend their money "exclusively for charitable, scientific and educational purposes."

McLeod said on Thursday that the hotel would continue to be used for higher education. Moody Gardens was in talks with Texas Tech University on the possibility of a hospitality program at the hotel. The hotel now provides internships to university students, he said.

McLeod also is on the board of the Moody Hospitality Institute. The board's president, Allan Matthews, was unavailable on Thursday.

The foundation last year granted the college \$238,000 to run the program.

The college could continue the program under the Workforce Development Program, said Johnson. He said he would have a recommendation for the regents at their next meeting.

McLeod said Galveston College would be welcome to continue to have a presence at Moody Gardens.

"Galveston College has done a wonderful job with this program, and we hope they will continue to send their students to Moody Gardens," he said.

The college was a bit player in the battle for the city's new convention center. The seawall center would be built on land the college sold to Landry's Management, Moody Gardens' competition for the deal.

That land deal is stalled by questions of whether the college can sell the land — its Fort Crockett campus on Avenue U — to the private sector.

Johnson told regents the college had hired attorney David Feldman to work on the college's behalf to untangle the issues surrounding the land deal. The college's usual attorney, Carla Cotropia, also represents the park board, and Feldman was hired to avoid a conflict of interest.

The college will be able to report on the progress of the work next week, said Johnson.

MOODY  
FOUNDATION  
PUNISHES  
COLLEGE BY  
WITHDRAWING  
GRANTS.

# Moody scheme will not help community

10-25-99

**R**aymond Lewis Jr.'s column of Oct. 19 is an excellent illustration of why we should oppose an increase in the hotel-occupancy tax for the benefit of the Moodys.

Like latter-day Merlins, supporters of the tax increase claim to have a "vision" of the future, but they can't see the past — or learn from it.

Mr. Lewis says we "just may" encourage some corporations to move here with "real jobs."

"Just may" is not good enough to justify the investment of millions of dollars in public funds. Galveston Island, without air service and so close to Houston, begins with a substantial disadvantage in the convention business. Our exposure to hurricanes will cause many conventions to sensibly make their reservations elsewhere.

We've seen too many "just may" opportunities in the past, but we haven't learned from them.

Galveston's tourism was unable to support the Sea Arama park, which now rusts and rots. The Moody Foundation is no longer willing to fund Galveston Outdoor Theater.

Mr. Lewis says that "we" will get a "first-class convention center."

What does he mean by "we"? If the center proves profitable, it will flow back to the foundation, at least in theory.

The city of Galveston may, if it's lucky, get to retire its bonds. It will derive no profit because



**Mark W. Stevens**

Guest column

it's a benefactor — and a chump. If this is a "good deal" as Mr. Lewis claims, then why aren't private investors lining up?

First Class? It ought to be. It will be built with "other people's money." The

directors of the Moody Foundation can be as opulent as they want because they are doing it with Moody Trust money and maybe even the city's money and not a cent of their own.

Fact is, the individual Moody family members won't feel it if the project is a success — or a flop. Their company — Gilbane — will get the construction contracts no matter what, just as before.

Think of it. The trustees own the company that gets all the construction business for the foundation. Who wouldn't want to do it first class in their position?

The Moody Foundation is a cow — and the city is being asked to feed millions of dollars to it while the Moodys milk it.

Mr. Lewis pretends, or perhaps believes, that there is no down side to this project. There isn't one for the individual Moodys, but there is for Galveston.

What will happen if the convention center does not prove

profitable? If the Moody Foundation is either unable or unwilling to carry forward, will we see another announcement as with Galveston Outdoor Theaters, Ball High's Project Graduation or so many other instances of the Moody's retrograde generosity?

Would the individual Moody family members be willing, now, to pledge their fortunes to pick up the obligations of the foundation?

Not likely. In a Fifth Circuit Court of Appeals opinion affirming a substantial judgment against the late Shearn Moody, it was revealed that a vice president and director of Empire Life insurance told Shearn that a proposed action would be bad for the policyholders, to whom he owed a fiduciary duty. Moody's response: "(Expletive Deleted) the shareholders."

And the Moodys actually expect people to eat at a restaurant named "Shearn's."

Judging from their recent and past negotiation tactics, the Moodys hold us in the same degree of contempt as the departed Shearn had for his policyholders. Our attitude to the Moody clan should be the same.

So let the Moodys and their foundation build anything they want, but with their own money — and not a penny of public funds and without any indirect public subsidy.

Vote "No" on the Moody's Convention Center subsidy scheme.

● Mark W. Stevens is a Galveston attorney.

# Moody's investigate expansion

■ The convention center at Moody Gardens might still be looking to expand with its own funding.

9-24-00

By CARTER THOMPSON  
The Daily News

**GALVESTON** — Though passed over in favor of a seawall location, the convention center at Moody Gardens still might be expanded.

Whether that expansion or a related expansion of the Moody Gardens Hotel hinges on an election on a new convention center to be built behind the San Luis Resort was unclear.

Doug McLeod, director of development for the Moody Foundation, said the Moodys were examining the options.

"Probably we can't do anything until we see what voters do on the Brimer Bill," he said, referring to the state legislation that authorizes such elections. "It in essence prevents us from planning."

If voters approve the increase in the city's hotel-occupancy tax, the facility at Moody Gardens almost certainly will lose the tax allotment it now receives for operation and maintenance expenses. That allotment is now worth \$600,000 a year.

The Moodys also would be on their own to finance the expansion, which McLeod said would be for the most part a new convention center tied into the current facility's west side that includes the Floral Ballroom.

During recent evaluation process of proposals submitted for the new center, Moody attorney Irwin "Buddy" Herz said the plans were to expand the center regardless of whether it was chosen and funded by the city.

Family patriarch Robert L. Moody also reportedly has expressed an interest in expanding both the center and adjoining hotel at Moody Gardens to city leaders.

Councilman Joe Jaworski and Moody met for lunch at Luigi's Ristorante Italiano on Monday. Jaworski said it was a frank and open discussion in which Moody indicated he was displeased with the evaluation process but did not suggest he was organizing opposition to the election, the date for which has not been set.

Moody asked about the possibility of adding 200 rooms to the hotel and perhaps paying property taxes on those new rooms. The hotel's current stock of 303 hotel rooms is owned by the city and is tax-exempt, an arrangement that irks some other island hoteliers.

"I appreciate him coming forward and wanting to discuss these kinds of things," said Jaworski. "I think it needs to be done with the park board, but I don't begrudge him for seeking out elected officials and feeling out their positions."

Moody did not return a phone call to his office on Thursday.

Asked about whether the Moodys would support or oppose the election, McLeod responded, "Officially our best bet is to stay out of it." But he went on to say, "I think our posture is to wait and see if Tilman keeps his word."

Tilman Fertitta heads the two companies that submitted the proposal recommended by the park board's ad hoc convention center evaluation committee.

McLeod was referring to whether commitments Fertitta made verbally to the committee on the proposal would end up in a written agreement.

Please see MOODYS/A7

## Moody's

Continued from Page A6

Fertitta said he welcomed an expansion of the convention center at Moody Gardens. But the new hotel rooms, even if taxable, would compete unfairly with the private sector, he said.

Fertitta, the head of Landry's Seafood Restaurants and owner of Fertitta Hospitality, said he always kept his word.

"Whatever was in my presentations is what I'm going to do," he said. "Whatever I say is going to happen."

The park board this week will decide whether to adopt the committee's recommendation. If it does so, negotiations on the written agreement will begin soon after.

Other council members contacted this week, including Mayor Roger "Bo" Quiroga, said

they had not met with Moody representatives. Quiroga said was "bothered" that other council members had met with Moody representatives.

The Moodys need park board approval for any major expansion. Its operating agreement states that park board trust must approve any projects that cost more than \$1 million, even completely financed by Moody Foundation or family members.

GALVESTON COUNTY DAILY NEWS



# Park board's job is to say no to bad deals for city

**W**hen's a deal not a deal? Well, if you live in Galveston, a deal isn't a deal when Buddy Herz makes it for the Moody Foundation.

That's a shame, because the foundation and Moody Gardens, its most spectacular project, have so much to offer the community.

The partnership between the city of Galveston and the foundation is unusual and extraordinarily complex. More problematic, it keeps changing.

The island gains from that agreement a world-class tourist attraction. The foundation, whose chief negotiator is attorney Herz, won a favorable land lease and tax-exempt status.

The big problem is one for other private Galveston businesses forced to compete against Moody Gardens and the foundation, possessor of hundreds of millions of untaxed dollars.

Because Moody Gardens features attractions, a dress shop, a health club, a gift shop, several restaurants, bars, a hotel and convention facilities, already it competes directly with many tax-paying businesses. It's not a fair fight.

To make this unusual relationship work, those who do pay taxes must believe in the long-term good intentions of the untaxed colossus in their midst.

Buddy Herz probably would say he's just doing his job, chipping away continually at the original agreement with the city, making one deal after another and then reneging.

However, the pattern is so clear now that the essential ingredient in all this — trust — has been fractured, maybe irreparably.

A clear example came up recently when Herz and the foundation went back to the Galveston Park Board of Trustees to ask for another change. This one would allow the foundation to sell memberships in its health club.

Not even a year ago, the foundation agreed not to do that. That was part of yet another renegotiation. Moody Gardens did not like the right the city then had to give the complex back to the foundation, making it liable to pay property taxes.

Some urged the park board not to do that, arguing that the so-called give-back clause was the only real

leverage the city had. Herz made a wounded speech, nearly weeping that anyone would question his organization's trustworthiness.

Folks, we hate to say we told you so, but we told you so.

There's an old maxim in business: There's no point negotiating with someone you don't trust.

Watching all this, an old story comes to mind. Driving one day, a woman runs over a snake but doesn't kill it. She takes the wounded reptile in and nurses it back to health. Then one day it bites her, and as she dies, she gasps, "I don't understand — I treated you so well."

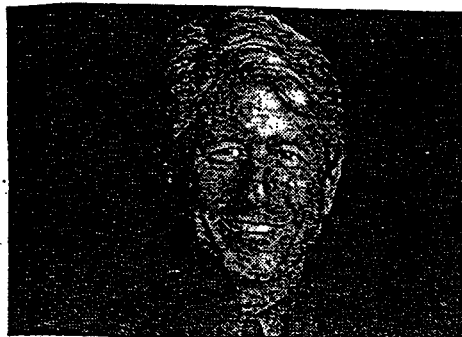
"Hey," said the snake, hissing slyly, "you knew I was a snake when you took me in."

Herz is just doing what he's always done. The city and the park board

should keep that in mind. The board's job is to just say no.

● Dolph Tillotson is president and publisher of The Daily News.

**DOLPH TILLOTSON**



**Wednesday**

July 7, 1999

.....  
*District Attorney Mike Guarino advised the park board of trustees that it could not spend public money on advertisements to support the tax increase.*

**City should change name of island to Moodyville**

Once again the park board, the lackey of the Moody Federation, mishandled public funds with no accountability to the citizens of Galveston.

I suggest we change the name of the town to Moodyville and take 10 percent out of everyone's paycheck to go to the Moodys and be done with it.

**George Osborn**  
**Galveston**

\* GALVESTON COUNTY \*

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## OUR VIEW 11/19/00

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### Moody Gardens belongs on sidelines of campaign

**M**oody Gardens should stay out of the election to decide whether the city will build a new convention center on the seawall.

The Moody family, which built Moody Gardens, has a huge financial interest in fighting the park board's plan to build a new convention center.

And it's in the family's interest that the voters turn down a proposal to build a convention center anywhere except Moody Gardens.

The family and Gal Tex, a family-owned company that manages Moody Gardens, have every right to lobby for whatever measures benefit their interests.

Hotelier Tilman Fertitta, who won the competition to take a proposed convention center to the voters, certainly will campaign for his plan.

But while the Moody interests have every right to get involved in this election, Moody Gardens does not.

It's an institution owned by the city. The Moody family gave it to the city so that it would be off the tax rolls. And since it belongs to the city, it should be scrupulous in staying out of the campaign.

Already, though, the lines between what's in the public interest and what's in the private interest are blurring.

Moody Gardens has hired Bill Miller, a public relations consultant, to promote an expansion of the Moody Gardens convention center.

Gal Tex, the private company owned by the Moody family, has hired the same consultant to run a campaign to defeat the seawall convention center in the election.

Whether that meets the strictest definition of a conflict of interest is beside the point. It doesn't pass the smell test.

The Moody interests argue that Moody Gardens' money won't be used in the convention center campaign. But what constitutes a campaign?

Does a brochure promoting expansion of the Moody Gardens convention center constitute a campaign against the Fertitta proposal? What about a billboard?

One wing of city government should not be campaigning against a proposal put forward by another wing of city government.

While the Moodys and Fertitta battle it out over the convention center proposal, the place for Moody Gardens to be is on the sidelines.

● This editorial was written by Heber Taylor, editor of The Daily News. His email address is [heber.taylor@galvnews.com](mailto:heber.taylor@galvnews.com).

# The convention center fight is all about money

**M**oody Gardens is asking the Galveston Park Board today for permission to begin construction on renovation and expansion of its convention facilities.

That's a bad idea, at least for now, and the park board should table it indefinitely.



**Dolph Tillotson**

The Moody proposal sounds innocuous enough. The project would provide 60,000 square feet of exhibit space and 30,000

square feet of meeting space. The project would be "wholly funded by Moody Gardens, Inc."

Who could lose on a sweet deal like that?

We all could lose.

Speedy approval of that request could set in motion events that would cost the city its one chance for a viable convention center.

The Moody interests would be the big winners, but those interested in the growth and prosperity of Galveston would lose.

Readers will recall the convention center was the subject of a detailed evaluation over the summer. The park board requested proposals and got three of them, including one from Moody Gardens.

A seven-person site selection committee held many hearings and spent months poring over those proposals. Eventually, the site committee, the park board and city council agreed - unanimously - the best proposal came from hotelier Tilman Fertitta.

Fertitta's proposal was deemed best because it is situated on Seawall Boulevard, it is closest to the greatest number of hotel rooms, and it brought to the community its greatest opportunity for new and taxable economic development.

However, before it is built, details have to be worked out with the park board.

The Moody interests are fighting against reallocation of hotel occupancy tax money now allocated to Moody Gardens, about \$600,000 a year.

Doug McLeod, chairman of Moody Gardens Inc., recently told the Galveston City Council if Moody interests don't get their way on the funding issue, they'll cut funding to charitable programs such as Hope Therapy for brain trauma victims.

It's a nasty fight, and it's all about money.

The Fertitta proposal also requires public approval of an increase in the hotel occupancy tax under provisions of the Brimer bill. Word on the street is that the Moody interests are gearing up to fight against that election. It's in their financial interest for the Fertitta project to fail.

The proposed Moody Gardens expansion project would be an effective political ploy. We can hear the argument now: Why approve a hotel tax when Moody Gardens already is building an expanded convention center? The answer, of course, is that the Moody Gardens project has been deemed inadequate. It's all right if it's in addition to the Seawall Boulevard project. It's not all right as a substitute for it.

If the park board sanctions a new convention center now at Moody Gardens, all the work up to this point could be scuttled.

Members of the park board should be wise enough to recognize the potential loss in the Moody request and say no, at least for now.

● Dolph Tillotson is publisher and president of The Daily News. His email address is d.tillotson@galvnews.com. His phone number is (409) 683-5219.

through INTIMIDATION + THREATS!

MOODY FOUNDATION THREATENS TO CUT ITS ONLY REAL CHARITABLE GIFTS TO HOPE ARENA IF FOUND. DOESN'T GETS ITS WAY!

# Program's closure should be reconsidered

**M**y 5-year-old son has a developmental disorder that is something like a high-functioning autism. It's been called sensory processing disorder, pervasive develop-



**Ann Nelson**  
Guest column

mental disorder, and simply, language delay. No one has determined exactly what it is.

This disorder struck him nearly dumb at 18 months. He

stopped saying "apple," "bath," "go-go-go, and all the words I'd written in his baby book at 15 months.

He began to withdraw socially, maintaining some kind of physical or psychological distance from children and people he didn't know well, in general, from people whose behavior he couldn't predict.

He has participated in various therapies over the past three years. Speech therapy, occupational therapy, music therapy and sensory therapy. He has made tremendous progress, but he still has 18-month delays in his speech and social development.

Moody Gardens' management team is now aborting the best of his current therapies. Without consulting the director of Hope Therapy services, other employees, or

the clients they serve, the team has decided to abandon its Hope Therapy equestrian, small animal and recreational therapy programs so that convention and hotel facilities can be expanded to the waterfront where Hope Therapy now sits.

And, the team explains this move as an effort to "refocus" its efforts.

Hope Therapy has been a model of special education. It provides special-needs children with individual attention from people who are trained to work with their disabilities.

While this may seem like a simple formula, this kind of one-on-one teaching is hard to come by.

We don't get it from public education. Even in the special therapeutic services that public schools provide, such as speech, occupational, music and movement, students rarely receive one-on-one attention. And we rarely get referrals for it from our insurance companies.

Hope Therapy has also been a model of philanthropy, the kind of charitable organization that our president calls on to supplement public assistance. I have marveled at Hope Therapy — the horses are so well trained, the staff so patient, the therapeutic theory so intelligent and sensitive.

The Moody Foundation names Moody Gardens as its primary funding focus (along with the Transitional

Learning Center), and Moody Gardens, as I write, still advertises Hope Therapy as its "cornerstone."

Now that the Moody Gardens management team has abruptly told the staff and clients that the service is over, I am stunned by the lack of principle, the lack of conscience, and the complete inconsistency in this act.

We were given nothing close to 1) adequate time to find replacement therapy, 2) transition services to help our child understand that he would no longer be riding with Gina, or 3) sufficient explanation for the closing. Everything that was good about Hope Therapy — careful, thoughtful, educated consideration of children with special needs — has been absent from the action the management team has taken.

An article in The Daily News stated that the Moody Foundation "could be involved with an attempt to relocate" the program.

I urge the management team — including specifically Douglas McLeod, Mike Riley and John Zendt — to translate intentions into action by participating in plans to continue the children's therapy.

By doing so, the team would respond to the children's needs in an ethical manner consistent with the mission of the Moody Foundation.

Ann Nelson lives in Friendswood.

POOR ANN NELSON ! SHE ALSO IS DUPPED, JUST AS THE IRS  
& THE PUBLIC ARE. THE MISSION OF THE MOODY FOUNDATION,  
JUDGING ONLY BY THE ACTIONS OF MOODY FOUNDATION TRUSTEES,  
IS TO TRANSFER AS MANY FUNDS AS POSSIBLE FROM THE  
MOODY FOUNDATION TO BENEFIT PERSONALLY THE  
TRUSTEES OF THE MOODY FOUNDATION AND THEIR FAMILY &  
BUSINESS ASSOCIATES & FRIENDS. JUST PITIFUL.

•••  
*The Galveston City Council said it would study its options in protesting the closing of the hippotherapy program at Moody Gardens. The program uses horses and other animals to help people who have suffered brain injuries or muscular disorders.*

4/7/02

### **Parent angry, saddened over close of therapy program**

I have a son who has been with the program for about five years. I am very saddened and angry that we are losing a great program.

It has done so much for our son — and to think that he is the one (among many others) that will definitely lose everything at the hand of the almighty dollar.

I do very much appreciate everything that his therapist has done for him. I do hope and pray that anyone who can help restart this can come forward very soon because time is of the essence.

I, along with many others, agree that we would love to see Mr. Tilman Fertitta take this over.

**Diane Saucedo  
Hitchcock**

### **Program's end a dramatic change to those involved**

Lucky, Frosty ... the names had been erased but were still legible on the small, wood framed chalk boards that are nailed to the posts in front of each of the stalls.

I couldn't read the others.

Fresh, aromatic pine wood shavings covered the floor, imprinted with the recent outlines of hooves. Rakes, shovels, brooms and other tools were stacked neatly in a corner. The amber glow of the lights with schoolhouse globes, usually still on at this early hour, had been extinguished.

My 9-year-old yellow lab, Addie, looked into the open barn door as usual on her morning walk, but saw only a diminutive mouse that scurried behind one of the sliding stall doors.

Just days ago some very special and gentle animals would have wheeled and craned their necks to see the intruder, possibly believing that we might be one of the staff members bringing breakfast.

Three or four blocks from my house an equally special and gentle child wakes up in anticipation of a day with "his" horse; but the bad dream this time is real, and he cries himself back to sleep.

**Bob Newding  
Galveston**

**SUNDAY ... 3-31-02**

*The Galveston City Council said it would study its options in protesting the closing of the hippotherapy program at Moody Gardens. The program uses horses and other animals to help people who have suffered brain injuries or muscular disorders.*

### **Hope Therapy decision shows Moodys only about money**

I was very shocked to find out that the very foundation of Moody Gardens, their internationally recognized horse riding (hippotherapy) and animal-assisted therapies, will be shutting its doors on April 1 in order for Moody Gardens to build their tax-exempt convention center.

As a mother of a disabled child I have seen firsthand how beneficial this type of therapy can be and was looking forward to participating in this program (we were on the waiting list).

I am also very disappointed that Moody Gardens has made no effort to relocate or perhaps find another sponsor for this therapy. They owe that much to the many disabled individuals that participated in Hope Therapy and now feel very cheated and displaced.

It seems to me Moody Gardens real interest is in benefiting itself and not those who it has set out to benefit. Perhaps the city of Galveston and Moody Gardens should explain to its tax-paying citizens why it should remain tax-exempt.

**Sharla Monsma  
Houston**

### **Moody Gardens' tax-free status is a sham**

Ha! Why would one be surprised about the recent notice to close Hope Arena at Moody Gardens?

I'm surprised the self-serving Moodys have kept it alive for as long as they have.

I am appalled that the Moodys get off tax-free. What a sham. Tilman Fertitta to the rescue?

**Donna Swartz  
Galveston**

# Autism program's end shocks clients

## Horse therapy closing to make room for Moody Gardens center

By KEVIN MORAN  
and RUTH RENDON  
Houston Chronicle

3-14-02

GALVESTON — The Moody Foundation will close an internationally known equestrian therapy program for the disabled to allow for expansion of a convention center at Moody Gardens, foundation officials said Wednesday.

Dismantling of the program, featured on HBO and in numerous other media since it began in 1985, left parents of some long-time participants feeling angry and betrayed.

"I had to find out by word of mouth from another parent," said Karen Theriault of Friendswood, who was in tears after learning the program in which her autistic son, Ben, 9, has participated for five years will end April 1.

"They told us over the years that if they got the convention center, they would build a new arena."

Theriault said she learned Wednesday that today will be the second-to-last weekly therapy session for her son.

The horse program is part of Hope Therapy, which includes a horticulture therapy program, sports programs and short summer camp programs.

"Ben loves the horses and he lives for Thursdays," Theriault said. "I don't know how we're going to explain to him we're not going to go ride the horses anymore.

"It's helped him tremendously. He's able to independently ride a horse now.

"This is a therapy, not just fun and games."

Hope Therapy's 17 staff members were also surprised at the closing.

Director Sherry Kirwin said she and others there were told Tuesday the facility is being restructured and that portions will close March 31.

The equestrian center serves 77 people and has 80 on a waiting list, Kirwin said. The nearest facility offering a similar program is in Hockley in northwest Harris County, she said.

Kirwin said Moody Gardens management deemed Hope Therapy too expensive to relocate the program.

Moody Foundation officials

have referred to the riding program, called hippotherapy, as the "cornerstone" of Moody Gardens.

Foundation trustee Robert L. "Bobby" Moody championed the program after his son, Russell, then 19, suffered head injuries in a car accident in 1980. He later married and enjoyed an independent lifestyle.

It was the centerpiece of plans to build Moody Gardens, a tourist attraction that now includes a one-acre rain forest under a glass pyramid, a world-class aquarium and an IMAX movie theater.

Under an arrangement with the city of Galveston and its Park Board of Trustees, the foundation deeded Moody Gardens to the park board, and Moody Gardens maintains tax-exempt status by using tourism revenues to support charitable programs such as the hippotherapy.

In recent years, the Moody Foundation used local tax dollars to operate a convention center for

the city at Moody Gardens. However, voters decided last year to let Landry's Seafood Restaurants president Tilman Fertitta develop a new official convention center at his beachfront hotel and restaurant complex.

But Moody Gardens officials have pressed forward with plans to use foundation money to expand the existing convention center as well as a tax-exempt hotel Moody Gardens operates.

Hippotherapy candidates have routinely spent nearly two years on Hope Therapy's waiting list.

"There's no other program like this anywhere that my son can go to," said Sherry DeWees, whose autistic son, David, 14, has been attending the hippotherapy program for more than five years.

"He's come so far," said DeWees, a past president of the Gulf Coast chapter of the Autism Society of America. "This is a child who held on for dear life when he started riding.

"Now, if you could see his face when he is going fast on a horse, he just breaks out in a smile that touches everybody's heart."

Her child and others had planned to participate in a Moody Gardens-sponsored Special Olympics program in April, DeWees said.

"Now, all the kids riding for Hope Therapy are just out," said DeWees.

MOODY GARDENS WAS NEVER REALLY CHARITABLE, ONLY A PITTANCE OF CHARITY TO SERVE AS WINDOW DRESSING TO DUPE THE IRS INTO RULING THAT MOODY GARDENS WAS TAX EXEMPT. MOODY GARDENS WAS ALWAYS, FIRST + FOREMOST, A SCHEME TO TRANSFER MOODY FOUNDATION FUNDS TO PERSONALLY BENEFIT TRUSTEE ROBERT MOODY, HIS FAMILY + FRIENDS BY HIRING HIS OWN COMPANY, GALTEX HOTEL CORP. TO TOTALLY BENEFIT BY MANAGING MOODY GARDENS. NOW MOODY'S TRUE COLORS COME OUT AS THE LAST BIT OF CHARITY, HOPE THERAPY, IS CLOSED BY MOODY SO HE CAN BENEFIT PERSONALLY FROM THE OPERATIONS OF NEW COMMERCIAL BUSINESS OPERATIONS (HOTEL, etc.)



## Program's closure a nasty surprise

The decision to close the hippotherapy program at Moody Gardens was heart-breaking to the families of people who are trying to recover from brain injuries and muscular disorders.

But it's infuriating to many Galveston voters. And it should be. People who have been misled have a right to be angry.

The Moody Foundation built Moody Gardens around the therapy program, which uses horses to help patients regain motor skills.

Foundation officials argued time and again that the hotel and the attractions were needed to fund the therapy.

They argued that the hotel and tourist attractions weren't just businesses disguised as a tax-exempt charity — but instead were revenue producers for a therapy program of unquestionable value.

What a load.

Now the program is being shut down because it is standing in the way of a planned expansion of the convention center at Moody Gardens.

What does that say about the foundation's priorities? Which would you say is more important? The charitable work the foundation does through its therapy program? Or the revenue generated by a spectacular tourism development? }

Moody representatives have come before the city government and the voters for years now with plans to expand the convention center.

Have you ever heard anyone say that therapy programs would have to go to make room for a larger convention center?

If it really is true that expanding the convention center means that the therapy program has to go, why give the patients, their families and the staff such short notice?

Moody interests had plans on the books for a bigger convention center long ago. Why not give the therapy program at least a year to find new grants, new donors and new sources of funding?

It was a nasty surprise.

Some Galveston residents also felt misled about the public's relationship to Moody Gardens.

The city owns Moody Gardens — a gift from the Moody Foundation. Since the city owns Moody Gardens, it's tax exempt.

You'd assume that ownership would entitle you to some influence on key decisions. But the decision to close a therapy program to make room for a convention center shows just how little control the city has.

← City / Park Board is acting as a puppet / "strawman" owner of Moody Gardens! SHAM!

City leaders deserve some of the public's anger over this decision.

It hasn't been that long ago that city leaders gave away the only real leverage the city had in its dealing with the Moody Foundation. That was a provision in legal documents that allowed the city to give back Moody Gardens to the Moody interests — a move that could make the property taxable.

The Moody Foundation has hundreds of millions of dollars. It could, if it wanted to, do an awful lot of good simply by giving the money away to real charities.

Instead, the lion's share of the money the Moody Foundation gives away in Galveston goes back to itself — back to the development at Moody Gardens.

→ BACK TO MOODY FOUNDATION TRUSTEE BOBBY MOODY THRU GALTEX HOTEL CORP. which he owns or controls!

What Galveston residents were led to believe was that Moody Gardens was a place that made room for people who trying to recover from heart-breaking injuries or diseases.

What we've found out is that it's a place that needs room for 125 more hotel rooms and 37,500 square feet at the convention center — business investments that will increase revenues at Moody Gardens.

← YES! IT IS ONLY A TAX AVOIDANCE SCHEME USING THE PARK BOARD OR CITY COUNCIL AS FRONTS + CO-CONSPIRATORS TO DUPE THE IRS + THE CITIZENS OF GALVESTON

Is this charity? Or is this a hard-nosed business operating under a charitable front to avoid taxes?

Heber Taylor is editor of The Daily News. His email address is heber.taylor@galvnews.com

3/17/02

GALVESTON

# Horses hitting the trail

## Hope Therapy program to close after 16 years

By RICHARD MASSEY  
The Daily News

The looming closure of the oldest charitable program at Moody Gardens has unnerved the parents of disabled children, who now wonder how their kids will learn to walk.

About 75 youngsters with brain and muscular disorders use hippotherapy, or horse therapy, to regain or enhance muscle control and self-esteem. The youngsters ride horses and play equestrian games under the guidance of a physical therapist.

The program started in 1985 as a humble arena serving a small number of clients.

Russell Moody, son of Moody Foundation trustee Bobby Moody, sustained a head injury in an automobile accident in 1986. Moody underwent hippotherapy at the Moody Gardens complex.

But 16 years later, at the end of this month, the equine portion of the Hope Therapy program will be closed to make way for an expanded convention center.

The other facets of the Hope Therapy program — horticulture therapy, Camp Discovery, Sports Festival and the Mardi Gras Ball

See HORSES/A3



CARLOS JAVIER SANCHEZ/The Daily News

Lori Ferazzi speaks to a motorist leaving Moody Gardens Saturday afternoon about the closure of the Hope Therapy program. Ferazzi's 6-year-old son Eric, who is autistic, will not be able to continue his equestrian therapy at the center. The therapy program will be shut down on March 31 to make way for expansion of the convention center.



CARLOS JAVIER SANCHEZ/The Daily News

Jon Michael Hensley, 11, rides Thunder, a thoroughbred horse, for one last time at the Hope Therapy Center at Moody Gardens. Hensley, along with his brother Kirby, has been diagnosed with autism. Six years ago when they began riding they did not have language skills and could not ride alone. The Hensleys now are considered independent riders and both participated in the Special Olympics.

## HORSES

Continued from Page A1

for Special People — will remain at Moody Gardens.

Moody Gardens was recently given approval from the city council and the park board to begin adding 37,500 square feet of convention center space and 125 hotel rooms to the Moody complex.

The Moody interests won the right to expand its facilities through mediation in federal court.

Moody Gardens, which began in the early 1980s as Hope Charities, Inc., is recognized as a charitable non-profit organization and is tax-exempt.

With a waiting list 80 people long, the parents who were able to enroll their children in the program once considered themselves lucky.

Now, there is nothing but despair.

"I don't know what will happen to my son without Hope Therapy," said Lory LeBlanc, whose 4-year-old, Zachary, has muscular dystrophy. "There's nothing else that will help my son. He will get worse."

After only a few months in hippotherapy, Zachary learned to move his hips, said LeBlanc.

"He squatted down to pick up a toy and said, 'Mama, mama, look what I can do.' We were all in tears."

LeBlanc's voice trembled with emotion as she retold the story.

Clara Remmers, the mother of an 8-year-old with Down Syndrome, feels the same way as LeBlanc.

"I'm just very saddened," said Remmers, whose

daughter Jenna has been in the program for six years. "I can't believe that something like this could stop."

Remmers said her daughter has gained self-esteem with the knowledge that she can ride a horse.

On Saturday at Moody Gardens, several parents and supporters protested Hope Therapy's looming demise.

They called for Moody Gardens to keep the program running. They voiced their displeasure with the decision. At least a few talked of lawsuits.

Parents, such as LeBlanc and Remmers, might soon find some help in Hitchcock.

Jerry Finch, owner of Habitat for Horses, said he wants to relocate the horse therapy facility to his 26-acre complex on the mainland.

Finch works with equine-assisted psychotherapy, in which the horse is used to help people with mental disorders.

Finch and his organization also adopt horses.

"What we want to do is pick up what they're (Moody Gardens) dropping," said Finch. "There are tremendous options."

Moody Gardens, as a public entity, would likely have to declare the hippotherapy equipment as surplus, said Doug McLeod, chairman of the board of Moody Gardens.

The surplus would have to be reported to the park board, the public entity with oversight of Moody Gardens.

If the park board did not want, or need, the equipment, the equipment could then be sold at auction.

McLeod said Moody Gardens could be involved with

an attempt to relocate the facility.

"We would certainly work with them in the transition if they want us to," said McLeod on Friday.

It costs around \$600,000 per year to run an organization the size of the one at Moody Gardens. The program has 18 staff members, 14 horses, nine stalls, two turnout pens and a 100-foot by 60-foot arena.

McLeod said the equine center was the most expensive to maintain but served the fewest number of people.

For the short term, the area equestrian Olympics scheduled for April 27 in Santa Fe are now in disarray. Hope Therapy was supposed to be the host.

Now, more than 100 area riders will not have a tournament in which to compete.

Without competing at the area level, the riders cannot compete in subsequent state-level competitions.

"It's a huge disappointment," said program director Sherry Kirwin, a licensed speech language therapist and health care administrator.

"The children have trained for this for 10 weeks," said Kirwin. "The sad thing is, the children don't know what's going on."

Moody Gardens is taking every step it can to employ all the current staff members at the equine center.

Employees will either be shifted to Moody Gardens,

the Transitional Learning Center or to the University of Texas Medical Branch, said McLeod.

Kenny Johnson is one of those employees.

Johnson, an employee at the equine center for five years, will stay at Moody Gardens. For the last five years, Johnson, who has Down syndrome, has watered the arena, cleaned the stalls and washed and fed the horses.

"I was sad," said Johnson, when asked how he felt about the closure of the equine center.

McLeod said he was also saddened by the decision to close Moody Gardens' oldest program.

"We all shed tears over this decision," McLeod said. "It was difficult to make."

# mayor should offer apology

## McLeod says

### Quiroga: Moody Gardens is the one out of line

By RICHARD MASSEY  
The Daily News

An official with Moody Gardens has asked Mayor Roger "Bo" Quiroga to apologize for remarks he made at a recent city council workshop.

Quiroga suggested that the recent closing of the hippotherapy program at Moody Gardens was a "scam" and that the city had been duped into granting a bargain basement lease to the non-profit organization.

Doug McLeod, chairman of the board for Moody Gardens, said that the mayor's remarks were "out of line."

"I would really appreciate it if the mayor would apologize to me and the people of Moody Gardens," said McLeod. "I think he's probably running scared in this election ... and he feels like the Moodys are a good target for him politically. Maybe he thinks by bashing us he can salvage his mayoral race that is going badly."

But Quiroga, who faces three opponents in the May 4 election, said Friday that he had no intentions of apologizing to McLeod or Moody Gardens.

"I think it should be visa versa," said Quiroga, a two-term incumbent who has out-raised and out-spent all of his opponents combined.

"I'm sorry Mr. McLeod feels that way. But a lot of people feel just the opposite. I think it was a travesty that they closed the



"I think he's probably running scared in this election ... and he feels like the Moodys are a good target for him politically."  
Doug McLeod, above, chairman, Moody Gardens.



"I'm sorry Mr. McLeod feels that way. But a lot of people feel just the opposite. I think it was a travesty that they closed the therapy program the way they did."  
Mayor Roger Quiroga, above.

See DISPUTE/A2

## DISPUTE

4-7-02

Continued from Page A1

therapy program the way they did."

The 5-acre lease Quiroga mentioned was obtained by Moody Gardens as an amendment to the existing lease with the city. It was the eighth amendment to the original 1983 lease.

Quiroga said there was evidence that Moody Gardens wanted to lease airport land so that the Hope Arena could be relocated there.

But Moody Gardens pulled the plug on the horse therapy program last month.

The arena was the facility used to teach children with muscular and brain disorders how to ride and perform simple exercises on horses. Through equestrian pursuits, the children were able to overcome some of their disabilities. The horse therapy program was for years the centerpiece of the charitable programs at Moody Gardens.

Quiroga said evidence of the "scam" could be found within an exchange of letters between then-airport director Rob Pruitt and McLeod.

In a 1998 letter to McLeod, Pruitt expressed interest in "your proposal for the new Hope Arena."

One city memo, dated 1998, refers to the lease as the "Hope Arena Lease."

The Hope Arena, however, is not specifically mentioned in the eighth amendment to the original lease, which was ratified by the city, the park board and Moody Gardens in May 1999. That means that there is nothing in the eighth amendment that says Moody Gardens must put the Hope Arena on that land.

Pruitt, reached by phone Friday at his office in Florida, said that Quiroga missed the mark in his assessment of the situation.

"There was never any concrete contract that put the

Moodys on the line to build the Hope Arena," said Pruitt. "The mental midgets at city hall are trying to use a memo to constitute a legally enforceable document. If he read anything into that, he's wrong."

Pruitt labeled Quiroga's accusations "disingenuous and hypocritical."

The base monthly rental on the five-acre lease, which is due for renewal in 2034, is \$1,252.50. The annual rate increases by 2.5 percent, or by the Consumer Price Index, whichever is greater.

At the time of the lease, the land, near Hope Boulevard and 81st Street, had been vacant for 40 years.

City manager Steve LeBlanc said that Moody Gardens received a bargain deal on the lease rate.

McLeod objected to that statement as well.

"It's not a reduced rate," said McLeod. "It's actually more."

A memo drafted by Pruitt states that a fair market rental on that five-acre tract would be \$2,178 per month, not the \$1,252 per month agreed to by Moody Gardens.

But the five-acre tract under contract was not the piece of land that Moody Gardens originally wanted.

The non-profit organization had asked for a lease on a six-acre tract, but a study found that the land had sustained environmental damage.

That's when Moody Gardens forged ahead with the five-acre tract.

Moody Gardens ended up paying a rent that was below fair market value for the five acres but above fair market value for the six acres.

"That was a pretty straight forward lease deal," said McLeod. "He's never shown any interest in that program (horse therapy) until right before an election year. The whole thing wrecks of political fear on his part."

## Moody water park proposal a bad idea

Spokesmen for the Moody Foundation and Moody Gardens were set to go before the Galveston Parks Board of Trustees this week to present plans for a major water park facility at Moody Gardens.

They withdrew indefinitely, or at least long enough to evaluate responses to the park board's request for proposals on a similar project, due on Aug. 15.

However, in withdrawing, a spokesman for the foundation wondered aloud why the park board would want to incur public debt to build a water park when the Moody Foundation proposes a \$40 million facility for "free." It would be built with foundation money.

Well, as long as the question has come up, there are several strong reasons to consider avenues for the water park other than Moody Gardens.

The park board RFP said the Galveston park board seeks "a public/private water park development to enhance, expand and diversify Galveston's tourism industry and supplement local economic development."

The Moody Gardens proposal could create unfair competition with a future, privately owned and perhaps tax-paying entity that would pump money directly to the parks group and the people of Galveston.

The competition would be unfair because the park board, through an agreement with the Moody Foundation, technically owns Moody Gardens. Thus, the entity pays no local, state or federal taxes. Operating losses at Moody Gardens are underwritten by the tax-exempt Moody Foundation. And while the park board "owns" Moody Gardens, it has virtually no say in day-to-day operations there.

It is a peculiar relationship, one that is hard to fathom for those unfamiliar with local history and politics.

Other developers, including Galveston native Tilman Fertitta, have expressed an interest in developing such a project, so it's certain Moody Gardens is not the only interested party. There may be many others.

However, how many companies would invest tens of millions of dollars knowing they face competition from a foundation-run giant that pays no taxes and does not have to worry about its losses?

The proposed Moody Gardens water park, with its expanded convention facilities, surely would make Moody Gardens better able to compete for more and larger conventions. It is likely it would drain business away from the publicly owned convention center now under construction on Seawall Boulevard.

The Galveston Island Convention Center at the San Luis Resort, now under construction, will be a public-private partnership in which the city of Galveston shares half the profits. There is no such profit-sharing agreement with Moody Gardens. To whatever extent Moody Gardens takes business from the publicly owned convention facility, the people of Galveston will be the losers.

Finally, if the facility is built outside of Moody Gardens by a private entity, it may pay taxes to the city, the county and the local school district. Moody Gardens does not.

Anyone who has checked his property tax appraisal this spring most likely wants new property taxpayers in Galveston.

Actually, there's nothing in the RFP that commits the city to incurring debt in any of the water park proposals. However, if the park board ultimately must incur some debt to enter into a partnership that benefits the citizens of Galveston, so be it.

What's really wrong with a city providing for its own needs and, if necessary, taking a risk to do so? That's standard operating procedure everywhere but Galveston.

Dolph Tillotson is president and publisher of The Daily News. His email address is [dolph.tillotson@galvnews.com](mailto:dolph.tillotson@galvnews.com).

# Council studies options on Moody Gardens

MARCH 2002

## Mayor says city should get back land devoted to therapy program

By RICHARD MASSEY  
The Daily News

The city council decided to take a look at why Moody Gardens pulled the plug on its hippotherapy program, which council members described as the basis of the organization's non-profit status.

On Thursday during a workshop meeting, Mayor Roger "Bo" Quiroga said Moody Gardens misled the city into leasing land to Moody Gardens at a reduced rate.

Moody Gardens apparently had wanted the 5-acre tract so that the hippotherapy program could be re-located there.

But Moody Gardens recently announced that the hippotherapy program would be closed down permanently. But Moody Gardens still has the 5-acre tract that sits next to Scholes International Airport.

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Related stories, A3  
Guest column, A10

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"I think we have been totally misled in this whole thing," said Quiroga. "Why can't we get our five acres back if they are not using it for what they said they were going to use it for?"

The basis of Quiroga's remarks come from a correspondence between Moody Gardens and then airport director Rob Pruitt.

"It was a pleasure talking to you today regarding the lease of an additional 5 acres of airport property by Moody Gardens," wrote Pruitt in a 1998 letter to Doug McLeod, chairman of Moody Gardens. "We are extremely excited about your proposal for the new Hope Arena and we look forward to working with you to expedite the development of the property."

One city memo, dated 1998, refers to the lease as the "Hope Arena Lease."

The Federal Aviation Administration allows reduced rates on market-value leases to those who develop airport land.

Moody Gardens was given a reduced rate on its lease agreement, said city manager Steve LeBlanc.

"It seems to me that this was nothing but a scam," said Quiroga.

Since the Hope Arena is not going to be built on the land, city attorney Susie Green has been instructed to look into a possible breach of contract claim against Moody Gardens.



# Here's a little of what's been on the minds of Daily News readers lately

*Moody Gardens announced that it is closing the Hope Therapy program for construction on a planned expansion.*

## Why is program suddenly too expensive to maintain?

Thank you for your coverage of the closure of the hippotherapy and other animal-assisted therapy at Moody Gardens.

The questions that I would like answered by Bobby Moody are: Why, with your tax-exempt status and the amount of funds that are now taken in at Moody Gardens, is this program suddenly too expensive? It seems odd to me that years ago when there was no fancy hotel, no pyramids and no visitors center, that the hippotherapy program was affordable and now it is not.

In addition, why did the closure have to occur at the end of March? This could not have been delayed one month so the children could have participated in the Special Olympics in April? Especially since Hope Therapy was the event host.

Doesn't Mr. Moody realize that this is a colossal embarrassment to the Galveston area?

Lastly, why weren't the parents given more notice? It is not just what was done here, it was the way in which it was done.

Gerald and Mary Stewart  
Houston

## What are Hope Therapy patients to do now?

I am a native of Galveston Island and was shocked to read the story about Moody Gardens shutting down Hope Therapy.

As a high school student I did volunteer work for the program and saw the results that the program did for its handicapped clients.

Later as an adult I became interested in the program again and was hired. I witnessed firsthand all of the good that the program did for its clients, not to mention the staff.

It was a motivator for me and everyone I knew to see the adults and children come in with nearly no muscle control or definition and progressing to movement and control. That was amazing.

What are these clients to do now that the almighty dollar has gotten the way? In my opinion it is a shame that the greed has outweighed the need for the program. I have often told people who are coming in from out of town to visit Moody Gardens because it helped worthy cause, but now I will no



CARLOS JAVIER SANCHEZ/The Daily News

Peggy Shaddox, center, advanced instructor for Hope Therapy for the past 12 years, is assisted by Jon Michael and Kirby Hensley, right, as she gets in her wheelchair. Shaddox, who specializes in cognitive disabilities, gave the Hensleys their last lesson at the therapy center Saturday. The Hope Therapy Program at Moody Gardens will be shut down on March 31 to make way for development.

longer do so. You can bet my next visit will not include Moody Gardens.

Debra Salazar  
Austin

## Moody Foundation turning back on many people

So much for the Moody Foundation's care and concern for the disabled. When it comes to the almighty dollar, you're willing to toss them aside.

You started out helping and catering to the handicapped, but now a convention center is more important.

You don't see the progress we, as parents of a disabled child, see in our children since they started therapy. Although it may be insignificant to you, closing down the arena and therapy sessions will affect a lot of families. You're willing to toss aside some of the best therapist event coordinators, office staff and other employees Moody has. I can't believe greed wins again.

Perhaps when (business rival)

Tilman Fertitta hears of this, he'll step in to help. He's more about community relations than you are. I can't believe you're turning your back on all these people.

Laurie Whitman Williamson  
Galveston

## Unfortunate program ended for business interests

I am saddened and dismayed to read that the Moody interests have determined to discontinue the Hope Therapy Program at Moody Gardens in order to expand the convention center.

Sherry Kirwin and the staff at Hope Therapy Program are dedicated professionals who enrich the lives of the head-injured and others with physical and mental skill deficits.

The founding paradigm for Moody Gardens and Hope Therapy was to provide innovative, state of the art therapy for these individuals. Tax-exempt status was awarded for these purposes, and over the years, these programs have provided resources and services consistent with the founding

concept.

My son was injured in a head-on collision in 1981 and has been a beneficiary of programs provided through the Transitional Learning Center, the Bayridge Village and the Hope Therapy since their inception.

I am very grateful that those opportunities were available for my son when he needed them.

I wonder, now, how his progress will be maintained.

For 20 years these programs have produced very special achievements for so many of our less fortunate citizens. It is indeed unfortunate to see such progress tossed aside for business interests.

I am particularly saddened for those, now enrolled in the program, and those on the long waiting list who have no place to go where these specialized needs can be met. And I am saddened for those, in the future, who will be without these extraordinary enrichments to their overall health and well being.

Claire Donovan  
Galveston

# Despite efforts, conflict of interest still alive

Galveston's political and civic life had been dominated for generations by boards whose members often had financial interests in the public business they controlled.

That hasn't changed in spite of the fact that this year, by an 80-percent vote, citizens of Galveston passed three charter amendments aimed at reducing such conflicts.

The amendments prohibit board members who do business by contractual agreement with the board, including an entity owned by the board, on which they serve, from voting on contractual arrangements the board makes with other members of the same board.

The amendments cover not just the individual, but the individual's employer and relatives (the wording is the same as the state conflict-of-interest law).

Also, when the city council appointed new members to the parks board, Mayor Roger Quiroga boasted that the city avoided appointing people with obvious conflicts of interest.

Nonetheless, even after the new appointments to the park board, there are four members who have direct or indirect contractual connections with the board. I believe the amendments apply to all four and they should be aware of that

## GUEST COLUMN



### ● STEVE GREENBERG

as they conduct business.

The connections between these men, their employer and the various Moody family interests demonstrate the complexity of the problem and, not coincidentally, they show how well the Moody interests have played the game of local politics.

The four with potential conflicts are: Allen Flores, who has a contract to operate R.A. Apffel Park; Gene Lucas, employed by Gal-Tex Hotel Corp., which by contract operates Moody Gardens; and Raymond Lewis and Melvin Williams, who are employed by the University of Texas Medical Branch, which has 20 different contracts with Moody Gardens.

In the case of Lewis and Williams, it is worth noting that their boss, John Stobo, president of UTMB, now sits on the board of Moody National Bank. The bank controls The Libby Shearn Moody

Trust, which controls 51 percent of Gal-Tex, which operates Moody Gardens, owned by the park board.

All of that sounds complicated, but it demonstrates the manner in which our community's boards, foundations and political entities are tied to one another.

The recently passed amendments were designed to prevent "vote swapping" that might occur between several board members who have a personal or financial pressure on a board member.

Example: If an employee of UTMB voted for a contract favorable to Moody Gardens, that employee could potentially be rewarded by UTMB, which could in turn be rewarded by the Moody Foundation, which funds Moody Gardens and controls 33 percent of Gal-Tex, with grants or other benefits.

Of course, if the employee voted against such an issue, the employee and university also can be punished.

My point is simple: Personal interests often take precedence over the public good in Galveston. In spite of efforts to change that, a potential for conflicts still is very much alive.

● Steve Greenberg recently completed a two-year term on the park board.

## LETTERS TO THE EDITOR

## **SECTION F**

**Look what happens. When most Park Board members are neither employees of Moody nor derive any financial benefits from Moody.**

**The Park Board members who served from June 1, 2003, until May 31, 2004, had only one member out of nine under the financial control of Moody. What a marvelous difference the lack of control by Moody made for the City of Galveston. Result: that Park Board on November 19, 2003, passed a rule that any future expansion at Moody Gardens would have to be subject to taxation if it competed with private enterprise.**

## RULE

The Park Board has the statutory and contractual authority (and as owner of the assets) to regulate the type of concessions, businesses, and facilities at the Moody Gardens Complex. The Park Board is required to promote tourism to Galveston, without unfairly competing, as a governmental entity, with private businesses. The Park Board's staff has expertise in the tourism industry and the Park Board will use that expertise in the development of Moody Gardens. Therefore, the Park Board will require that it be consulted and have input and approval on what attractions, projects, and improvements will be implemented at Moody Gardens to further the various tourism businesses in Galveston. Other than general maintenance, all capital expenditures, in any amount, proposed for Moody Gardens shall be submitted to the Park Board for their prior approval and input. If the Park Board determines that the proposed project unfairly competes with private businesses, approval to carry out proposed projects will be denied unless Moody Gardens agrees to make payments in lieu of taxes. This rule is intended to prevent a governmental entity from competing against private enterprises unfairly and to promote tourism attractions for Galveston.

THIS RULE WAS PASSED BY THE  
PARK BOARD OF TRUSTEES WHO SERVED  
FROM JUNE 2003 TO JUNE 2004.

INTERESTINGLY, ONLY ONE MEMBER WAS  
ON THE MOODY PAYROLL (MIKE HIGHTOWER WHO WORKS  
FOR MOODY NATIONAL BANK). THE CURRENT PARK  
BOARD, JUNE 2004 - JUNE 2005, HAS 4 MEMBERS  
WHO ARE ON THE MOODY'S PAYROLL & WILL SUPPORT  
THEIR EVASION OF TAXES NO MATTER WHAT!

# Park board sets Moody Gardens rule

## Some future expansion to face payments to board

By JERRY URBAN  
The Daily News

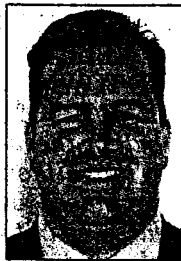
Galveston's park board on Tuesday voted to create a rule that prohibits Moody Gardens from expanding its facilities when such improvements would compete with private enterprise and show no public purpose, without payments to the park board and to taxing entities in lieu of property taxes.

The nine-member board voted 7-1 to adopt the rule. Member Sheila Lidstone was absent from voting because of an emergency.

The rule adoption came in the wake of Moody Garden's request to approve approximately \$3 million for a new swimming pool near the resort's hotel. As a result of the new rule, the park board, which technically owns the non-profit Moody Gardens, also voted 7-1 to deny the request to build the swimming pool.

Board Chairman Gerry Del Prete made the motion to adopt the new rule, with board member Johnny Smeca seconding the motion.

Doug McLeod, chairman of Moody Gardens



Board Chairman Gerry Del Prete's motion on future Moody Gardens expansion:

"Before us is a proposal to build a \$3 million pool. This has raised the question and our concern that this is not in the best interest of the public good. As the owner of the improvements we believe that expansion of items that compete with private enterprise is not something a government, i.e., the park board, should be doing. The park board has rule-making authority; therefore, I move that the park board implement a rule that no further expansion occur at Moody Gardens that competes with private enterprises and that no further commercial development without public purpose occur at Moody Gardens without some payment to the park board and some payment in lieu of taxes being paid to the local taxing entities."

## RULE

Continued from Page A1

Inc., seemed stunned after the vote. He made no statement to the board. However, he did request that the park board provide him a copy of the motion adopting the rule.

The lone vote against the rule was made by Mike Hightower, who is employed by Moody National Bank.

Later, McLeod said Moody Gardens will consider its options.

Those options could possibly include court action, arbitration or even construction of a swimming pool that costs less than \$1 million. He said that according to its contract, Moody Gardens must obtain approval from the park board for improvements of \$1 million or more.

Before the vote, McLeod maintained that the board's action, if it turned out as it did, violated contract terms. He also said the action stemmed from behind-the-scenes efforts by restaurateur and developer Tilman Fertitta to "restrict expansion" at Moody Gardens. Fertitta and Moody Gardens have long been competitors in Galveston. McLeod also reiterated his position that Fertitta has a sweetheart deal in its partnership with the city to operate a new convention center.

Del Prete denied that Fertitta had anything to do with the board's action, as did Fertitta spokesman Steve Greenberg.

In addition, Del Prete praised Moody Gardens for its contributions to Galveston and for "providing the impetus to private tourist development throughout Galveston, which is the mission of the park board.

However, Del Prete added: "... private, independent tourist development is now blossoming in Galveston, and the park board has been receiving complaints and comments that the Moody Gardens complex and hotel are competing commercially with the private commercial sector.

... Accordingly, the park board desires to continue to exercise its regulatory authority at the Moody Gardens complex and implement rules so that the Moody Gardens complex and hotel no longer compete unfairly with the private sector."

Moody Gardens pays hotel and motel taxes, but is exempt from paying property taxes in an agreement made with the park board about 10 years ago. Moody Gardens does pay the city of Galveston more than \$300,000 a year through the settlement of a federal lawsuit that involved the resort, the city, the park board and Fertitta.

McLeod said some members of the public are under the false impression that people tied to Moody Gardens' operations are reaping huge sums of money.

"Our goal is to have it self-sustaining," said McLeod.

He also said Robert L. Moody Sr., who is on top of Moody interests in Galveston, "makes very little" from Moody Gardens indirectly.

McLeod said the Moody Foundation has put about \$400 million into the different operations at Moody Gardens since 1983.

"He (Robert L. Moody Sr.) loves Galveston," said McLeod. "He says, 'My grandfather made his money in Galveston and I'd like to see that it stays here.'"

Del Prete cited recent editorials in the Galveston County Daily News that recommended Moody Gardens make payments to taxing entities in lieu of property taxes. He said the editorials reflect what many people in the community believe.

McLeod responded to the editorials by pointing out that typically Moody Gardens breaks about even, after all expenses for the cost of doing business are considered. He added that for the fiscal year that ended Sept. 30, Moody Gardens reported a net operating loss of \$2,028,855. At the same time, he said, Moody Gardens attracts some 2 million people to the island a year and is a major contributor to the island's economy.

## Moody Gardens should pay something to city

**T**he Galveston Park Board of Trustees is expected to vote Nov. 18 on an expansion plan at Moody Gardens.

This is going to be exciting stuff. A big new pool. A swim-up bar. A lazy river ride.

Everything that has been built at Moody Gardens has been first-class. This should be a cause of celebration throughout the community.

Instead, it will result in a completely predictable quarrel.

Hoteliers and other businessmen who compete for the tourist trade will complain that Moody Gardens, which is exempt from property taxes, has an unfair advantage.

Spokesmen for Moody Gardens will reply that the Moody Foundation has invested millions in bringing these attractions to the island and say that's never been appreciated.

The actors in this drama recite the same lines year after year.

This particular tragedy is getting old.

Here's a proposal for cutting it off: The park board ought to insist it's time for Moody Gardens to make a payment in lieu of property taxes, beyond the \$300,000 a year it must pay the city under the settlement of its lawsuit over the new convention center on the Seawall.

The park board shouldn't approve any more expansion plans until it gets some kind of payment.

Why?

Because Moody Gardens is a business — perhaps the single biggest one — in Galveston's tourism scene.

When it had a horse arena for people who'd sustained brain injuries and when it stood alone, as a small attraction in the mosquito-infested marsh near the airport, you could see an argument that it was a charitable and educational institution.

Today, it's got pyramids, attractions, a great hotel and restaurants.

According to the annual report for the year ending Sept. 30, 2003, revenues topped \$28 million. Gross operating profit was \$12.21 million. That's a business.

It's time for Moody Gardens to make a payment in lieu of property taxes.

What's a fair number?

The appraisal district thinks the property is worth \$263 million. But that includes museum property, which many would argue shouldn't be taxed. A value of \$263 million is too high.

On the other hand, the property is now on the tax rolls at \$0. That includes a hotel that just grossed \$14 million, an IMAX theater that grossed \$3 million and a gift shop that grossed \$1 million. A taxable value of \$0 is too low.

Somewhere between is the magic number the park board should find.

A payment in lieu of property taxes would do three things:

First, it would make the playing field a bit more level than it is today. It will never be level because all the efforts at Moody Gardens are underwritten by a huge, well-funded charitable foundation. Thus, the profit pressure ordinary businesses feel will never affect Moody Gardens.

Still, however, with a substantial payment in lieu of taxes by Moody Gardens, those who are competing for tourists' dollars would do so on a more equitable basis.

Second, it would generate a substantial amount of income for local governments that have been feeling the pinch. Nobody likes paying property taxes, but those taxes pay the salaries of police officers and teachers. They pave the streets.

Third, it would put an end to these formal, highly stylized dramas before the park board. It would free Galvestonians from the burden of trying to pretend that plans for pools with swim-up bars are all about education and charity instead of all about business.

If Moody Gardens were making payments in lieu of property taxes, its plans for growth — and there will be plenty more growth — would be something we all could celebrate.

We'd be celebrating something that's going to be good for business instead of arguing about what's business and what's not.

# A call that took some courage

**T**he Galveston Parks Board of Trustees recently made a decision that was in the best interests of the city.

The parks board voted 7-1 to create a rule prohibiting Moody Gardens from expanding its facilities when those facilities would compete with private enterprise and show no public purpose without payments to the park board and to taxing entities in lieu of property taxes.

It was easy to understand Moody Gardens' claim to being a nonprofit educational and charitable facility when it was just Hope Therapy, a program that used horses to rehabilitate those with brain injuries.

Last year, Moody Gardens Hope Therapy closed its horse arenas but maintained the beautiful, tourist-attracting Rainforest, Aquarium and Discovery pyramids, along with the IMAX, Palm Beach and other attractions it has built over the past years.

The decision to close the horse-therapy program prompted many people to question how much of Moody Gardens was nonprofit and how much was really a business competing for dollars in the tourist industry.

A payment in lieu of property taxes would do at least two good things.

First, it would make the playing field for those competing for tourist dollars a bit more level than it is today.

Second, it would generate a substantial amount of income for local governments that have been feeling the pinch.

If all the property at Moody Gardens were on the tax rolls, it would generate more than \$5 million to the school district, city, county and other taxing authorities.

While we're not saying that's fair, Moody Gardens pays the city a yearly stipend of \$300,000, plus about \$70,000 in lease payments for airport property.

Somewhere, somehow, the attraction should be paying more, for the overall improvement of the city.

The city could do a lot with the revenue.

We wonder if Seawall parking meters would continue to be at the forefront of controversy if the city had more money to work with, or if broken streetlights, potholes, overgrown oleanders, water fees, trash pickup, collective bargaining and other thorns in the city's budget might not be so prickly if one of the island's most popular attractions kicked in a little more.

The school district also could use some money.

But for now, notch this park board vote into the residents' win column.

The board did something that took guts, and we're counting on a board that works in the best interests of the island's year-round dwellers, the people who are its backbone and the people to whom the board must and will inevitably answer.

• Erin Graham

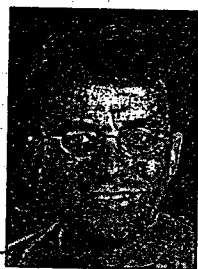
MOODY GARDENS

11-16-2003

## The deal should change with the times

Last Sunday, The Daily News editorial said it was time for Moody Gardens to make a payment in lieu of taxes.

The editorial had my name was on it, so I got to talk to folks at Moody Gardens, who disagree.



Heber Taylor

No, I didn't change my mind.

I still believe an institution that has \$28 million in gross revenue and is planning a \$3 million swimming pool for hotel guests can

and should find a way to help all the rest of us pay for the things we all need: teachers, police officers, streets and stop signs.

But I did hear some things I found interesting. I thought you might too.

One of the reasons Moody folks have resisted this idea was that it wasn't part of the deal.

Past mayors and park board chairmen who have written letters to the Internal Revenue Service about the city's relationship with Moody Gardens have spelled that deal out.

Even when the hotel was about to be built at Moody Gardens, city officials were telling the IRS it shouldn't be taxed. The idea of all this construction was to attract visitors and create jobs.

The Moody interests would invest millions to build the city-owned gardens. There was no mention of payments in lieu of taxes. (Moody interests did, as the result of a court settlement over the convention center, make a \$306,900 payment in lieu of taxes this year. They also paid \$68,600 for leases at the airport.)

Moody folks contend that, since the deal began in 1983, they've stuck to the bargain and the city should too.

They also contend that, while Moody Gardens is a non-profit, property taxes are routinely abated on projects that have a huge economic impact.

Moody Gardens employed 873 workers at high season and 625 in the off-season. Seventy-two percent live on the island. Their share of the \$10.9 million payroll was \$7.9 million.

The attractions drew 1.8 million visitors this year. Moody Gardens spent \$2.22 million with Galveston vendors.

If economic development folks had landed a multimillion dollar investment that resulted in such benefits for the city, they'd have all been declared heroes. Or so the argument goes.

I don't argue with that.

I believe Moody Gardens is a huge benefit to Galveston. I'll go further: I personally think it's wonderful.

I like to have lunch at the hotel restaurant and look out on the terrace. On quiet weekdays in the off-season, I like to sit in the Rainforest Pyramid. It's a good place to think.

I like topping the Causeway and seeing pyramids. I'm delighted by the vision it took to change the skyline of the place I call home.

But all this success ought to tell us something. Times have changed in the 20 years since that deal was struck. Anybody who thinks Moody Gardens is a horse ring in a mosquito marsh is just out of touch.

It's an attraction that can gross \$28 million in an off year. It can come to the park board and say that its hotel guests need a \$3 million pool.

Times have changed. And the deal should change with the times.

Heber Taylor is editor of The Daily News.



GALVESTON

# Setting policy

## Park board chair: Controversial rule a 'no-brainer'

1/4/2004

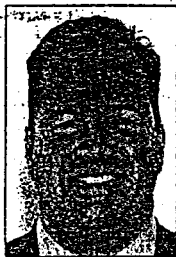
By JERRY URBAN  
The Daily News

Many Galvestonians probably would like to know who was behind the recent park board adoption of a rule that is a bold challenge to the operators of Moody Gardens.

"To be honest with you, this was sort of a brain-child of my own," said Gerry Del Prete, while discussing the controversial rule that may eventually lead to a courtroom battle between the park board and the popular tourist attraction. "It was a no-brainer thing to do. It was a long time in coming."

The park board rule, that was adopted 7-1 with one board member absent, prohibits any expansion of Moody Gardens that would be in competition with private enterprise unless payments are made to the park board and area taxing entities in lieu of property taxes.

Del Prete, who has been chairman of the park board since August, said the concept for the rule evolved during the past couple of years and a few other board members were involved with him in developing it.



Gerry Del Prete

The rule, he said, was needed because of the continued realization that the officially nonprofit Moody Gardens was competing more and more with private enterprise, and the board wasn't playing as large a role in setting policy for Moody Gardens as it should be.

Del Prete, who has been on the park board since late 2001, said he's the one who forced the rule to the table.

The park board technically owns Moody Gardens, which is funded through operations and by the Moody Foundation.

"The park board, as I see it, has absolute authority," said Del Prete.

An agreement between the park board and Moody Gardens says Moody Gardens has to have the approval of the park board for improvements costing \$1 million or more.

However, Del Prete said the new ruling supersedes that \$1 million agreement and effectively makes that provision void for any expansion that would compete with private enterprise.

The rule came at the same time that Moody Gardens was seeking park board approval for construction of a \$3 million pool and associated improvements.

Del Prete said he believed that other park board members were swayed to adopt the rule because it appeared Moody Gardens was building the new pool to compete with the Schlitterbahn project, which is planned for development just across from Moody Gardens.

Before Schlitterbahn renewed efforts to build a water park here, Moody Gardens had planned to build a \$40 million water park. That plan apparently has been shelved because the city has signed off on a deal with Schlitterbahn.

More recently representatives of Moody Gardens have said the pool and associated improvements are needed to accommodate a growing number of people who stay at the site's expanded hotel.

Jeff Henry, the key principal of the Schlitterbahn project in Galveston, made a comment last week that might be seen as contradicting Del Prete's concern that a new pool at Moody Gardens would compete with Schlitterbahn.

"I'm very surprised at the treatment of Moody Gardens by the park board and people," said Henry. "The only reason we're coming to the island is because we can build next to Moody Gardens. That's why we're coming."

Told of Henry's comments, Del Prete said Moody Gardens still shouldn't be in a position where it competes with private enterprise.

Rumors have been circulating that a Moody controlled company was financing the Schlitterbahn project. Henry said the financing wasn't "locked in" and declined to disclose with whom he, or his representatives, is negotiating for financing. However, he wouldn't rule out that Schlitterbahn is negotiating with American National Insurance Co.

Representatives of Moody Gardens were not available or wouldn't comment for the record about Del Prete and the new rule.

However, one source in the Moody camp said Moody Gardens contends the rule as written is not reasonable, as required by the formal agreement between the park board and Moody Gardens.

Also in question, the source said, is whether the park board can determine unilaterally what's reasonable.

The 1990 agreement, which has been amended, appears in certain parts to support the

interests of Moody Gardens.

For example, the agreement says: "The park board acknowledges and agrees that Moody Gardens now contemplates and shall have the power to enter into projects, programs and contracts with Galveston College, The University of Texas Medical Branch at Galveston ... and/or any other for-profit or non-profit organizations for the use of the Moody Gardens complex or Moody Gardens' facilities, including but not limited to the Moody Gardens hotel ... as long as such projects are intended to (a) attract tourists and visitors to Moody Gardens ..."

However, Del Prete is quick to point out other provisions that appear to give the park board ultimate authority.

One provision in the agreement says: "... the park board has the statutory authority to regulate the type of concessions, businesses and facilities at the Moody Gardens complex ..."

Del Prete insists the creation of the new rule — technically park board attorney Carla Cotropia penned the words — has nothing to do with his past problems with Moody Gardens.

Del Prete is the general manager of the Galveston Health & Racquet Club, which is near Moody Gardens.

A few years ago, Del Prete and principals of the racquet club became embroiled in a dispute with Moody Gardens after it attempted to give local memberships to a fitness center. Racquet club officials claimed those memberships could have put the racquet club out of business. The park board eventually prohibited Moody Gardens from allowing memberships to Galvestonians.

Del Prete denied that he or a principal owner of the racquet club, Tom Cook, have an ax to grind with Moody Gardens.

However, some of Del Prete's comments might make someone think otherwise. For example, he said: "They (Moody Gardens officials) are very crafty. ... They don't want to be outdone."

The source in the Moody Gardens camp complained that Del Prete didn't let the Moody Gardens board of directors know of the park board rule before it was enacted. Del Prete sits on the Moody Gardens boards as a representative of the park board.

However, Del Prete said at least some Moody Gardens board members were aware, before the rule's adoption, that the park board had problems with authorizing construction of the pool.

Indeed, during a Moody Gardens board meeting just hours before the park board adopted the rule, Del Prete said a Moody Gardens legal representative threatened to possibly seek damages if the park board voted against approving the pool.

The park board turned down the pool request at the same meeting that the rule was approved.

Del Prete said a top-level Moody Gardens official at another time threatened him after learning that he would be the park board's representative on the Moody Gardens' board.

"He said, 'We don't want you coming over here disrupting our harmony' or something to that effect," said Del Prete. "Or, we'll run you out of here."

Del Prete also denied that Cook or restaurateur Tilman Fertitta had anything to do with the new rule, even though a least one top-level Moody Gardens official previously said Fertitta was behind it.

Del Prete acknowledged that before the rule was adopted he met with Mayor Roger "Bo" Quiroga and City Attorney Susie Green to discuss the possible park board action to prohibit any Moody Gardens expansion in competition with private enterprise.

Del Prete said the meeting was needed to make sure that such a prohibition would not conflict with city regulations and policies. The park board was authorized by state statute and is separate from the city, but it still has some overlap and ties to city government. For example, the

city council appoints park board members and approves ordinances that give the park board authority over certain operations, such as beach parks and Moody Gardens.

Quiroga said he supports Del Prete in his efforts to have Moody Gardens make payments in lieu of property taxes. Indeed, Quiroga said Moody Gardens should lose its nonprofit status.

"There's no reason for Moody Gardens to be tax exempt," said Quiroga, adding services once provided by Moody Gardens, such as Hope Therapy, that were legitimate nonprofit activities, are now gone.

"Why should a foundation be in the hotel business?" he said. "It's about time for the city to quit exempting property, because it's so vital to the schools, the city and the county."

Asked if it were feasible for Moody Gardens to be converted into a for-profit operation, Quiroga said: "I don't see why not. This question has to be answered by the IRS."

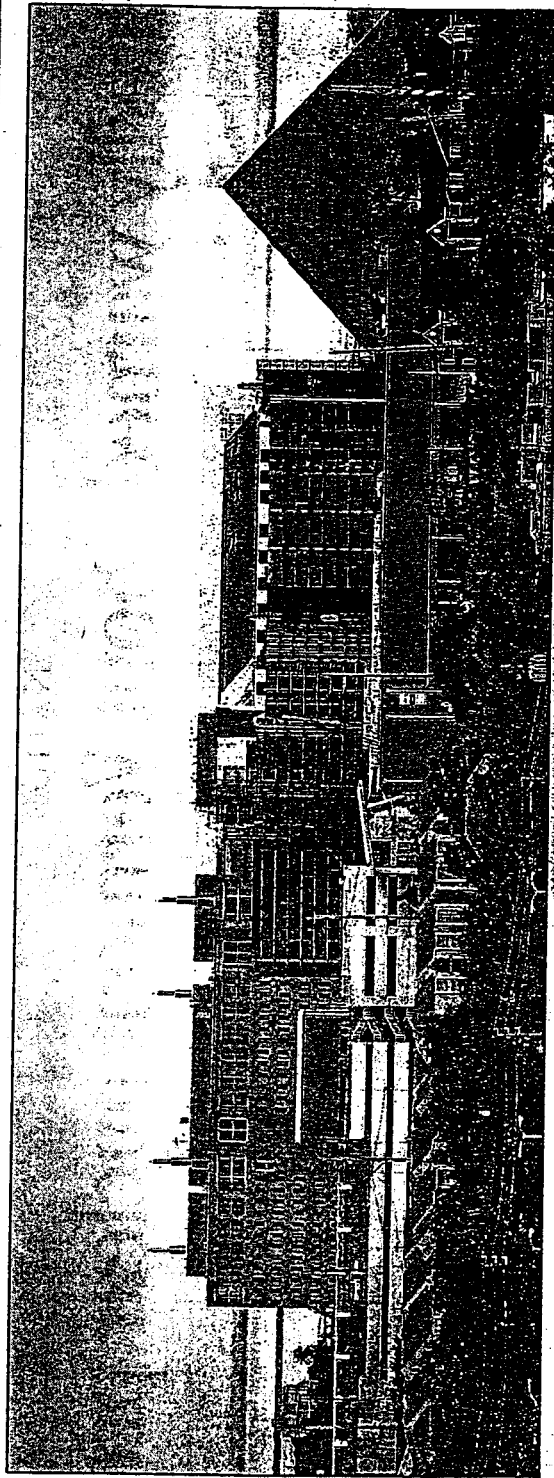
Gil Langley, president and CEO of the park board, said he is awaiting direction from the park board in regard to the Moody Gardens issue.

Del Prete added representatives of Moody Gardens have asked the park board for a clarification of the rule.

He added he expects the issue to at least go to mediation and perhaps result in a courtroom battle.

"We're trying to figure out how they could seek damages if we own it," he said. "You can't tell them (Moody Gardens officials) what they can and can't do. They're not going to take this lying down."

SUNDAY, JANUARY 4, 2004



FILE PHOTO/The Daily News  
Construction continues on the expansion at the Moody Gardens Hotel and Convention Center in August. A new park board rule prohibits any expansion of Moody Gardens that would be in competition with private enterprise unless payments are made to the park board and area taxing entities in lieu of property taxes.

## **SECTION G**

**Appropriate questions to ponder.**

How does Moody Gardens lessen the Burdens of Government when the Park Board has NO Burden of Government to own and operate commercial businesses competing unfairly against other private businesses?

To the extent that Moody Gardens operations of commercial businesses reduces the revenues of its private business competitors, Moody Gardens is in fact a Burden To Government and not in any way relieving burdens of government.

Moody Gardens states that Moody Hospitality Institute is a program developed to enhance the possibility of I.R.S. approval of tax exempt status. Later after receiving approval Moody Gardens Hotel closed down the Moody Hospitality Institute.

How much of the Revenues of Palm Beach, Colonel Paddle Wheeler, Moody Gardens Hotel, restaurants and gift shops does the owner of Moody Gardens, (i.e. the Park Board), receive/realize?

If the Park Board doesn't receive those revenues who does receive those revenues?

How many dollars of those revenues goes to Gal-Tex Hotel Management as a management fee?, as an expense reimbursement to Gal-Tex?

If Moody Gardens is relieving a Burden of Government through operations of Palm Beach, Colonel Paddle Wheeler, Moody Hotel, gift shop and restaurants

Then isn't it true that every other entertainment facility, recreational facility, and hotel gift shop and restaurant in Galveston are also relieving that Burden of Government?

Why are they taxable and their revenues taxable and Moody Gardens revenues are Not?

Isn't it true that the only reason that the other facilities in Galveston are taxable and Moody Gardens is not taxable is because the Park Board has been set in the position of appearing to own something it neither benefits directly or has any attributes of the ownership it is purported to have through the agreements with Moody Gardens. If it were not for the arrangement between the Park Board and Moody Gardens, then Palm Beach, Colonel Paddle Wheeler, Moody Hotel gift shops and restaurants would be taxable.



## QUESTION

1. Why are the Revenues from Moody Gardens' facilities going to the tax attorneys to preserve the Private Foundation status of Moody Gardens, Inc. and the Moody Foundation?
2. Why are those legal fees a Cost of Operations of Moody Gardens?

## **SECTION H**

**Recent history. June, July, August, 2004. Here they go again.**

**I.R.S. again questions tax exemption status of Moody Gardens.**

**Moody Foundation jumps into high gear and hires Washington and Dallas attorneys to fight I.R.S. positions.**

**While having control over four members of the Park Board of Trustees, due to their financial ties to Moody, the Moody Foundation coerces the Park Board to issue a new resolution to the effect that Moody Gardens relieves burdens of government. This is false. Moody Gardens is a burden to local Galveston government.**

# Taxman looking at Moody Gardens

## Nonprofit's legal bills already at \$500,000

6/23/04

By SARAH VIREN  
The Daily News

Moody Gardens has accrued about \$500,000 in attorney fees and expenses related to an Internal Revenue Service audit of its 2000, 2001 and 2002 finances.

Up to four law firms, including two tax specialists based in Washington, D.C., were retained during the last three years to represent the nonprofit organization during the audit, according to the May minutes of an executive committee meeting of the organization's board.

Yet officials from the Galveston Park Board of Trustees, which owns the Moody Gardens tourist complex, said they know little about the audit or why Moody Gardens has joined up with such high-profile law firms.

"We have no idea what they are doing," said Carla Cotropia, an attorney representing the park board. "They should be providing us with this information."

Moody Gardens Inc., which runs a 428-room hotel, rainforest pyramid, visitor's center, IMAX theater, museum, aquarium, gift shop and conference center near the airport, is a tax-exempt organization. An IRS field agent conducting the audit, though,

has questioned whether some income from the facility, particularly money coming out of the hotel and gift shop, should be taxable, according to minutes of the May 4 Moody Gardens board meeting.

Irwin "Buddy" Herz, a lawyer representing the Moody interests, said he knows little about the audit, but thinks it is "pretty routine."

Doug McLeod, chairman of the Moody Gardens board, said he couldn't comment on the matter and referred tax-related questions to Mike Wylie, a Dallas lawyer handling the audit for the nonprofit entity. Wylie declined comment.

Park board officials say the \$500,000 in legal expenses, which will be covered through a Moody Foundation grant, and the involvement of the Washington, D.C., tax law firms indicate that this might not be a run-of-the-mill audit.

"It looks a little more intense and involved than indicated," said Gerry Del Prete, the park board chairman who also sits on the Moody Gardens board.

Del Prete said he was concerned that an executive committee of the board, rather than the full board, is handling audit negotiations. Although he voted to hand the matter over to the committee, Del Prete said he thought at that time that the audit was just a routine evaluation. He has since changed his mind.

According to minutes from a meeting of the executive committee, there are at least three legal agreements between the Moody Gardens and its lawyers regarding the audit that were not board-approved. This includes a "conflicts waiver" and a "joint defense and confidentiality agreement" between Moody Gardens, the Moody Foundation, the Galveston law firm of Greer, Herz and Adams,

Wylie's law firm and Miller & Chevalier, a Washington, D.C., law firm specializing in counseling and dispute resolution.

The committee's meeting minutes also indicate that the audit is pending rather than ongoing. McLeod said that was probably a misuse of the word pending.

"Pending — the connotation is that it is coming, but actually it's been with us for quite a while, so it's just probably a misuse of that term," he said. "There's nothing sinister about it."

In 1998 an IRS audit of gardens closed with no adjustments, according to McLeod. The most recent audit began three years ago, he said.

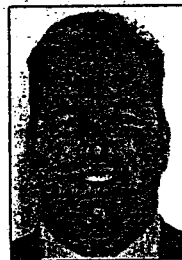
In early May, Moody Gardens requested \$500,000 from the Moody Foundation to cover "attorney's fees, fees to experts and other costs and expenses incurred by or on half of Moody Gardens in connection with the pending IRS audit," according to minutes from the executive committee meeting. The foundation approved this grant.

Park board members on Tuesday agreed to request more information from Moody Gardens regarding the audit — including details of a Request for Technical Advice from the IRS field agent to the IRS national office.

The Daily News has also requested these documents and copies of other legal agreements between Moody Gardens and its tax lawyers.



Doug McLeod



Gerry Del Prete

(JULY 8, 2007) GALVESTON

# Attorney: Moody Gardens won't release audit records until July 23

By SARAH VIREN  
The Daily News

Information relating to a three-year IRS audit of Moody Gardens should be available to the public, according to a lawyer for the Galveston Park Board of Trustees, which owns the tourism complex.

Only the governmental body can't get copies of the documents itself.

On June 22, The Daily News asked the park board for documents detailing concerns and questions raised during an audit of Moody Garden's finances.

Records show that Moody Gardens has spent more than \$500,000 on legal fees and hired up to four different lawfirms.

By law, the park board had to turn over the requested information or give a reason for withholding it within 10 business days.

In a letter delivered Wednesday, board attorney Carla Cotropia said she could not get copies of these documents — or a series of legal agreements also requested — because Moody Gardens refused to hand them over until July 23.

Daily News Attorney Charles Daughtry said that was not a legitimate excuse.

"Clearly these records are subject to the Public Information Act and should be produced immediately," he said. "The park board owns the complex, it's their records and they're responsible for the production of them. It's no excuse, and certainly not a legally defensible position, that Moody Gardens won't turn over the documents to the park board."

Moody Gardens is a tax-exempt corporation that operates a hotel, convention center, aquarium, rainforest pyramid, IMAX theater and gift shop for the park board.

Officials with the nonprofit have agreed to give The Daily News and the park board the IRS questions — called a Request for Technical Assistance

— and their responses to these questions by July 23, but no sooner. They have refused to turn over three other legal agreements also requested.

Irwin "Buddy" Herz, an attorney representing Moody family interests, said Moody Gardens is not required to turn over the papers but is



Irwin "Buddy" Herz

doing so as "a sign of good faith." He said the delay is because lawyers are trying to clear up "inaccuracies" in the IRS request — and be-

cause some of the lawyers handling the matter will be on vacation, according to a letter from Herz to Cotropia.

Cotropia said that by stalling, Moody Gardens puts the park board in an "awkward position."

"We are kind of between a rock and a hard place," she said. "They have put us in a position of being in noncompliance with the newspaper. We have a fiduciary to turn it over, and we want to turn it over."

Moody Gardens is on city-owned airport land. All the buildings on it, though, were built through grants from the Moody Foundation and turned over to the city in 1989. Cotropia said Moody Gardens needs the park board's involvement in the deal to continue claiming its tax-exempt status.

Lawyers and board members for Moody Gardens say the audit is for the 2000, 2001 and 2002 tax years, but have refused to comment on details. The park board, which runs the beach parks and promotes tourism on the island, has one seat on the Moody Gardens board.

According to minutes of a May 5 meeting of a Moody Gardens executive committee, the organization has spent more than \$500,000 on legal services relating to the audit.

IRS filings show that the nonprofit spent millions on different lawfirms from 2000 to 2001, at least one of them a tax firm. Moody Gardens paid \$200,000 each year to Jenkens & Gilchrist, a Dallas firm that includes tax lawyer Mike Whyllie, who is handling the audit.

The Moody Foundation, a nonprofit charitable organization that granted Moody Gardens the money to cover at least some of its legal fees, has hired the same firm over the years, forking out \$565,000 in 2002 and \$556,000 in 2001 and \$300,000 in 2000 to Jenkens & Gilchrist.

Herz said he would not comment on whether the Moody Foundation was being audited as well.

The bulk of the federal government's concerns appear to deal with the hotel and gift shop — and whether income from these entities should be taxable, according to minutes of the May 4 Moody Gardens board meeting.

Herz said he would attend the next park board meeting to discuss the audit with trustees and answer questions. He plans to deliver the IRS's 100-page request and Moody Garden's explanation of that request to park board trustees and The Daily News by 10 a.m. on July 23.

During July's board meeting, Cotropia said, she also hopes to discuss the park board's relationship with Moody Gardens.

"I think we need to address it," she said. "I do think we need to address it and put it in front of the board and talk about protocols."

# Moody Gardens to explain IRS audit

7-27-04 By SARAH VIREN  
The Daily News  
GALVESTON

Do profits from the Moody Gardens hotel, convention center and tourist complex belong to Moody Gardens Inc., the tax-exempt organization in charge of operating them?

That's one of the things IRS agents auditing the corporation want to know and it could be that either answer would have ramifications for the complex on Offatts Bayou.

If no, then Moody Gardens Inc. is "little more than a shell entity consisting of a board of directors,"

IRS agents wrote in a 109-page document called a technical advice request, which will be sent to the federal agency's national office within 30 to 60 days.

If yes, then some of that income, especially profits from the convention center, gift shops, hotel, restaurants and spa, should be taxable, according to that request.

Officials with the nonprofit maintain that they have no net income, but if they did it would belong to Moody Gardens. They say Moody Gardens helps the city by attracting tourists to the island and that a 1995 IRS ruling says hotel revenue is exempt from taxes.

The agents' analysis shows a \$19 million operations profit from 2000 to 2002. Moody Gardens board members say these numbers are based on false calculations and improperly filed tax forms. They say 2000 was the only year there was excess operating income.

Moody Gardens has budgeted to spend \$500,000 in legal fees related to the audit, board meeting minutes show. According to

See AUDIT/A3

its 2000 and 2001 tax filings, the nonprofit also paid \$200,000 each year to Jenkins & Gilchrist, a Dallas firm that includes tax lawyer Mike Whyllie, who is handling the audit.

In their request, local auditors question whether Moody Gardens is fulfilling one of its missions as a tax-exempt agency: to help "lessen the burdens of government" by increasing tourism.

Citing a 2002 lawsuit Moody Gardens filed against the park board and city council and the fact that Moody Gardens pays no property taxes to the city, the agents theorize that the nonprofit might actually make things harder for the local government, rather than easier.

"Although everything is eventually donated to the city of Galveston, it is hard to view the activity as charitable in situations where it is necessary to sue the city in order to construct assets," the agents wrote.

Moody lawyers are now drafting a response, which will be sent to Washington, D.C., along with the request.

They claim that many of the conclusions of the local agents were wrong. The national office will make a final decision.

The local auditors' request is based on an analysis of Moody Gardens' finances and records that spanned at least the past two years.

It was released along with 700 pages of exhibits in response to an open records request filed by The Daily News to the Park Board of Trustees, which owns the Moody Gardens complex.

Park board officials took more than a month to hand over the documents but said this was because Moody Gardens would not release them until this week.

Charles Daughtry, The Daily News' attorney, said the park board had no excuse for not turning over the documents within the 10 days allowed by state law.

Moody Gardens officials maintain that they are not subject to public information laws.

They said they released the audit documents as sign of good faith. Lawyers with the nonprofit will attend today's park board meeting to go over the audit.

The auditors' request includes a brief summary of the Moody Gardens' structure, its history and its relationship with various for-profit and government entities, which they characterize as "somewhat confusing." These entities include the Moody Foundation, a nonprofit that funded the Moody Gardens construction; Gal-Tex Management Company, a for-profit business that runs the hotel and tourist facilities; and the park board, which owns the complex.

The Moody Foundation partially owns Gal-Tex Hotel Corp., which owns the Gal-Tex Management Co., according to the request. The other owners of the corporation were redacted before the document was released to the public.

In a letter to the park board, Moody board members said some names and identifying information of customers and clients had been redacted, but did not say why.

Other parts of the request also were deleted, including the names of several American National Insurance Co. officials who stayed at the hotel. Robert L. Moody, who is a trustee for the Moody Foundation, is also of CEO of the insurance company.

A random sample of hotel guest cards analyzed by auditors indicated that officials from Moody related businesses comprise 25 percent of guests. Moody Gardens officials say those counts are inaccurate.

Along with the auditors' request document, Moody officials on Friday released a

bound copy of 49 contracts and hotel records to support their case.

GALVESTON

# Moody Gardens turns to park board for IRS help

By SARAH VIREN  
The Daily News

In the face of a three-year audit by the Internal Revenue Service, Moody Gardens is turning to the Galveston Park Board of Trustees for help.

Irwin "Buddy" Herz, a lawyer representing Moody interests, said Friday that he planned to ask for a resolution of support from trustees.

Tax attorneys with the nonprofit say the public backing could help their case with the federal government. In a recently released docu-



Irwin "Buddy" Herz

ment called a Technical Advice Request, IRS field agents concluded that Moody Gardens is not completely fulfilling its tax-exempt mission: to relieve the burden of government.

That opinion will go to the taxing agency's national office for review within the next

See MOODY GARDENS/A3

## MOODY GARDENS

Continued from Page A1

60 to 90 days. Moody officials are drafting a response, which will also be sent to Washington, D.C. A final decision on the audit could take six months or more, Moody lawyers say.

On Friday, Herz and Doug McLeod, chairman of the Moody Gardens board, gave a 90-minute presentation to the park board on the history of the nonprofit, highlighting

the ways that it has spurred tourism in Galveston and improved a formerly blighted area near the airport.

Chairwoman Dianna Puccetti said she would probably sign off on the proposed resolution, which most likely would state that Moody Gardens helps the city by in-



Doug McLeod



Dianna Puccetti

said.

McLeod compared the proposed resolution to a 1994 letter from the park board that affirmed the nonprofit's benefits to the city. That letter

creasing tourism.

"I don't see how anyone can argue that it doesn't lessen the burdens of government," she

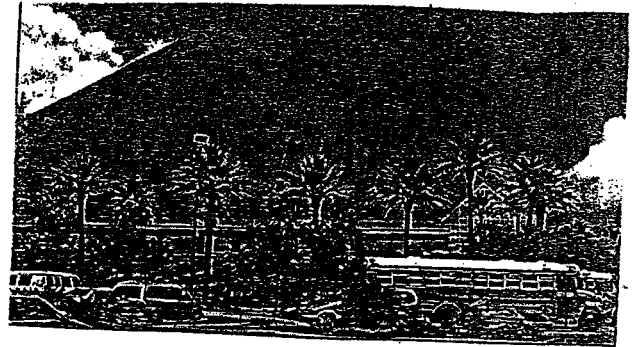
helped Moody Gardens get approval for a tax-exempt hotel at its 160-acre tourist facility.

McLeod said he thinks every park board trustee save one would vote for the resolution.

That one is Gerry Del Prete, former chairman of the park board.

During Friday's meeting, Moody attorney Jerry L. Adams said he felt Del Prete had a conflict of interest when he served as park board representative on the Moody board. Del Prete is the manager of the Galveston Health and Racquet Club, which once sued the city and Moody Gardens over competing amenities at the nonprofit tourist center.

Puccetti is now the park board representative on the Moody board. During a Tuesday meeting, Del Prete said he didn't think the hotel at Moody Gardens relieves the burden of government. In 2002, Moody Gardens sued the city and park board to expand its hotel.



NEWS:

## IRS: Moody Gardens has paid millions to foundation

The Moody Gardens 160-acre tourist complex in Galveston was built through grants from the Moody Foundation, a charitable trust. But Internal Revenue Service figures shows that Moody Gardens has generated up to \$44 million a year in revenue and \$15 million in operating profit and has given at least some money back to the billion-dollar foundation in the form of charitable contributions. Moody officials say these profit numbers were calculated wrong.

# Documents show Moody Gardens a money maker

By SARAH VIREN  
The Daily News

SUNDAY, AUGUST 1, 2004

Nonprofit sending money  
to the Moody Foundation

Documents released as part of a federal audit of Moody Gardens undermine some long-held beliefs about the nonprofit tourism-driven organization — namely that it is a money loser subsidized by the Moody Foundation, a charitable trust.

According to figures from the Internal Revenue Service, Moody Gardens has generated up to \$44 million a year in revenue, \$15 million in operating profits and has given millions of contributions back to the billion-dollar Moody Foundation.

Moody officials say the profit numbers are wrong — miscalculated by

See MOODY GARDENS/A7

## MOODY GARDENS

Continued from Page A1

their accountants and an IRS field agent auditing their books. They contend that the nearly \$7 million listed as contributions to the Moody Foundation on tax returns for five years were actually refunds for unused grants from the foundation.

During the years that Moody Gardens was returning money, though, it was also paying the foundation an average of \$671,000 a year in interest on a loan for the construction of its hotel, expense figures show.

Following a public information request from The Daily News, Moody Gardens last week turned over a 109-page analysis of its finances by field agents from the IRS. In the document, called a Technical Advice Request, the agents conclude that Moody Gardens made about \$19 million on its operations in 2000, 2001 and 2002, the years of the audit.

The agents' analysis shows that the nonprofit gave charitable contributions of more than \$5.3 million to the Moody Foundation during these years. Tax returns put

this figure closer to \$4.4 million. Moody Gardens contributed about another \$2.6 million to the Moody Foundation in 1999 — prior to the IRS audit — according to its tax filings.

Since the release of the IRS audit documents, Moody Gardens officials have been working to correct what they say are errors and miscalculations made by field agents.

Twice this week lawyers and board members from the nonprofit met with the Galveston Park Board of Trustees to discuss the audit and its contractual relationship with the government body. They also drafted a seven-page letter with exhibits countering many of the agents' claims.

The park board owns Moody Gardens, but Moody Gardens Inc., a tax-exempt corporation, is the designated operator of the complex on Offatts Bayou, which includes a hotel, convention center and various tourist attractions.

During a Tuesday meeting, Michael Wylie, a tax attorney representing Moody Gardens, said errors made by Moody accountants skewed the operation figures for the nonprofit. About \$15 million in income was accidentally listed as convention center profit rather than as a grant, he said. That mistake was not realized until recently.

Moody Gardens officials say

the field agents also incorrectly included other grants and hotel occupancy taxes as operating profits. Their recalculations show slightly more than \$1 million in profit from operations during the three years in question.

The grants to the Moody Foundation have been harder to explain. When asked on Thursday afternoon, neither Wylie, whose firm works for the Moody Foundation and Moody Gardens, or Irwin "Buddy" Herz, who also represents both Moody nonprofits, knew for sure what the contributions were for.

After researching tax returns from 2000 to 2002, Wylie said the contributions appear to be unused grant dollars that were returned to the Moody Foundation.

"Moody Gardens does not make contributions," Wylie said. "That's how the (Moody Gardens') accountants classified it."

As of Friday afternoon, Moody Gardens officials had not identified which projects the \$7 million in refunds were from.

Herz said he didn't know why the refunds were classified as contributions on the tax returns. He said the Moody Foundation, which has given more than \$400 million in grants during the past 20 years, requires that excess dollars from any grant project be returned to the foundation.

### Moody Gardens finances from 1998 — 2002

Grants from the Moody Foundation to Moody Gardens:  
\$15,387,987.

Contributions/grants from Moody Gardens to the Moody Foundation: \$6,973,500.

Interest paid by Moody Gardens on a loan from the Moody Foundation: \$2,686,095.

— Information compiled from Moody Gardens, Inc. 1991 through 2001 990-PF tax returns and from expense and profit reports supplied by

Wed, 8/11/04

GALVESTON

# Moody Gardens to correct mistakes in recent tax returns

By SARAH VIREN  
The Daily News

Moody Gardens is going to correct mistakes made on recent tax returns.

Attorney Irwin "Buddy" Herz said accountants would amend a 2002 filing, which inaccurately showed the nonprofit organization with a \$15.5 million operating profit for that year.

A Moody Foundation grant that was listed as convention center income skewed the profit figures, he said.

"The failure came in not showing that as a deduction or expense to the park board," Herz said.



Irwin "Buddy"  
Herz

Moody Gardens typically takes in grants each year from the foundation for operation and construction costs. That income is then deducted either through expenses accrued in running the park or through donations of the newly constructed facilities to the Park Board of Trustees.

The park board owns the Moody Gardens hotel, convention center and tourist

complex. Moody Gardens Inc. operates those facilities.

Officials with the nonprofit, which is being audited by the IRS, claim their organization consistently loses money.

But a Technical Advice Request filed by IRS field agents calculated a \$19 million operating profit for Moody Gardens during the audit years 2000 to 2002.

Herz said the amended tax forms would clear that issue up.

The new filings will be sent to the national IRS office along with a response to the field agents' Technical Advice Request.

Even with the corrected

mistakes, Moody Gardens will still show a \$1 million profit during the audit years.

Herz said he didn't know why no one noticed the mistake earlier. Pannell Kerr Forster of Texas is the firm that filed the forms. In amending the 2002 tax forms, the firm will also add a \$100 million grant that should have been listed for that year under current accounting practices.

"It was just a mistake," Herz said. "When they were reviewing these two years ago, nobody cared because we weren't paying taxes anyway. From now on I know, we will review (the filings)."

A recent analysis by The Daily News showed that Moody Gardens gave the Moody Foundation nearly \$9.6 million from 1998 to 2002: \$7 million in unused grant dollars and \$2.6 million in interest on a \$13 million loan from the foundation.

During that time period, the foundation granted \$15 million to Moody Gardens, according to IRS filings.

Accountants for the Moody Foundation show that some of those refunded dollars were actually portions of grants canceled by the foundation before they were allocated to Moody Gardens.



...  
*Documents from an Internal  
Revenue Service audit of Moody  
Gardens were released to the public  
Friday. Wed 7-28-04*

### **Moody Gardens looks like private enterprise**

Moody Gardens should be an entity unto itself as well as the Moody Foundation. The Moody Gardens gravy train may come to an end soon, as well it should.

It is making money hand over fist with lots of volunteer help comprising a free staff of workers that many people of Galveston County would like to fill at minimum wages.

Many people have criticized Tilman Fertitta for his entrepreneurial contributions to the tax base of Galveston and Galveston County that have added greatly to the enhancement of the tourist attraction here. The employee salaries paid to the citizens to staff each and every operation he owns also enhance the tax base.

The \$320,000 that Moody Gardens pays to the city each year pales in comparison to the amount of taxes that the charitable status would generate in trickle-down economy for the county.

Moody Gardens is big business and should be divided from the former status of being a tax-free charity.

It's time the IRS reclassify Moody Gardens as the privately run enterprise that it is and give the citizens of Galveston and Galveston County the tax break that they deserve.

Vera Skaggs  
Texas City

# Seeking statements of support

## Moody Gardens asks local government bodies for documents to be sent to IRS

By SARAH VIREN  
The Daily News

Moody Gardens officials say negative comments by former city council members and park board trustees may have sullied the organization's reputation in the eyes of the Internal Revenue Service.

To change that, the nonprofit is asking for a statement of support from both government bodies. That document would be sent to IRS offices in Washington, D.C., for review. The IRS is wrapping up a three-year audit of Moody Gardens.

Park board trustees will vote today on a resolution confirming the public benefits of Moody Gardens, which operates a park-board-owned tourism complex along Offatts Bayou. A similar resolution is set to go before city council next month.

Irwin R. "Buddy" Herz, an attorney representing Moody interests, said the resolution was necessary "because some of the negative comments of past park board members and opponents of Moody Gardens may have indicated to the IRS that there was no support of Moody Gardens in Galveston."

As a tax-exempt organization, Moody Gardens has a duty to relieve the burdens of government by helping attract tourists and visitors to Galveston. The proposed resolution affirms that Moody Gardens has fulfilled that duty.

IRS auditors have questioned that notion, though, citing a 2001 lawsuit the nonprofit filed against the city and park board.

Moody Gardens was the official site for conventions until 2000, when city officials

## MOODY GARDENS

Continued from Page A1

voted to build a new center run by Landry's Management, L.P.

Moody Gardens sued in an attempt to stop construction of that facility.

Steve Greenberg, director of governmental affairs for Landry's, said he thought at least two members of the park board had conflicts of interest and should not vote on the resolution: Betty Massey, who works for Mary Moody Northern Foundation, and Michael Hightower, who works for Moody National Bank.

Trustee Edward Walsh III also does work through his accounting firm for Moody National Bank.

Island native Robert L. "Bobby" Moody is a trustee in the foundation that funds Moody Gardens and is chairman of the board of the bank and a trustee for the

Mary Moody Northern Foundation.

Massey, Hightower and Walsh declined to comment on the resolution or whether they had a conflict of interest.

Park Board Attorney Carla Cotropia said she advised both

Walsh and Hightower that they do not meet the definition of conflict of interest with regards to Moody Gardens.

The resolutions, if approved by the city and park board, would be sent to IRS national offices. A 109-page document drafted by IRS auditors in Galveston suggests that parts of Moody Gardens operations, including the hotel and gift shops, should be taxable.

Moody Gardens tax lawyers are now drafting a response.

In 1994, the park board and city sent a similar letter of support to the IRS on behalf of Moody Gardens. That letter helped the nonprofit from get tax-exempt status for its hotel and aquarium.

Herz said he thought any criticism of Moody Gardens by city officials has faded. Five new city council members were elected in May. That city council then appointed five new trustees to the park board.

"The city leaders (now) are independent thinking and not controlled by any faction of the city," Herz said.

Park Board Chairwoman Dianna Puccetti said she thought the resolution was "straight forward" and "factual," but would not comment on how she plans to vote.

### WHAT THE RESOLUTION SAYS

Whereas, the park Board of Trustees of the city of Galveston (the "Park Board") and Moody Gardens, Inc. have had a long relationship;

Whereas, Moody Gardens has been a great success in attracting visitors and tourists to the city of Galveston, and is the No. 1 tourist attraction in the Houston/Galveston area and the No. 8 tourist attraction in the entire State of Texas;

Whereas, the park board wishes to acknowledge the benefits of its relationship with Moody Gardens, Inc.;

Therefore, be it resolved that the Park Board adopts the following Declarations and Resolutions:

The Park Board's statutory duty is to attract visitors and tourists to the City of Galveston.

The Park Board's ownership of the Moody Gardens facilities, the operation of such facilities for the park Board by Moody Gardens, Inc., and the continued growth and success of Moody Gardens has assisted the Park Board in fulfilling its statutory duty, promoted economic development and increased employment opportunities in this city.

## Park board needs to talk this over first

**T**he Galveston Park Board of Trustees should have a thorough discussion of a resolution that Moody Gardens requested that involves its own discussions with the Internal Revenue Service.

But the park board shouldn't vote on the proposed resolution today.

A rushed vote would be a disservice to the public for several reasons:

- First, an awful lot of people had the impression that this resolution was not going to be rushed and that public officials would have time to study the consequences. Many people were dismayed to learn a day before the meeting that the resolution would be up for a vote.

- Second, it's not clear which park board trustees should vote on this resolution. Some people on the board work for Moody interests. That naturally raises questions about whether they can be impartial in advocating whether Moody Gardens — or any part of Moody Gardens — should be paying federal taxes. Those are good questions. But there has been no discussion about whether any of the trustees have a conflict of interest.

- Third, what are the consequences of approving this resolution? What would happen if everyone agrees with the resolution, which says that "Moody Gardens has been a great success in attracting visitors and tourists to the city"?

Will the park board write that same letter to the IRS on behalf of other groups that wish to avoid some federal taxes?

And if so, how will the board make that decision? The city has other developments that have been a great success in attracting visitors and tourists. Would Tilman Fertitta's developments on the Seawall qualify? How about George Mitchell's developments on The Strand? Is the new Schlitterbahn water park expected to be a great success? If so, why doesn't it get a letter from the park board?

And what about the average mom and pop who opened a small restaurant or a rental shop? Aren't they doing their best to attract visitors and tourists?

While it's not clear what the consequences of this resolution are intended to be, here's one possibility: It's possible that the IRS might conclude, upon reading this resolution, that most people in Galveston think that no part of Moody Gardens, including the hotel and the gift shop, should pay federal taxes.

If that's the intent, it's a remarkable leap.

The park board really hasn't done much at this point to see what the public thinks.

If the board really is interested in finding out what the public thinks about whether Moody Gardens should pay taxes, it should have a public discussion of this resolution without rushing the vote.

Our guess is that Galvestonians would have plenty to say.

• Heber Taylor

# OPINION

A8  
Friday

August 27, 2004

## THE GALVESTON PARK BOARD OF TRUSTEES

### Trustees with Moody ties shouldn't vote on resolution

I am writing this for citizens who believe that elected officials and the representatives they appoint to city boards must act in a totally unbiased manner and never vote on matters related

to interests in which they have financial ties.



**Tom Cook**

Guest column

If members of a public board have financial ties to certain organizations or interests and they are asked

to vote on issues affecting those organizations or interests, then there is an assumption that they must abstain from voting since they could put their personal interest above those of the public.

Recently, Moody representatives asked the Galveston Park Board of Trustees for a resolution stating that Moody Gardens relieves burdens of government. This seems absurd.

If the Moody hotel, restaurants, etc., relieve burdens of government, then all Galveston hotels, restaurants relieve burdens of government. It is probably more correct to say that the Moody hotel,

restaurants, gift shops, etc., if not taxed, are really burdens to government.

Apparently the IRS believes that some commercial business at Moody Gardens should be taxed. The Moodys want a resolution to counter the IRS position.

Moody Gardens hotel, restaurants, gift shops, Palm Beach and Colonel Paddle Wheeler pay no income, school or property taxes.

Obviously the Moody interests would be grateful to any park board member who votes to help them avoid taxes.

Does any park board member have financial ties to the Moodys? Can their vote be unbiased?

Obviously, you have the worst conflict of interest imaginable when you are asked to render an independent, unbiased vote related to an organization that provides for your financial needs, by paying your or your children's daily living expenses through salary or otherwise.

If businesses such as Moody hotel, restaurants, etc., lose their tax-exempt status, the city of Galveston wins by gaining revenues from property taxes badly needed for schools, teachers, streets, etc.

Park board members with financial ties to Moody interests who vote for the resolu-

tion sought by Moody Gardens are hurting all citizens of Galveston, particularly our school district, which needs tax revenue.

Residents should get to vote on who really relieves burdens of government. Residents need a petition to place this issue before the voters. The park board should not have the power to enable a party of its choosing to avoid property taxes.

It is unfair to all Galveston hotels and restaurants when park board members with financial ties to Moody interests vote to help Moody Gardens avoid taxes, especially using the specious claim of relieving burdens of government.

The following park board members have financial ties to Moody interests:

- Mike Hightower: employee of Moody National Bank, controlled by Robert Moody.
- Betty Massey: Executive director of Mary Moody Northern Foundation. Robert Moody is a trustee.
- Eddie Walsh, CPA: his firm derives revenues from Moody interests.

These board members, all fine people, should abstain from voting on issues affecting Moody interests. They have the worst conflict imaginable.

Tom Cook lives in Galveston.

# Park board

## approves

# Moody Gardens resolution

By SARAH VIREN  
The Daily News

SEPT. 1, 2004

Calling it straightforward and factual, the Galveston Park Board of Trustees approved a resolution of support for Moody Gardens Inc.

No one declared a conflict of interest.

Moody Gardens, which runs a park board-owned tourist complex near the airport, is being audited by the Internal Revenue Service. Tax lawyers with the nonprofit say the resolution could help their case with the federal taxing agency.

### How they voted

**FOR:**  
Dianna Puccetti  
Danny Allen  
Michael Hightower  
Danny Weber  
Bill Hynek  
Betty Massey  
Edward Walsh III

**AGAINST:**  
Gerry Del Prete

**ABSTAIN:**  
Al Fichera

Pleas from the general

See MOODY/A6

## MOODY

Continued from Page A1



Al Fichera

public to consider conflicts of interest were heard but not heeded at Tuesday's meeting; the only trustee to abstain from the vote was Al Fichera. He said he didn't think it was the sort of decision the park board should make.

All other trustees except Gerry Del Prete voted for the resolution.

"I think we do own Moody Gardens and we have to support Moody Gardens," said Trustee Edward Walsh III.

Walsh, whose accounting firm does work for Moody National Bank, was one of three trustees who receive at least some income from an organization partially owned or controlled by Robert L. Moody.

Moody is a trustee of the foundation that funds Moody Gardens, chairman of the board of the bank and a trustee for the Mary Moody Northern Foundation.

The other two trustees are Betty Massey, who is executive director of the Mary Moody Northern Foundation, and Michael Hightower, who works for the bank.

Each of the trustees voted for the resolution.

Before the meeting, Steve Greenberg, head of governmental affairs for Landry's Restaurants, told trustees he thought they should abstain from voting if they get money from an organization

**WHAT:** Ethics Commission meeting.

**WHEN:** 4 p.m. today.

**WHERE:** City Hall, 823 25th St.

**DETAILS:** Commission to consider changes to city code of ethics.

related to Moody Gardens.

"If you are trying to establish credibility, I think it is a backward way to go," he said. "It's just wrong, and I think if you actually went to the public I think they would tell you that."

Park board attorney Carla Cotropia said she advised both Walsh and Hightower that they do not meet the legal definition of conflict of interest.

Greenberg is proposing changes to the city's ethics policy. The ethics commission will consider those changes today.

Greg Roof, who led a fight against paid parking on the

Seawall, spoke before the meeting in support of the resolution. But he warned trustees to abstain if their votes might damage the "perception of the way the park board conducts business."

Walsh said he took this into account but thought trustees each had to decide what was right for the park board.

A similar resolution will go to city council, probably at their next meeting. If approved, both documents would be sent to the IRS national office for review.

Moody Gardens lawyers



Steve Greenberg



Edward Walsh III



Greg Roof

are drafting a response to initial findings of the IRS audit and expect to send the response to Washington, D.C., as well within the next four weeks.

In 1994, park board and city council members sent a similar letter of support for Moody Gardens.

Del Prete asked most of the questions during Tuesday's discussion, quizzing Cotropia and Moody representatives about the contractual agreement between the park board and Moody Gardens.

Del Prete is the manager of the Galveston Health and Racquet Club, which once sued the city and Moody Gardens over competing amenities at Moody Gardens.

He said he didn't feel that the nonprofit organization relieves the burden of government, and pointed out that Moody Gardens once sued the city and the park board. He said that tax dollars are now repaying the lawyer bills accrued by these governmental bodies as part of that lawsuit.

Del Prete said he thinks things are different now than in 1994, because Moody

Gardens no longer runs the city's official convention center. Landry's Management, L.P. built a new Galveston center,

which opened this year.

"I will vote against this resolution because I think times have changed," Del Prete said before the vote. "I think the convention center competes with our current convention center, which is a burden of government."



Gerry Del Prete

## GALVESTON

## Moody Gardens gets city seal of approval

By MARTY SCHLADEN  
The Daily News

As the Internal Revenue Service reviews its tax-exempt status, Moody Gardens on Thursday received a unanimous resolution from the Galveston City Council proclaiming the facility to be a boon to public welfare.

The resolution came after the Park Board of Trustees last week passed a similar measure.

Relations between Moody Gardens and the agencies of the city government have not always been so harmonious. In the past few years, Moody Gardens sued the park board and the city in an acrimonious fight about where an island convention center



Irwin "Buddy"  
Herz

would be located. Eventually, two such facilities were built — one on the Seawall and one at Moody Gardens.

Past antagonisms seemed largely forgotten Thursday as Irwin "Buddy" Herz, an attorney representing the Moody interests, outlined the financial benefits Moody Gardens provides the city:

- More than \$400 million in construction and operating deficits for a facility that the Moody interests gave to the city.

- 840 full-time jobs.
- \$320,000 in 2004 payments to the city in lieu of taxes.

- \$800,000 in hotel-occupancy revenue since a hotel was opened at Moody Gardens.

Despite the economic benefits to the city, some critics have asked whether it was fair for other hotels to have to compete with their tax-free counterpart at Moody Gardens. More generally, they ask whether Moody Gardens' mission is qualitatively different from any private business that seeks to bring tourists to Galveston.

For example, councilwoman Patricia Bolton-Legg asked in workshop what the difference was between the

aims of Moody Gardens and those of a T-shirt shop.

"There is a difference here,"



Lyda Ann  
Thomas

said Mayor Lyda Ann Thomas. Moody Gardens "is a city-owned property."

In the end, many members of the council said they would support

the brief resolution because they believed it to be true.

"It's very simple and straightforward," said councilman Danny Weber. "In my eyes, it's very factual and irrefutable."

## PARK BOARD ENDORSES TAX-EXEMPTION FOR MOODY GARDENS

Three Park Board members with financial ties to Moody interests, by passing their endorsement resolution, have acted to assist Moody Gardens to escape IRS taxes. Without the vote of those three members, the resolution would have failed due to lack of the necessary 5 votes for passage. It's incredible that board members who derive income from Moody interests can endorse tax-exemptions for Moody Gardens and claim that they have no conflict of interest! I believe a direct financial tie to parties controlling the subject of a board resolution is the absolute worst conflict a person could ever have. A fourth Trustee's son works for Moody Bank, posing still another financial conflict.

City Council is to blame. They purposefully appointed to the Park Board, three people who derive direct income from Moody interests. They had to know these people could not impartially represent the public interest while regulating Moody Gardens. I've always been in favor of small government. However, after watching this arrogant abuse of power at the Park Board meeting, I began to wish the IRS had more authority so it could stop Moody Gardens from using the Park Board as its "strawman", and could bring tax charges against board members with direct financial conflicts of interest who participate in a scheme to help their benefactor avoid taxes. Neither the Park Board nor the City exist to lobby the IRS for a tax exemption for Moody Gardens or anyone else.

Surely the Ethics Commission will bring an end to these terrible conflicts. The commission should make it a conflict of interest for anyone receiving over \$5,000 per year from an interest group, or a controlling group, to vote on any issue regarding that interest group. If the city council won't approve such a reasonable rule, then it's obvious City Council is more concerned with special interests rather than the public interests it was elected to represent.

*SUBMITTED AS LETTER TO EDITOR  
OF GALVESTON NEWS - NEVER PUBLISHED*

**Public money? Spent for public good?**

A review of Moody Gardens 990 Tax Returns from 1998-2002, shows these legal fees:

Herz & Adams	\$610,483.00
Vinson Elkins	\$118,124.00
McLeod, Alexander	\$ 62,254.00
Fulbright & Jaworski	\$851,048.00
Jenkins & Gilcrist	<u>\$386,964.00</u>

Total: \$2,026,873.00

Reading newspaper accounts concerning additional payments to Washington law firms, it appears that approximately \$900,000.00 was spent in 2003. In just six years, Moody Gardens spent about \$3 million of the public money of the Park Board to pay legal fees not related to the Park Board's interests, but only related to the personal pecuniary interests of Moody Foundation and Moody Gardens. The ironic thing, is that these payments out of public money of the Park Board do absolutely nothing to protect the City of Galveston, the Park Board, or the citizens of Galveston. The only reason the public money of the Park Board is being spent on legal fees is solely to preserve the tax-exempt status of the Moody Foundation and Moody Gardens. The Park Board is truly being used as a "straw man". The Park Board is ill advised to continue to aid and abet the avoidance of local and federal taxes by the Moody Foundation and Moody Gardens. All that is accomplished is to burden the City, County, school district, and federal government with the loss of the fair share of taxes to which they are entitled. The ordinary citizens and taxpayers of Galveston suffer when city boards favor special interests over public interest.

*SUBMITTED AS LETTER TO EDITOR  
TO GALVESTON NEWS - NEVER PUBLISHED*



**THOMAS E. COOK, III  
J. MICHAEL FIEGLEIN**

**36 Colony Park Circle  
Galveston, Texas 77551  
(409) 744-2195  
FAX: (409) 744-0080**

**April 23, 1998**

**CONFIDENTIAL**

*Thomas E. Cook*

**Chief, EO/EP  
Internal Revenue Service  
1100 Commerce, MC 4900 DAL  
Dallas, TX 75242**

**Re: The Moody Foundation, EIN # 74-1403105  
Moody Gardens, Inc., EIN# 76-0288131**

**Dear Sir:**

The purpose of this letter is to advise the IRS of a situation involving the above-referenced private foundations that should cause the IRS to revoke the foundations' tax-exempt status. In our opinions, those foundations misrepresented facts to the IRS that caused the IRS to issue a favorable ruling when one should have been denied. We believe that had the IRS been advised of all the relevant facts, the IRS would never have allowed the foundations to retain their tax-exempt status.

#### **SUMMARY**

Through an intricately woven scheme of deception, the above-referenced foundations have masked the Moody Gardens Complex: a water amusement park, a paddlewheel charter boat, a movie theater, and a soon-to-be completed 5-star, world class, luxury commercial hotel and fitness center, as "governmental/charitable" facilities and operations, when, in actuality, they are 100% commercial business operations. The foundations claim to be facilitating governmental operations and relieving burdens of government when the governmental entity has no burden, and never has had any burden, related to the commercial businesses of the Moody Gardens Complex.

Park Board "ownership" of Moody Gardens is a sham and nothing more than form over substance. Operations, management, and revenues inure to the foundations - not the Park Board.

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Operations and management are controlled by a taxpaying entity owned and controlled, directly and indirectly, by the Moody Foundation, the principal trustee of the Moody Foundation, and that trustee's family and relatives.

In the ruling request, the IRS was led to believe that Moody Gardens was given to the Park Board by the Moody Foundation. It was suggested that the Moody Foundation's funding of the operation and development of Moody Gardens lessened a burden of government. When the transaction is examined, it becomes obvious that nothing was given by the foundations to the Park Board. The Moody Foundation may take back Moody Gardens at any time upon 20 days notice. See Exhibit "B". There was never a completed delivery or gift. The alleged transfer of ownership appears to be a transfer without substance. The Moody Foundation held all normal indices of ownership of Moody Gardens both before and after the supposed "gift".

### FACTUAL BACKGROUND

The Moody Foundation (Foundation), a \$700 million private operating foundation, was created by a testamentary bequest in 1942. Moody Gardens, Inc., (Gardens) was created by the Foundation in 1988 to operate a development designated as Moody Gardens. In 1994, these foundations sought a private letter ruling related to their activities. A copy of the request is attached as Exhibit "A".

### CREATION OF A TAX-EXEMPT COMMERCIAL ENTERPRISE

In 1983, the Foundation leased certain surplus airport land from the City of Galveston. It began development of Palm Beach at Moody Gardens, an IMAX theater, and a charter paddlewheel boat operation. When confronted by the IRS and told that the Foundation's operations were too commercial and would cause the loss of tax exemption, the Foundation devised a scheme to allow their commercial businesses at Moody Gardens to operate tax-free. The scheme was to "convey" the Moody Gardens leasehold and commercial businesses to the Park Board of Trustees of the City of Galveston (Park Board). In December, 1989, the Foundation purported to convey its Moody Gardens leasehold and development to the Park Board. See Exhibit "B". The "conveyance" by the Foundation to the Park Board can be canceled by the Foundation, and Moody Gardens can then be taken back by the Foundation, merely by giving 20 days notice to the Park Board. See Exhibit "B". The Foundation's purported conveyance, to the Park Board, of the Moody Gardens complex is simply illusory, and is not a completed gift or transfer of ownership. It is simply a disguise for the sole purpose of permitting the Moody Foundation to operate commercial business enterprises with tax-exempt status to exclusively benefit that foundation, its trustee and related parties.

### CURRENT AND PROPOSED OPERATIONS

The Foundation, through Gardens, built a rain forest pyramid, a swimming pool, a paddlewheel charter boat, and a theater. Of the one million visitors to the Park in 1996, only 300 visited for the charitable therapy touted in the ruling application. See Exhibit "D". Of

## CONFIDENTIAL

those who visit for the therapy, most pay their own costs, either personally or through insurance. Only 56,000 students visited Moody Gardens for educational purposes. In addition, students must pay admission to visit the facilities. See Exhibit "D".

Now the Foundation is building the largest hotel and fitness center in Galveston County. The hotel has been touted to be the finest in the United States with an intended 5-star rating. A Moody Gardens hotel subcontractor, with a specialty in ornate woodworking, said that the Moody Foundation's decision to spend an extra \$1.8 million on specialty, ornate woodwork in the hotel would arguably make the Moody Gardens hotel one of the most luxurious hotels in the United States. The Moody Foundation decided to create a luxurious, 5-star hotel at Moody Gardens, and elected to expend the monumental funds necessary to do so. The Foundation proposed in the ruling request that this luxurious, 5-star hotel is a burden of government that The Foundation is assuming. This is a burden that was both created and assumed by the Foundation. This is not a burden of the City government. No government would ever create such a burden for its citizens!

In the ruling request, the hotel is supposed to be a teaching hotel. Not disclosed in the ruling request, however, is the fact that according to its plans, this "teaching" hotel will not include any teaching facilities - a totally absurd proposition! See Exhibit "E". This arrangement is vastly different from other teaching hotels, such as University of Houston's hotel where over half of the floor space is devoted to classrooms and learning labs. A foundation trustee described the hotel as "world class" and "5-star". A two year community college will allegedly offer courses in hotel management on its campus, located miles away from the hotel. Most experts believe that a four year degree is necessary for hotel management positions and that the two year program is a farce presented to the IRS to support the hotel's claim to tax exempt status. See Exhibit "E".

The Foundation also argued that the hotel - as government property - deserved to be supported by the Foundation. This argument fits with the Foundation's suggested charitable purpose of relieving the burden of government. It appears that the Foundation creates a government burden so it can then relieve it.

Other commercial hoteliers have filed suit in Galveston to stop this non-profit competitor. See Plaintiff's First Amended Complaint filed in **FERTITTA HOSPITALITY, L.L.C. v. MOODY GARDENS, INC., GAL-TEX MANAGEMENT COMPANY, INC.**, case number G-97-423, in the United States District Court for the Southern District of Texas, Galveston Division, attached as Exhibit "C".

## RELATED PARTIES/PRIVATE BENEFIT INUREMENT

Part of the agreement between the Park Board and the Foundation allows the Foundation to designate who will manage Moody Gardens. The Foundation hired Gal-Tex Management Corp. (Gal-Tex), a Texas for-profit corporation, to run Moody Gardens. See Exhibit "F". Gal-Tex is owned 51%, and controlled, by the Libby Shearn Moody Trust

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(LSMT). Robert L. Moody directly benefits, personally, as a life income beneficiary of the LSMT. In addition, Moody National Bank, a bank effectively controlled by Robert L. Moody and his children, acts as sole trustee of the LSMT.

The other owners of Gal-Tex are:

1. Moody Foundation - 33%; Robert L. Moody, primary trustee
2. Moody Endowment, Inc. - 16%; Robert L. Moody, primary trustee

It is clear that Robert L. Moody indirectly owns, and directly controls, Gal-Tex, because he effectively controls all three entities which own Gal-Tex. The ownership of Gal-Tex was not disclosed in the letter ruling request.

Gardens has, in the past, purchased its liquor, exclusively, from a Moody family business (Coyote Liquor), banked at a Moody family controlled bank (Moody National Bank), and purchased its insurance from a Moody insurance company through a Moody owned insurance brokerage company - none of which was disclosed in the letter ruling request. See Exhibit "F".

## CIRCUMVENTING IRS DECISIONS

In 1988, the IRS audited the Foundation regarding its operation of a paddlewheel boat and the Palm Beach swimming pool. Representatives of the Foundation have reported that the IRS required the Foundation to dispose of the paddlewheel boat and Palm Beach operations. See Exhibit "G". The Foundation supposedly donated the boat and Palm Beach to the Park Board. Then the Foundation agreed to fund, develop, manage, operate and maintain the boat and Palm Beach. The Foundation claims it is relieving the burden of government as its exempt purpose for an activity that the IRS has already decided was commercial. In substance however, nothing has changed. The risk of loss has remained with the Foundation. No risk ever lay with the Park Board. The Park Board never assumed or held a burden. It was merely a scheme to circumvent the IRS enforcement decisions.

## CONCLUSION

The foundations operate commercial enterprises under the guise of relieving the burden of government - a burden the foundations created themselves. When this fact is added to the related party issues, the true motives of the trustees becomes apparent. We request the IRS to investigate the foundations and impose appropriate sanctions, including revocation of tax exempt status.

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**CONFIDENTIALITY**

We consider this submission to be a confidential Complaint; and request the IRS to not disclose the source of this information.

Respectfully submitted,

---

J. Michael Fieglein  
TX Bar #06960300

---

Thomas E. Cook, III  
TX CPA #7114

JMF,TEC/pt  
Enclosures

cc: Charles O. Rossotti, Commissioner  
Internal Revenue Service  
1111 Constitution Ave., NW  
3000 IR  
Washington, DC 20224

Evelyn A. Petschek, Assistant Commissioner - EP/EO  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224

Lee Monks, Taxpayer Advocate  
Internal Service  
1111 Constitution Ave., NW  
Washington, DC 20224

**EXHIBIT A**

REQUEST FOR RULINGS ON BEHALF OF MOODY GARDENS, INC.,  
THE MOODY FOUNDATION, AND THE PARK BOARD OF TRUSTEES  
OF THE CITY OF GALVESTON, TEXAS

September 23, 1994

Submitted By:

JOHNSON & WORTLEY  
A Professional Corporation  
900 Jackson Street  
Suite 100  
Dallas, Texas 75202

J. Michael Wylie  
(214)977-9685

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## A. STATEMENT OF FACTS

### I. Organizations Requesting Rulings

This letter requests rulings with respect to the proposed construction, operation, and maintenance of an aquarium and hotel, more particularly described below, involving Moody Gardens, Inc. ("Moody Gardens"), The Moody Foundation (the "Foundation"), and the Park Board of Trustees of the City of Galveston, Texas (the "Park Board"). This request for rulings is submitted pursuant to Revenue Procedure 94-4, 1994-1 I.R.B. 90.

Moody Gardens is a Texas nonprofit corporation exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The charitable purposes for which Moody Gardens was granted tax exemption under section 501(c)(3) include lessening the burdens of government, education, and the charitable purpose of providing a community wide benefit. Moody Gardens was incorporated by the Foundation in 1988 and received its determination letter from the Internal Revenue Service (the "Service") on December 11, 1989. Moody Gardens currently manages and operates the "Moody Gardens," an \$88 million dollar project on Galveston Island in Galveston, Texas (the "Park," as described more fully below). The Park's principal activities consist of operating a convention center, a 3-D IMAX® theater, a beach area, various gardens, a therapy program and a ten story rainforest pyramid. Moody Gardens is a private foundation within the meaning of section 509(a) of the Code and further is a private operating foundation described in section 4942(j)(3) of the Code. Moody Gardens' taxpayer identification number is 76-0288131, its address is One Hope Boulevard, Galveston, Texas, 77554, and its telephone number is (409) 744-1745. Moody Gardens is subject to the audit jurisdiction of the District Director of the Key District Office of the Service located in Dallas, Texas. The eleven members of Moody Gardens' board of directors are Armin M. Cantini (Assistant Vice President, American Indemnity Company), Donald Childress (retired), Edwina Fraley (Director of Marketing, Moody Gardens, Inc.), Luis R. Hernandez (Attorney and Certified Public Accountant), Smith Hill, Jr. (Owner, New Hill's Restaurant), John C. Maisel, Jr. (Owner, Mainland Floral, Inc.), Keith McFatrige, Jr. (attorney), E. Douglas McLeod (Director of Development, The Moody Foundation), Shearn Moody (private investor), Donald L. Schattel (Executive Director, Park Board of Trustees of the City of Galveston), and The Honorable Joe Max Taylor (Sheriff, Galveston County). In addition, beginning October 1, 1994, a member of the Galveston City Council will be added to Moody Gardens' board of directors as more fully explained below.

The Foundation is a charitable trust created pursuant to a trust indenture dated August 22, 1942. The purpose of the Foundation is to promote and fund projects in the State of Texas in the humanities, the performing arts, religion, education, health, science, and community and social services. The Foundation is exempt from federal income taxation under section 501(c)(3) of the Code and is classified as a private foundation within the meaning of section 509(a) of the Code. The Foundation's taxpayer identification number is 74-1403105, its address is 704 Moody National Bank Building, 2302 Postoffice Street, Galveston, Texas, 77550, and its telephone number is (409) 763-5333. The Foundation is subject to the audit jurisdiction of the District Director of the Key District Office of the Internal Revenue Service located in Dallas.

Texas. The three trustees of the Foundation are Robert L. Moody, Ross R. Moody, and Frances Moody Newman.

The Park Board is the primary municipal agency affiliated with the City of Galveston (the "City") that is committed to the development of the Park. As described more fully below, the facilities at the Park are operated and maintained by Moody Gardens, but are owned by the Park Board and are located on land leased by the Park Board from the City. The Park Board's employer identification number is 74-1505237, its address is 2106 Seawall Boulevard, Galveston, Texas, 77550, and its telephone number is (409) 763-6564. Because the Park Board is a governmental unit, it does not file a federal income tax return. The nine trustees of the Park Board are J. Bangle (Owner, J. Bangle Gallery), Carl Kelly (Executive, Radiology Department, University of Texas Medical Branch), Raymond Lewis, Jr. (Executive, School of Allied Health Sciences, University of Texas Medical Branch), Eugene Lucas (President, Gal-Tex Hotel Corporation), Robert Lynch (Member, Galveston City Council; Investment Counselor, Galveston Management Company), Carl Robertson (Senior Vice President, American National Insurance Co.), Marilyn Schwartz (Trustee, Park Board of Trustees of the City of Galveston), Lyda Ann Thomas (Chairwoman, Park Board of Trustees of the City of Galveston; Chairwoman, The Kempner Foundation), and George Van Etten (General Manager, The Tremont House).

## 2. Proposed Transactions

### a. Introduction

The Park is a multi-phase civic improvement project located on Galveston Island in Galveston, Texas. The population of Galveston Island over the last four decades has decreased from 67,175 in 1960 to 59,070 in 1990. The average household income in 1990 was \$22,800.00. The island is approximately thirty miles long and three miles wide and is connected to the mainland by Interstate 45. The property on which the Park is located (the "Site") is approximately 160 acres of bayou frontage property on Galveston Island that previously was a part of the Galveston Municipal Airport. Attached as Exhibit 1 is a photocopy of an aerial photograph of the original undeveloped Site. The Site and substantial portions of the City have been designated, pursuant to December 10, 1981 and July 12, 1984 resolutions of the Galveston City Council, as "blighted or economically depressed areas" under the provisions of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. art. 5190.6 (West 1987 & supp. 1992). Exhibit 2. Pursuant to this designation and the City's general obligation for the welfare of its citizens, the City has had, currently has, and will continue to have the responsibility and burden of trying to increase the number of jobs available on Galveston Island, increase tourism to the island, and provide public recreational and educational facilities for both inhabitants of the island and tourists. Moody Gardens, in conjunction with the Park Board, and the facilities making up the Park work toward fulfilling all of those needs. Construction at the Park has occurred in several phases and it is expected that the entire project will be completed over a period of approximately 20 years. Currently, the first three phases of the project, which were covered in applications for recognition of exemption, explained below, have been completed, and the proposed transactions that are the subject of this ruling request represent

parts of the fourth phase of construction. Maps and computer-enhanced photographs depicting the current and future facilities at the Park are attached as Exhibits 3 and 4. All project costs to date have been provided through grants from the Foundation, and the Foundation has exercised expenditure responsibility under sections 4945(d)(4)(B) and (h) of the Code and the regulations thereunder for all such grants.

#### b. Background

The Park began as an in-house project of the Foundation in cooperation with the City, and particularly with the Park Board. The Foundation envisioned a charitable and educational public park that would provide therapy and training for the disabled, as well as botanical gardens, a public white sand beach and swimming lagoon, jogging trails, a rainforest environment biome, an aquarium, an IMAX® theater, and various educational programs built around the activities at the Park.

The project commenced in 1983 with the Foundation's lease of the Site from the City for 40 years effective January 1, 1983 (this lease, along with its subsequent amendments, hereinafter are referred to as the "Lease"). Exhibit 5. Following the Lease of the Site, the City, working closely with the Foundation and after agreeing in writing with the Foundation as to construction of a botanical garden and other facilities at the Park and the hiring of various income levels of workers at the Park, on August 30, 1984 obtained a \$500,000 Urban Development Action Grant from the United States Department of Housing and Urban Development in order to fund the City's building of (i) a bridge across Lake Madeline canal on Galveston Island that would be on one of the roads leading to the Park and (ii) an entranceway to the Park. See Exhibits to Application for Recognition of Exemption of Moody Gardens attached hereto as Exhibit 14.

On January 8, 1986, Hope Charities, Inc. ("Hope Charities") was incorporated in Texas as a nonprofit corporation to operate at the Park the "Hope Arena," a 30,000 square foot enclosed arena that was completed in 1985 as Phase I of the Park. Hope Charities filed a Form 1023, "Application for Recognition of Exemption," on October 21, 1986, and the Service issued a determination letter to Hope Charities on January 22, 1987 in which the Service determined that Hope Charities was a tax-exempt organization under section 501(c)(3) of the Code and further was classified as a private foundation under section 509(a) of the Code. Subsequently, Hope Charities operated as a private operating foundation. A copy of Hope Charities' Application for Recognition of Exemption and determination letter are attached as Exhibits 6 and 7. The charitable purpose for which Hope Charities was granted its tax exemption was that by operating Hope Arena on behalf of the Park Board, Hope Charities lessened the burdens of government on the City and the Park Board. After obtaining its determination letter and pursuant to an agreement between Hope Charities, the Park Board, and the Foundation, dated January 28, 1987 (the "Hope Charities Development Agreement"), the Foundation assigned to the Park Board the portion of the Lease covering Hope Arena, and Hope Charities and the Foundation granted to the Park Board ownership of Hope Arena, subject to certain contingent reversionary interests in the Foundation. The introductory paragraphs in the Hope Charities Development Agreement provide:



WHEREAS, it has been determined by Moody and Park Board and by the City of Galveston that said partial assignment of the leasehold would inure to the greater benefit of the people of the City of Galveston by allowing The Hope Arena, which has been constructed on the assigned portion of the leasehold to be expanded into a convention and special events center operated in conjunction with The Moody Civic Center in Galveston, Texas; and,

WHEREAS, operation of The Hope Arena as a convention and special events center will serve to stimulate the economic growth and vitality of the City of Galveston, which will greatly inure to the benefit of the people of Galveston; and,

WHEREAS, Moody, in furtherance of its charitable purposes desires to insure that the greatest possible benefit is received from this aforementioned partial assignment by the people of the City of Galveston and the State of Texas; and

WHEREAS, the successful operation of The Hope Arena will ultimately lead to the advancement, by virtue of economic stimulation and growth, of the health, science, education and advancement and diffusion of knowledge and understanding among the people of Texas; and

WHEREAS, the successful operation of The Hope Arena as a convention and special events center will promote tourism and further the statutory purposes and goals of Park Board.

Although ownership of Hope Arena was held by the Park Board, pursuant to the Hope Charities Development Agreement, Hope Charities was required to operate, maintain, and manage Hope Arena on behalf of the Park Board. A copy of the Hope Charities Development Agreement is attached as Exhibit 8. At the time Hope Charities filed its Form 1023, Hope Arena was also being utilized as a civic center for the City. In addition, Hope Arena was, and presently is, as described below, operated to benefit the Hope Therapy Programs by providing a center for various types of therapy for the disabled, including "Hippotherapy," a therapeutic, rehabilitative horseback riding therapy for physically, mentally, and emotionally disabled persons.

On February 19, 1988, Palm Beach at Moody Gardens, Inc. ("Palm Beach Inc.") was incorporated in Texas as a nonprofit corporation to operate at the Park "Palm Beach," a public white sand beach and swimming area overlooking Offats Bayou that contains large fresh water lagoons and a large yellow submarine play area for children, as well as a boardwalk, jogging trails, concessions, and a tramway. Palm Beach Inc. filed a Form 1023, "Application for Recognition of Exemption," on April 8, 1988, and the Service issued a determination letter to Palm Beach Inc. on December 21, 1988 in which the Service determined that Palm Beach Inc. was a tax-exempt organization under section 501(c)(3) of the Code and further was classified as a publicly-supported organization under section 509(a)(2) of the Code. A copy of Palm Beach

Inc.'s Application for Recognition of Exemption, and determination letter are attached as Exhibits 9 and 10. The charitable purposes for which Palm Beach Inc. was granted its tax exemption were, similar to Hope Charities, lessening the burdens of government and, in addition, the charitable purpose of providing public parks and recreational facilities on a nondiscriminatory basis. On June 1, 1988, the Foundation assigned to Palm Beach Inc. the portion of the Lease covering the Palm Beach area of the Park, and on May 25, 1989, pursuant to an agreement between Palm Beach Inc., the Park Board, and the Foundation (the "Palm Beach Development Agreement"), Palm Beach Inc. assigned its portion of the Lease to the Park Board, and Palm Beach Inc. and the Foundation granted to the Park Board ownership of the facilities and improvements at Palm Beach, subject to certain reversionary interests in Palm Beach Inc. and the Foundation. Although ownership of the facilities at Palm Beach was held by the Park Board, pursuant to the Palm Beach Development Agreement, Palm Beach Inc. was obligated to operate, maintain, and manage the Palm Beach facilities on behalf of the Park Board. A copy of the Palm Beach Development Agreement is attached as Exhibit 11. The introductory paragraphs to the Palm Beach Development Agreement provide:

WHEREAS, Moody entered into a certain lease between, the City of Galveston and Moody, said Lease being effective January 1, 1983, as amended February 2, 1983, and as further amended January 1, 1986, and January 7, 1988 (hereinafter the "Lease"), a portion of which Lease was subsequently assigned to Palm Beach; and,

WHEREAS, it has been determined by Palm Beach and Park Board that said partial assignment of the leasehold would benefit the people of the City of Galveston by allowing Palm Beach at Moody Gardens, which has been constructed on the aforesaid assigned portion of the leasehold to be expanded to promote tourism in Galveston, Texas; and,

WHEREAS, operation of Palm Beach at Moody Gardens will serve to stimulate the economic growth and vitality of the City of Galveston, which will greatly benefit the people of Galveston; and,

WHEREAS, Moody, in furtherance of its charitable purposes desires to insure that the greatest possible benefit is received from this aforementioned partial assignment by the people of the City of Galveston and the State of Texas; and,

WHEREAS, the successful operation of Palm Beach at Moody Gardens will ultimately lead to the advancement, by virtue of economic stimulation and growth, of the health, science, education and advancement and diffusion of the knowledge and understanding among the people of Texas; and,

WHEREAS, the successful operation of Palm Beach at Moody Gardens will promote tourism and further the statutory purposes and goals of Park Board.

The Park Board previously had approved the Palm Beach Development Agreement at its meeting on February 22, 1989 and the Galveston City Council previously had approved the Palm Beach Development Agreement by resolution dated March 16, 1989. Exhibits 12 and 13.

Moody Gardens was incorporated in Texas as a nonprofit corporation on June 27, 1988 in connection with the implementation of Phase III of construction at the Park. On April 5, 1989, the Foundation assigned the remainder of the Lease to Moody Gardens. Moody Gardens filed a Form 1023, "Application for Recognition of Exemption," on September 26, 1989, and the Service issued a determination letter to Moody Gardens on December 11, 1989 in which the Service determined that Moody Gardens was a tax-exempt organization under section 501(c)(3) of the Code and further was classified as a private operating foundation under section 4942(j)(3) of the Code. A copy of Moody Gardens' Application for Recognition of Exemption and determination letter are attached as Exhibits 14 and 15. The charitable purposes for which Moody Gardens was granted its tax exemption were, as in the case of Hope Charities and Palm Beach Inc., lessening the burdens of government and, similar to Palm Beach Inc., providing parks and recreational facilities on a nondiscriminatory basis to benefit a broad segment of the public. Additionally, Moody Gardens' exempt purposes included education. On April 28, 1989, Moody Gardens entered into an agreement with the City, the Foundation, and Hope Charities to construct, on behalf of the City, an extension to the existing walking and jogging trails at the Park. This agreement is attached as Exhibit 16. The City approved this agreement by resolution dated May 11, 1989. Exhibit 17. On December 29, 1989, pursuant to an agreement between Moody Gardens, the Park Board, and the Foundation (the "Moody Gardens Development Agreement"), Moody Gardens assigned its portion of the Lease to the Park Board, and Moody Gardens and the Foundation granted to the Park Board ownership of the facilities and improvements at the remainder of the Park, subject to certain contingent reversionary interests in Moody Gardens and the Foundation. Although ownership of the facilities at the remainder of the Park was held by the Park Board, pursuant to the Moody Gardens Development Agreement, Moody Gardens was obligated to operate, maintain, and manage such facilities on behalf of the Park Board. A copy of the Moody Gardens Development Agreement is attached as Exhibit 18. The Galveston City Council previously had approved the Moody Gardens Development Agreement by resolution dated November 9, 1989. Exhibit 19.

In anticipation of a merger of Hope Charities, Palm Beach Inc., and Moody Gardens, the Foundation, the Park Board, Moody Gardens, Hope Charities, and Palm Beach Inc. entered into an "Assignment, Modification and Consent Agreement," dated September 28, 1990 (the "1990 Agreement"). The 1990 Agreement is attached as Exhibit 20. The Park Board previously had approved the 1990 Agreement at its meeting dated September 19, 1990, a copy of the minutes from that meeting being attached as Exhibit 21. The 1990 Agreement superseded and consolidated the Hope Charities Development Agreement, the Palm Beach Development Agreement, and the Moody Gardens Development Agreement (collectively, the "Development Agreements"). As a result of the 1990 Agreement, under its terms and provisions thereof, Moody Gardens, on behalf of the Park Board, is now solely responsible for the construction, operation, and maintenance of the entire Park, as well as bearing the expenses connected therewith, for the benefit of the public and in a manner consistent with the statutory purposes.

goals, and objectives of the Park Board (i.e., to effectively utilize the Park as a major conference/convention and recreational complex, public beach, botanical gardens, and educational park for attracting visitors to the City). (Pages 6-8 of the 1990 Agreement.) Consequently, Moody Gardens is required to expend any and all net profits generated by the Park on activities and improvements at the Park which further the statutory purposes of the Park Board. Similar to the Development Agreements, in accordance with the 1990 Agreement, the Park Board has ownership of the leasehold interest in the Site, while the City holds the base lease and title to the land composing the Site. Further, the Park Board also holds ownership of all equipment and improvements placed on the Site by or on behalf of Moody Gardens, except for title to any animals at the Park. Therefore, as soon as Moody Gardens expends a sum of money on equipment or constructing improvements at the Park, the subject of such expenditure becomes the sole property of the Park Board, to be managed and maintained, however, by Moody Gardens. Exhibit 20, P.28, ¶21. As a result of these provisions of the 1990 Agreement, the facilities and improvements at the Park are reflected on the books and records of the Park Board as an asset of the Park Board. See Exhibit 22.

In addition to the above provisions of the 1990 Agreement, the 1990 Agreement requires that the executive director of the Park Board or a trustee of the Park Board serve as a voting member on the board of directors of Moody Gardens during the term of the 1990 Agreement and that Moody Gardens (i) abide by all rules, regulations, and restrictions that the Park Board may prescribe; (ii) perform all obligations of the Park Board under the Lease and all laws, regulations, and other restrictions relating to the Lease; (iii) obtain the Park Board's approval before entering into any contract or incurring any debt in excess of \$1 million; (iv) furnish the Park Board with monthly statements of profit and loss and accounts receivable and payable, including an aging of all accounts; (v) furnish the Park Board with annual statements of profit and loss and receipts and disbursements; (vi) maintain and make available to the Park Board evidence of all receipts and disbursements; (vii) bond all employees who are responsible for or handle funds under a blanket fidelity bond in an amount not less than \$100,000; (viii) keep the Park in a safe, neat, orderly, and attractive condition; (ix) keep all books and records related to the Park in a manner acceptable to the Park Board; (x) maintain adequate liability insurance (at least \$4 million) to insure and protect the Park Board and its trustees with respect to the operation of the Park; and (xi) place \$2.1 million in escrow to provide an insurance and operating expense reserve. Under the 1990 Agreement the Park Board grants to Moody Gardens the additional authority and powers to promote and advertise the availability of the Park, to collect fees including concession, admission, and rental fees, to have, discharge, and direct all details of the work and to supervise all labor and employees required for operation and maintenance of the premises, to contract for all utilities, cleaning, landscape maintenance, and to generally contract for all goods and services which may be necessary for the operation and maintenance of the Park and to perform all other acts not specifically prohibited in the 1990 Agreement for the proper operation and maintenance of the Park. (Pages 8-10 of the 1990 Agreement). Finally, the Park Board or the Foundation may terminate the 1990 Agreement by providing notice to the other parties. Moody Gardens may terminate the 1990 Agreement only if the Park Board breaches the 1990 Agreement and fails to cure such breach within 30 days. If the Park Board decides to terminate the 1990 Agreement and determines that Moody Gardens

has sufficient funds to operate the Park, the 1990 Agreement will terminate and the leasehold interest in the Site and ownership of the facilities and improvements at the Park will revert to Moody Gardens. If the Park Board decides to terminate the 1990 Agreement and determines that Moody Gardens does not have sufficient funds to operate the Park, the Park Board may assign the 1990 Agreement, including the leasehold interest in the Site and ownership of the facilities and improvements at the Park, to the Foundation or a charitable organization designated by the Foundation. If the Foundation terminates the 1990 Agreement, the leasehold interest in the Site and ownership of the facilities and improvements at the Park revert to Moody Gardens, and the Foundation's responsibility is limited to any funds that were granted to, but not yet expended by, Moody Gardens.

With respect to the composition and function of the Park Board, the Park Board is the primary municipal agency created by the City that is committed to the development of the Park. The Galveston City Council formed the Park Board under chapter 306 of the Texas Local Government Code. Tex. Local Gov't Code Ann. § 306.011 (West 1988 & supp. 1994) Exhibit 23. In accordance with the Texas Local Government Code, the Galveston City Council appoints the trustees of the Park Board and at least one of the trustees must be a member of the Galveston City Council. Id. § 306.012(a). The general purposes for which park boards of trustees are formed in Texas are the acquisition, improvement, maintenance, finance, operation, and management of public parks. Id. §§ 306.011, 306.031. Specifically because the City is a coastal municipality with a population of less than 80,000, the Park Board has the additional power to manage and control the following facilities for the purpose of attracting visitors and tourists to the City: (i) parks; (ii) civic centers, civic center buildings, auditoriums, exhibition halls, or coliseums; (iii) hotels or motels; (iv) parking or storage facilities; and (v) other facilities considered advisable in connection with the preceding facilities that serve the purpose of attracting visitors and tourists to the City. Id. § 306.032. Exhibit 23.<sup>1</sup> Finally, park boards of trustees in general, and the Park Board specifically, have the power to (i) receive and expend public funds; and (ii) promulgate and enforce rules relating to the use of parks and other facilities under their management. Id. §§ 306.035, 306.039. The Park Board receives 53 percent of its revenues from the hotel occupancy tax and beach parking revenues collected in the City with the remaining revenue coming from concessions and rent payments.

As under state law, under the Code the Park Board is also a political subdivision created by the City. Code § 170(c)(1); Treas. Reg. § 1.103-1(b); Rev. Rul. 57-128, 1957-1 C.B. 311. The Park Board's counsel has given an opinion that the Park Board is subject to the same competitive bidding procedures to which a municipality is subject under Texas law. In addition, the City of Galveston bidding procedures apply to the bidding practices of the Park Board, again because the Park Board is a political subdivision created by the City. Further, because all equipment and facilities at the Park are owned by the Park Board, such equipment and facilities are subject to the restrictions and rules applicable to the disposition of other Park Board

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<sup>1</sup> The City of Galveston currently owns a seven story hotel, the Flagship, in Galveston which the City built in 1962. The hotel was built out over the water on pilings connected to the beach by a walkway. The hotel is operated by a lessee from the City

property. Accordingly, prior to the sale or other disposition of any equipment or facility at the Park, Moody Gardens must obtain approval from the Park Board of both the occurrence of the sale or disposition and the procedure for such sale or disposition. And, finally, once a piece of equipment or a facility at the Park is sold, the proceeds from such sale may only be expended with the approval of the Park Board and subject to the competitive bidding procedures applicable to the Park Board.

As stated above, at the time of the 1990 Agreement, it was contemplated that Hope Charities, Palm Beach Inc., and Moody Gardens would merge into one nonprofit corporation. Accordingly, on October 1, 1990, Hope Charities and Palm Beach Inc. were merged into Moody Gardens under Texas law. The purpose of the merger was to consolidate the operation of all of the various facilities at the Park into one nonprofit corporation. Copies of the merger documents that were filed with the Office of the Secretary of State of the State of Texas on October 1, 1990 were submitted to the District Director of the Service in Dallas, Texas, and on January 9, 1991 the Service confirmed Moody Gardens' continuing tax-exempt status under section 501(c)(3) of the Code by issuing a "no-change" letter, a copy of which is attached as Exhibit 24.

#### c. Moody Gardens' Current Operations at the Park

Moody Gardens continues to operate the Hope Therapy Programs, which include the provision of Hippotherapy, a rehabilitative horseback riding therapy for disabled persons, at Hope Arena. The benefits of Hippotherapy include increased strength, range of motion, balance, coordination, and circulation, as well as improved posture and muscle tone, increased attention span, and enhanced self-esteem. Each week, fifteen staff members work, and since the initiation of the program over three hundred volunteers have worked, with several hundred disabled individuals. In addition to Hippotherapy, the Hope Therapy Programs currently include three other full-time programs: (i) animal assisted therapy, where volunteers and staff pay weekly visits with a variety of animals to regional hospitals, health care facilities, and retirement homes; (ii) horticultural therapy, which is offered through the extensive greenhouse facilities at the Park; and (iii) vocational training and employee placement, which provide assistance in skills acquisition and employment preparation for individuals who are physically and mentally disabled. The School of Allied Health Sciences of the University of Texas Medical Branch, the Texas Rehabilitation Commission, and other organizations assist the Hope Therapy staff in evaluating clients and conducting seminars for therapists and doctors. Finally, in addition to the full-time Hope Therapy Programs, in conjunction with a number of sources in Galveston County, the Hope Therapy staff conducts at the Park a summer camp for disabled children and an annual sports day for the disabled.

As mentioned previously, Palm Beach was completed as a part of Phase II of construction at the Park. In addition to Palm Beach, Phase II included a contemplative oriental garden called the "Japanese Garden of Life" as well as other gardens and greenhouses, such as the "Serpentine Garden" and the "Vietnam War Memorial Garden." Originally adjacent to Palm Beach at the completion of Phase II was "Seaside Safari," which featured an animal contact facility for

children, as well as birds and reptiles. Seaside Safari is now "The Learning Place," which is the home to Moody Gardens' state accredited education department for students and teachers. The Learning Place contains classrooms, an aviary, an animal contact facility, and office space for the education department staff. The Learning Place is reserved for guided student field trips and specialized tours. The education department staff at the Learning Place provides enriching educational opportunities that offer an interdisciplinary classroom supplement intended for grades kindergarten through twelve. The curricula have been developed in accordance with the specifications of Texas state education agencies, such as the Texas Department of Education's Environmental Education Guidelines and the Texas Education Agency's Science Continuum. The education department's curricula integrate the fields of science, marine science, social science, environmental science, art, math, and language arts, and are designed to encourage students in the techniques of observation, experimentation, and problem solving. Moody Gardens' educational goals are (i) to develop student interest in science, conservation, and an understanding of how each element on this planet is inextricably connected; (ii) to increase student competency about the world and how it functions; (iii) to create an interest in scientific careers and impact students' daily lives by fostering awareness of the earth's limited resources; and (iv) to offer successful educational venues, such as the "Rainforest Pyramid," described more fully below, which presents students with an opportunity to experience a tropical rainforest environment and the creatures that inhabit it. Specifically, the education department offers at the Learning Place basic sign language I and II, instructional field trips, lectures, specialized tours, disability awareness, and two camps, a Saturday camp that offers lessons in nature and art and a summer camp that integrates environmental science, language arts, math, art, physics, and physical education. Since March of 1993, Moody Gardens has served approximately 70,000 students in its educational programs at the Learning Place, and Moody Gardens anticipates serving 50,000 students in 1995 alone. For teachers and naturalists, Moody Gardens offers at the Learning Place a five-day accredited environmental workshop in conjunction with the Texas A&M University Continuing Education Department and the Texas Rainforest Action Network, and Moody Gardens also offers a six-hour accredited teacher workshop in which teachers may learn about the rainforests and their preservation. This year, Moody Gardens has served approximately 1,500 teachers in its teacher workshops. In addition to these on-site educational programs, the education department offers a rainforest outreach program in which a docent is available to travel to any school in the State of Texas to give a presentation that includes educational activities, a slide show about the rainforest, indigenous music, and a live animal and butterfly display. Moody Gardens has served approximately 1,000 students through its outreach program this year and anticipates serving 4,000 students in 1995. Finally, the education department publishes curriculum guides, informational materials, brochures, posters, and technological information. An example of the education department's curriculum for students is attached as Exhibit 25 and general information about the education department's various programs is attached as Exhibit 26.

Phase III of construction at the Park was completed in March of 1993, with the opening of the ten story, 40,000 square foot Rainforest Pyramid. The Rainforest Pyramid houses one of the largest and most diverse enclosed rainforest environment exhibits in the world with thousands of species of exotic plants, birds, butterflies, fish, and tropical plants indigenous to

the rainforests of Africa, Asia, and South America. A species list for the Rainforest Pyramid that is given to each visitor is attached as Exhibit 27. The glass Rainforest Pyramid serves as an ideal place for research into the rainforests of the world and their future. March 27, 1993, the opening day of the Rainforest Pyramid, was proclaimed "Rainforest Pyramid Day" in the State of Texas by the Honorable Ann W. Richards, the Governor of the State of Texas. Exhibit 28. Associated with the Rainforest Pyramid are the "Visitors Center" and a 3-D IMAX® theater, one of only four such theaters in the world. These facilities serve as a multi-purpose, multi-media center for educational films, research, and entertainment. Three films are currently being presented at the IMAX® theater: (i) "The Last Buffalo," a spectacular ode to our environment and the need for its preservation; (ii) "We are Born of the Stars," which takes the audience through a five billion year evolution of our solar system; and (iii) "Echoes of the Sun," which weaves a complex tale of solar energy and how our bodies utilize the sun's power. Finally, Phase III included the completion of the "Moody Gardens Convention and Conference Center" (the "Conference Center"), a 60,000 square foot, state-of-the-art convention and conference center that seats up to 4,000 persons. The Conference Center was designed as an ideal facility for attracting to Galveston and hosting trade shows, conventions, conferences, concerts, seminars, and other similar events. Such events have and hopefully will continue to serve to vastly increase the number of out-of-town visitors to the City. Materials describing the Rainforest Pyramid, IMAX® theater, and Conference Center are attached as Exhibit 29.

Because of the tremendous economic benefit that an increase in the number of out-of-town visitors to the Conference Center and the Park represents to the City and its citizens, the Park Board, at its meeting dated March 31, 1993, recommended to the Galveston City Council that a portion of the hotel occupancy tax collected in the City be allocated to Moody Gardens for the operation and maintenance of the Conference Center. In response, the Galveston City Council, by ordinance dated June 24, 1993, has provided in the City Code of Galveston an allocation to Moody Gardens, for the operation and maintenance of the Conference Center, of one-seventh (approximately 14 percent) of the seven percent hotel occupancy tax distributed by the City. The City Code of Galveston further provides that, as a condition to the allocation to Moody Gardens of the hotel occupancy tax, the Galveston City Council shall appoint a member of the Galveston City Council to serve as a voting member of the board of directors of Moody Gardens during the time that such allocation is in effect. The ordinance approving, and the portion of the Galveston City Code providing for, the allocation to Moody Gardens of the hotel occupancy tax are attached as Exhibits 30 and 31. Such allocation of one-seventh of the hotel occupancy tax in order to operate and maintain the Conference Center will be effective October 1, 1994.

Moody Gardens' current operations include several other elements in addition to those described above. For example, Moody Gardens is involved in the recycling of effluent water used for irrigation. The ability to use recycled effluent water to irrigate the landscape has reduced the water supply demand on the City while also reducing Moody Gardens' expenses.

Generally, once the construction of a particular facility at the Park is sufficiently complete to open the facility for its intended public use, the public is charged an admission fee



to gain access to the facility. The admission fee is determined with the goal of maintaining the fee at the lowest possible level in order to pay the cost of operations and maintain a reasonable reserve for contingencies, while insuring that the facilities are accessible to a broad segment of the public. Current admission prices for the general public are \$6 for each of the Rainforest Pyramid, IMAX® theater, and Palm Beach if purchased separately, or \$11 and \$16, respectively, if two or three of the above are combined. Since the completion of Phase III, Moody Gardens has seen approximately one million (1,000,000) visitors. Moody Gardens has approximately 500 employees in the summer and approximately 350 employees in the winter. The cost of the assets at the Park that are owned by the Park Board total approximately \$88 million. See Exhibit 22.

In order to assist in managing and operating the Park most efficiently and to maximize its charitable and educational opportunities, Moody Gardens has retained a consulting and management firm on a month to month basis, Gal-Tex Management Company, Inc. ("Gal-Tex"). Gal-Tex is not a disqualified person in regard to the Foundation or Moody Gardens. Moody Gardens has contracted with Gal-Tex to provide Moody Gardens with professional facility management consulting services. Gal-Tex is a commercial corporation that owns several hotels and operates additional hotels and public use facilities, such as athletic clubs and golf courses, and provides professional hotel and public facility management services. In accordance with current oral agreement between the parties, Gal-Tex assists Moody Gardens with the management of the Park by supplying an executive director who is an employee of Gal-Tex, while the Board of Directors of Moody Gardens retains the ultimate legal and managerial responsibility for the operation and management of the Park. In exchange for Gal-Tex's services, Gal-Tex is to receive a flat monthly fee. No fee has yet been paid to Gal-Tex to date for any consulting services, although Moody Gardens represents that any payments made will be on an arm's-length basis. Moody Gardens currently is negotiating with Gal-Tex for a one year written agreement (the "Management Consulting Agreement"), a copy of which is attached as Exhibit 32.

#### d. Proposed Aquarium at Moody Gardens

As a part of Phase IV of construction at the Park, Moody Gardens proposes to construct, adjacent to the Rainforest Pyramid, "The Aquarium at Moody Gardens" (the "Aquarium"). Attached as Exhibits 3 and 4 are a current layout of the Park and a proposed layout with the Aquarium and Hotel. A booklet and other information describing the proposed Aquarium and the cost of operations are attached as Exhibit 33. As with all of the other facilities at the Park, the Foundation will provide the necessary funding for the construction of the Aquarium through grants (the "Aquarium Grants") to Moody Gardens. For purposes of this ruling request, the Foundation and Moody Gardens represent that the Aquarium Grants will be made in a manner that satisfies the "expenditure responsibility" requirements of sections 4945(d)(4)(B) and (h) of the Code and the regulations thereunder. The Aquarium will be a world-class marine education and research facility, and visitor's attraction. As currently planned, it will consist of a 110,000 square foot facility, comprising the "Ocean Theater," a spherical theater that will provide the illusion of being underwater, in addition to four major aquarium exhibit areas representing the oceans of Alaska, the Antarctic, the Caribbean, and the Indo-Pacific islands. In addition to the

exhibits, the Aquarium will contain a gift shop and a restaurant for the convenience of visitors. Construction of the Aquarium is anticipated to commence in mid-1995 and the Aquarium is expected to be completed and open in early 1998. The estimated construction cost of the Aquarium as currently planned is \$60 million, and Moody Gardens expects that the annual operating cost of the Aquarium will be \$6.4 million. More than six hundred thousand (600,000) people are expected to visit the Aquarium in its first year of operation.

As described above with respect to the other facilities at the Park, in accordance with the provisions of the 1990 Agreement, ownership of the Aquarium, except for the fish and other animals, will be in the Park Board, although the Aquarium will be operated, maintained, and managed by Moody Gardens. At no time, including during construction, will Moody Gardens own the Aquarium; rather, as soon as Moody Gardens expends funds in connection with the construction or operation of the Aquarium, the Park Board will own the subject of such expenditure. Further, at all times, including during construction, the Park Board's books and records will reflect the Aquarium as an asset of the Park Board.

Along with the City's and the Park Board's objective of increasing tourism and employment on Galveston Island, the stated mission of the Aquarium is five-fold: (i) to inspire understanding of and appreciation for the beauty and value of ocean life; (ii) to complement the terrestrial exhibits of the Rainforest Pyramid; (iii) to incorporate innovative and imaginative methods of presentation and exhibition; (iv) to operate as a successful component of the Park; and (v) to extend into the marine area the environmental education mission of Moody Gardens.

#### e. Proposed Hotel at Moody Gardens

In addition to the Aquarium, as a part of Phase IV of construction at the Park, Moody Gardens proposes to construct, adjacent to the Conference Center, "The Hotel at Moody Gardens" (the "Hotel"). As with the Aquarium and other facilities at the Park, the Foundation will provide the construction funding for the Hotel through grants (the "Hotel Grants") to Moody Gardens. For purposes of this ruling request, the Foundation and Moody Gardens represent that the Hotel Grants will be made in a manner that satisfies the "expenditure responsibility" requirements of sections 4945(d)(4)(B) and (h) of the Code and the regulations thereunder. Current plans for the Hotel provide for a thirteen story structure having 288 rooms to be operated by Moody Gardens with the assistance of Gal-Tex or some other comparable consulting and management company. The hotel will not be owned by, operated by, or a franchise of a national hotel chain. Moody Gardens may, however, contract with a national chain on a fixed fee, arm's-length basis, to use the national chain's reservation system. It thus may be necessary to "badge" the hotel with a national franchise name in order to obtain the use of the reservation system, but the national hotel chain would not operate the hotel. The total construction costs for the Hotel are estimated to be approximately \$35 million. Construction is anticipated to commence in early 1996 and the Hotel is expected to be completed and open simultaneously with the Aquarium in early 1998. In addition to rooms for lodging, the Hotel will have an attached 200 car parking garage and other standard facilities, such as a restaurant, bar, and possibly retail shopping. Given the projected level of operating expenses, Moody Gardens anticipates that the

Hotel will make a profit and it will be used as part of the general operating budget of Moody Gardens. Attached as Exhibit 34 are pro formas on the hotel and building schematics.

In accordance with the provisions of the 1990 Agreement described above, ownership of the Hotel, including all furniture and fixtures, will be in the Park Board, although the Hotel will be operated and maintained by Moody Gardens. At no time, including during construction, will Moody Gardens own the Hotel or any part of the Hotel structure; rather, as soon as Moody Gardens expends funds in connection with the construction or operation of the Hotel, the Park Board will own the subject of such expenditure. Conversely, at all times, including during construction, the Hotel will be reflected on the Park Board's books and records as an asset of the Park Board.

The expectation is that the addition of a hotel at the Park will increase the number of public users of the facilities at the Park, both by attracting more and larger events at the Conference Center and by prompting more families and individuals to attend the various educational and other offerings at the Park. Both Moody Gardens and the Park Board believe that having an on-site hotel is absolutely critical to attracting to the Conference Center the kinds of events that draw large numbers of out-of-town visitors. An increase in the number of out-of-town visitors in turn will increase the broad-based economic benefits to the City and its citizens. Besides the general belief in the convention center industry that a hotel adjacent to a convention center is critical to a convention center's success, the cities of Houston, Texas and Tampa, Florida have performed informal studies that indicate a large number of convention center events are lost if a convention center lacks an adjacent hotel. A study by Coopers & Lybrand of the feasibility of a hotel next to the convention center in Houston, Texas, summed it up this way: "Although the George W. Brown is one of the nation's largest and most advanced convention facilities, the City of Houston's convention package has not been as successful as envisioned. The missing element in Houston's convention package, as cited repeatedly by convention planners, is the lack of a convention headquarters hotel adjacent to the center." Moody Gardens and the Park Board believe that the Hotel is absolutely critical to the success of the Conference Center in the City. Attached as Exhibits 35 and 36 are letters from the Mayor of the City and the Chairwoman and Executive Director of the Park Board attesting to such fact. There are no hotels or motels in close enough proximity to the Park to be convenient either for multiple-day attendees at an event at the Conference Center or for multiple-day visitors to the Park, and multiple-day attendees or visitors currently must arrange transportation to the Park from the other side of Galveston Island. Although there is a facility located near the Park which contains 67 suites, no restaurant is available and it clearly is not the type of facility to serve conventions scheduled at the Park. Accordingly, the availability of on-site accommodations at the Park obviously would increase the attractiveness of the Park both as a forum for multiple-day events at the Conference Center and as a destination point for multiple-day visitors.

The Hotel is solely intended to be a convenience for the visitors to the Park, and it will be designed and operated to be ancillary to the exempt operations at the Park. The use of the Hotel will be coordinated with events at the Conference Center and with other activities occurring at the Park. The entire thrust of the Hotel's use and promotion will be based on the

use of the various facilities at the Park by guests of the Hotel, especially attendees of multiple-day events at the Conference Center or families who desire to stay several days at the Park in order to have enough time to see and use all the facilities at the Park. Accordingly, it is expected that approximately 90 percent of the Hotel's guests will be participants in events at the Conference Center, and scientists, students, visitors, and other participants involved in the charitable, educational, and scientific programs available at the Park. To the extent there is capacity at the Hotel exceeding such use, rooms will be made available to the general public. However, at all times preference will be given to participants in scheduled activities at the Park.

In addition to the above-described benefits of the Hotel, and subject to obtaining funding, the Hotel also will provide a direct educational benefit by hosting the "Moody Hospitality Institute," a joint educational program offered by Moody Gardens in conjunction with Galveston College. The Moody Hospitality Institute will provide quality comprehensive training in hotel and restaurant management, hospitality management, customer service, and culinary related fields. Specifically, utilizing the facilities at the Hotel, the Moody Hospitality Institute will provide classes and "hands-on" training in four areas: (i) short-term, non-credit hour training in customer service and hospitality; (ii) intermediate-term, credit and non-credit hour training in conjunction with the Galveston College Culinary Institute to provide chef and cook certification through the American Culinary Federation; (iii) an associate of science and associate of arts degree training program to prepare mid-management and management level employees for work in hospitality industries; and (iv) an international hospitality training curriculum. Exhibit 37. The Moody Hospitality Institute generally will be similar to other programs similar in kind now operated around the country at Cornell, Florida State, Michigan State, and many other universities. Funding is being sought through various state and federal sources and the Foundation is considering it as well.

## B. RULINGS REQUESTED

The following rulings are requested with respect to the proposed transactions described above:

### 1. With Respect to Moody Gardens and the Construction, Operation, and Maintenance of the Aquarium and Hotel:

a. Moody Gardens' expenditures to construct, operate, and maintain the Aquarium and Hotel will constitute qualifying distributions by Moody Gardens under section 4942(g)(1) of the Code and will not constitute taxable expenditures under section 4945(d) of the Code.

b. Moody Gardens' operation and maintenance of the Aquarium and Hotel will not constitute excess business holdings under section 4943 of the Code.

c. The income from Moody Gardens' operation of the Aquarium and Hotel will not constitute unrelated business taxable income under section 512 of the Code.

2. With Respect to the Grants by the Foundation for the Aquarium and Hotel:

a. The Aquarium Grants and Hotel Grants will constitute qualifying distributions from the Foundation under section 4942(g)(1) of the Code and will not constitute taxable expenditures under section 4945(d) of the Code.

3. With Respect to the Management Consulting Agreement between Moody Gardens and Gal-Tex:

a. The Management Consulting Agreement between Moody Gardens and Gal-Tex will not affect Moody Gardens' tax-exempt status under section 501(c)(3) of the Code.

C. APPLICABLE LAW

Section 501(c)(3) of the Code provides an exemption from federal income tax for organizations that are organized and operated exclusively for, among others, charitable, scientific, and educational purposes. The term "charitable" is used in section 501(c)(3) of the Code in a generally accepted legal sense and includes, among other things, the advancement of education and science, the erection or maintenance of public buildings, monuments, or works, and lessening the burdens of government. Treas. Reg. § 1.501(c)(3)-1(d)(2). An organization lessens the burdens of government if (i) a governmental unit considers the organization's activities to be the governmental unit's burden and (ii) the organization's activities actually lessen the governmental unit's burden. Rev. Rul. 85-1, 1985-1 C.B. 177, 178; Rev. Rul. 85-2, 1985-1 C.B. 178, 179. An "educational" purpose includes instructing the public on subjects useful to the individual and beneficial to the community, such as museums, zoos, planetariums, symphony orchestras, and other similar organizations. Treas. Reg. §§ 1.501(c)(3)-1(d)(3)(i)(b), 1(d)(3)(ii) Ex. (4).

Section 511(a) of the Code imposes a tax on the unrelated business taxable income ("UBTI") of generally all tax-exempt entities under section 501(a) of the Code. Section 512 defines "UBTI" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it. Code § 512(a)(1). An "unrelated trade or business" is defined by the Code as any trade or business the conduct of which is not substantially related, aside from the need of such organization for income or funds or the use it makes of the profits derived, to the exercise or performance by such organization of its exempt purposes. Code § 513(a).

Section 4942 of the Code imposes an excise tax on the "undistributed income" of a private foundation other than a private operating foundation described in section 4942(j)(3), to the extent such undistributed income is not distributed within a specified period following the

close of the taxable year in which it arises. Code § 4942(a). The "undistributed income" of a private foundation means, as of any time for any taxable year, the amount by which the "distributable amount" for the taxable year exceeds the "qualifying distributions" made before such time out of such distributable amount. Code § 4942(c). Thus, to the extent an amount constitutes a "qualifying distribution," such amount reduces the undistributed income on which a private foundation may be taxed under section 4942 of the Code. For purposes of section 4942, the term "qualifying distribution" means (i) any amount paid to accomplish one or more purposes described in sections 170(c)(1) or (c)(2)(B) of the Code, other than a contribution to a foundation that is not a private operating foundation or to an organization that is controlled, directly or indirectly, by the contributing foundation or any disqualified person with respect to the contributing foundation, unless certain requirements are satisfied, or (ii) any amount paid to acquire an asset used or held for use directly in carrying out one or more purposes described in sections 170(c)(1) or (c)(2)(B) of the Code. Code § 4942(g)(1); Treas. Reg. § 53.4942(a)-3(a)(2).

Section 4943 of the Code imposes an excise tax on the excess "business holdings" of a private foundation. A "business holding" of a private foundation means an ownership interest held by a private foundation in a "business enterprise." Code § 4943(d)(1).

Section 4945 of the Code restricts, through the imposition of an excise tax on the "taxable expenditures" of a private foundation, the type of expenditures that can be made by a private foundation. Under section 4945(d)(5) of the Code, an amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B) of the Code will be a taxable expenditure. The Treasury Regulations promulgated under section 4945 of the Code contain a specific list of expenditures that ordinarily will not be treated as taxable expenditures under section 4945(d)(5) of the Code. Treas. Reg. § 53.4945-6(b)(1). Included on such list is "any payment which constitutes a qualifying distribution under section 4942(g)." Treas. Reg. § 53.4945-6(b)(1)(v).

#### D. LEGAL ANALYSIS AND CONCLUSIONS

##### 1. Expenditures by Moody Gardens to Construct, Operate, and Maintain an Aquarium and Hotel will Constitute Qualifying Distributions and not Taxable Expenditures

If Moody Gardens' construction, operation, and maintenance of the Aquarium and Hotel on behalf of the Park Board are for a purpose described in sections 170(c)(1) or (c)(2)(B) of the Code, then the expenditures by Moody Gardens to construct, operate, and maintain the Aquarium and Hotel will constitute qualifying distributions by Moody Gardens and not taxable expenditures.

a. Moody Gardens' Expenditures for Construction of an Aquarium and Hotel will be for a Purpose Described in Section 170(c)(1) of the Code

(1) Contribution to a political subdivision for exclusively public purposes under section 170(c)(1) of the Code

Moody Gardens' expenditures to construct the Aquarium and Hotel will constitute qualifying distributions because the construction of the Aquarium and Hotel will qualify as a contribution to a political subdivision for exclusively public purposes within the meaning of section 170(c)(1) of the Code. First, under the provisions of the 1990 Agreement, the Park Board will have to approve any expenditure over \$1 million for construction of the Aquarium and Hotel. Under the provisions of the 1990 Agreement, once any funds are expended by Moody Gardens on the construction of the Aquarium and Hotel, ownership of the subject expenditures automatically will vest in the Park Board. At all times, both during construction and upon completion of the Aquarium and Hotel in early 1998, the Park Board will own the Aquarium and Hotel. Moreover, at no time, either during construction or upon completion, will Moody Gardens own the Aquarium or Hotel. Upon completion of the Aquarium and Hotel, Moody Gardens will have expended approximately \$95 million to construct, on behalf of the Park Board, two assets owned by the Park Board and reflected on its books and records as assets of the Park Board. Thus, as each expenditure is made by Moody Gardens during the construction of the Aquarium and Hotel on behalf of the Park Board, the subject of such expenditure is donated to the Park Board, and, upon completion of the Aquarium and Hotel, Moody Gardens will have donated the entire Aquarium and Hotel, piece by piece, to the Park Board.

Second, as discussed above in the facts section, the Park Board is a political subdivision of the City, and by statute the Park Board may receive a gift of a public facility or hotel, such as the gift of the Aquarium and Hotel from Moody Gardens to the Park Board. See Tex. Local Gov't Code Ann. § 306.031(b) (West 1988 & supp. 1994). Exhibit 23. The governmental entities eligible to receive charitable contributions under section 170(c)(1) of the Code include not only the governmental units described in that section, but wholly-owned instrumentalities of such governmental units as well. Rev. Rul. 75-359, 1975-2 C.B. 79. Revenue Ruling 75-359 provides that the following factors are taken into consideration in determining whether an entity is a wholly-owned instrumentality of a governmental unit: (1) whether it is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality and whether such authority exists; and (6) the degree of financial autonomy and the source of its operating expenses. The Park Board satisfies these tests as well. Therefore, the Park Board is the type of governmental unit described in section 170(c)(1) of the Code that may receive a charitable gift or contribution.

Finally, the expenditures to construct the Aquarium and Hotel on behalf of the Park Board will be made for an exclusively public purpose as required by section 170(c)(1) of the Code. Revenue Ruling 72-194 specifically provides that money donated to promote tourism is donated for exclusively public purposes. Rev. Rul. 72-194, 1972-1 C.B. 94 (money donated to department of parks, recreation, and tourism of state to cover any deficit in expenses of presenting annual steeplechase race in order to promote tourism in the state was donated for exclusively public purposes). Moreover, public ownership of an asset by a governmental unit indicates that funds donated to acquire the asset are donated for exclusively public purposes. Rev. Rul. 81-219, 1981-2 C.B. 77 (gifts to a fund for commissioning portrait of judge were made for exclusively public purposes because portrait became property of the political subdivision and hung in the courthouse on public display). Since (i) under the terms and provisions of the 1990 Agreement, the Park Board's specific function is to effectively utilize the Park as a major conference/convention and recreational complex, public beach, botanical gardens, and educational park for attracting visitors to the City, (ii) the Hotel solely is to assist the Park Board with the achievement of its function and, in fact, is vital to the achievement of the Park Board's function in relation to the Conference Center, and (iii) the Park Board at all times will own the Aquarium and Hotel, the expenditures to fund construction of the Aquarium and Hotel will be made for exclusively public purposes.

In light of the above, the expenditures by Moody Gardens for the Aquarium and Hotel will constitute qualifying distributions under section 4942(g)(1) of the Code and not taxable expenditures under section 4945(d) of the Code because the construction of the Aquarium and Hotel will qualify as a contribution to a political subdivision for exclusively public purposes within the meaning of section 170(c)(1) of the Code.

b. Moody Gardens' Expenditures for Construction, Operation, and Maintenance of an Aquarium and Hotel will be for Purposes Described in Section 170(c)(2)(B) of the Code

The construction, operation, and maintenance of the Aquarium and Hotel will serve charitable and educational purposes as described in section 170(c)(2)(B) of the Code because the construction, operation, and maintenance of the Aquarium and Hotel (i) will constitute the erection and maintenance of public buildings, (ii) will lessen the burdens of government, and (iii) will serve direct educational purposes.

(1) The erection and maintenance of public buildings under section 170(c)(2)(B) of the Code

The construction of the Aquarium and Hotel will independently serve a charitable purpose described in section 170(c)(2)(B) of the Code because the construction, operation, and maintenance of the Aquarium and Hotel will constitute the erection and maintenance of public buildings, a charitable purpose under Treasury Regulations section 1.501(c)(3)-1(d)(2). The part of the hotel occupancy tax that will be allocated to Moody Gardens effective October 1, 1994 will not be used for construction but will be used for maintenance of the Conference Center



As described above, in accordance with the 1990 Agreement, the Park Board must approve any expenditure in excess of \$1 million and so it must approve the construction of the Aquarium and Hotel. The Park Board owns all equipment and improvements placed on the Site by or on behalf of Moody Gardens, except for title to any animals at the Park. Under the provisions of the 1990 Agreement, as soon as Moody Gardens expends a sum of money on constructing the Aquarium and Hotel, the subject of such expenditure will become the sole property of the Park Board. Exhibit 20, P. 28, ¶21. At all times, both during construction and upon completion of the Aquarium and Hotel, the Aquarium and Hotel will be owned by the Park Board and reflected on its books and records as an asset of the Park Board. Furthermore, as established immediately above, the gift of the Aquarium and Hotel to the Park Board will be made for exclusively public purposes. Consequently, the construction and maintenance of the Aquarium and Hotel by Moody Gardens on behalf of the Park Board will constitute the erection and maintenance of public buildings, which is a charitable purpose described in section 170(c)(2)(B) of the Code. Thus, the expenditures by Moody Gardens to construct, operate, and maintain the Aquarium and Hotel will constitute qualifying distributions under section 4942(g)(1) of the Code and not taxable expenditures under section 4945(d) of the Code.

(2) Lessening the burdens of government under section 170(c)(2)(B) of the Code

An organization lessens the burdens of government if (i) a governmental unit considers the organization's activities to be the governmental unit's burden and (ii) the organization's activities actually lessen the governmental unit's burden.<sup>2</sup> Rev. Rul. 85-1, 1985-1 C.B. 177, 178; Rev. Rul. 85-2, 1985-1 C.B. 178, 179. Therefore, in order for the construction, operation, and maintenance of the Aquarium and Hotel to lessen the burdens of government, (i) the Park Board must consider Moody Gardens' construction, operation, and maintenance of the Aquarium and Hotel to be the Park Board's burden and (ii) Moody Gardens' construction, operation, and maintenance of the Aquarium and Hotel must actually lessen the Park Board's burden. With respect to the first requirement, an activity is a burden of government if there is an objective manifestation by a governmental unit that it considers the activity to be its burden. Id. Although the fact that an organization is engaged in an activity sometimes undertaken by the government or that a governmental unit expresses approval of an activity is insufficient to establish per se that such activity is a governmental burden, the interrelationship between the organization and a governmental unit may provide evidence that the governmental unit considers the organization's activities to be its burden. Id.

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<sup>2</sup> The United States Tax Court adopted this two-part test for determining whether an organization's activities lessen the burdens of government in a decision reviewed by the court and subsequently affirmed by the United States Court of Appeals for the Fourth Circuit. Columbia Park & Recreation Ass'n, Inc. v. Commissioner, 88 T.C.M. (C) 21 (1987), aff'd without published opinion, 838 F.2d 465 (4th Cir. 1988); see also Public Industries, Inc. v. Commissioner, 61 T.C.M. (CCH) 1626 (1991).

The facts in the instant case clearly show that under the guidelines of Revenue Ruling 85-1 and Revenue Ruling 85-2, the Park Board has agreed that the Park is its burden, and the objective manifestation of that is specifically shown by the following facts:

(1) The favorable working relationship between the City, the Park Board, and the Foundation that commenced in 1983 in order to obtain in 1984 a \$500,000 Urban Development Action Grant to fund improvements to a bridge on the road leading to the Park and paving the entranceway to the Park (Exhibit 14, Tab 8) and that favorable working relationship has continued as evidenced by the many agreements between the Park Board, Moody Gardens, and the separate entities merged into Moody Gardens, namely Palm Beach and Hope Arena, the resolutions of the City Council, and the Park Board ratifying and approving such agreements as well as the 1990 Agreement. Exhibits 8, 11, 12, 13, 17, 18, 19, 20 & 21;

(2) The ownership by the Park Board under the 1990 Agreement of all of the current facilities at the Park as well as the Aquarium and Hotel when completed in early 1998. Exhibit 20, Pages 1-3, Exhibit 22;

(3) The fact that the Park Board has the statutory power to manage and control the following facilities for the purpose of attracting visitors and tourists to the City: (i) parks; (ii) civic centers, civic center buildings, auditoriums, exhibition halls, or coliseums; (iii) hotels or motels; (iv) parking or storage facilities; and (v) other facilities considered advisable in connection with the preceding facilities that serve the purpose of attracting visitors and tourists to the City. Tex. Local Gov't Code Ann. §§ 306.031(d)(2) and 306.032 (West 1988 & supp. 1994). See Exhibit 23. These statutes clearly provide that the Park Board may own the Aquarium and Hotel, and that, once constructed with ownership in the Park Board, the Park Board would be obligated by statute to operate and maintain the Aquarium and Hotel, as it currently is obligated to operate and maintain the existing facilities at the Park although Moody Gardens is operating and maintaining such facilities, and will operate and maintain the Aquarium and Hotel, on the Park Board's behalf. There are numerous aquariums and hotels throughout the country that are owned and operated by governmental units both at the state and national level. Lodging, hotels, motels, etc., in government-owned state and national parks across the United States are readily available and have been for years. Furthermore, as stated in the facts, the City of Galveston built in 1962 and has continuously owned since that time a seven story hotel which it leases to an independent operator. Thus, by constructing, operating, and maintaining the Aquarium and Hotel, Moody Gardens will be performing an activity that is undertaken by governmental units;

(4) Effective October 1, 1994, Moody Gardens will receive, for purposes of operating and maintaining the Conference Center, one-seventh of the seven percent hotel occupancy tax distributed by the City, and a member of the Galveston City Council will be a voting member of Moody Gardens' board of directors. Exhibit 31. Such funding of the operation and maintenance of the Conference Center is important because the Aquarium

and Hotel will be, along with the Conference Center, a part of the Park. The funding of the operation and maintenance of the Conference Center is even more significant when one considers that the Hotel will be absolutely critical to attracting to the Conference Center the kinds of events that draw large numbers of out-of-town visitors. It is anticipated that approximately 90 percent of the Hotel's guests will be participants in events at the Conference Center, and scientists, students, visitors, and other participants involved in the charitable, educational, and scientific programs available at the Park. By increasing the number of such visitors to the Conference Center and the Park, the Hotel will in turn increase the broad-based economic benefits to the City and its citizens:

(5) The 1990 Agreement requires Moody Gardens to, among other things: (i) abide by all rules, regulations, and restrictions that the Park Board may prescribe; (ii) perform all obligations of the Park Board under the Lease and all laws, regulations, and other restrictions relating to the Lease; (iii) obtain the Park Board's approval before entering into any contract or incurring any debt in excess of \$1 million; (iv) furnish the Park Board with monthly statements of profit and loss and accounts receivable and payable, including an aging of all accounts; (v) furnish the Park Board with annual statements of profit and loss and receipts and disbursements; (vi) maintain and make available to the Park Board evidence of all receipts and disbursements; (vii) bond all employees who are responsible for or handle funds under a blanket fidelity bond in an amount not less than \$100,000; (viii) keep the Park in a safe, neat, orderly, and attractive condition; (ix) keep all books and records related to the Park in a manner acceptable to the Park Board; (x) maintain adequate liability insurance (at least \$4 million) to insure and protect the Park Board and its trustees with respect to the operation of the Park; and (xi) place \$2.1 million in escrow to provide an insurance and operating expense reserve. Exhibit 20, Pages 6-15;

(6) The executive director of the Park Board is a voting member of Moody Gardens' board of directors. Exhibit 20, Page 10;

(7) As personal property is sold by Moody Gardens, as a result of obsolescence, change, or deterioration, such sale must first be approved by the Park Board. The property also must be sold by State and City competitive bidding procedures. Once an item is sold, the proceeds belong to the Park Board and are subject to expenditure by State and City competitive bidding procedures as well;

(8) Because the Park will receive tax money, the books and records of the Park are subject to the Texas Open Records Act in terms of accounting for the tax dollars received. Tex. Gov't. Code Ann. § 552;

(9) The construction, operation, and maintenance of the Aquarium and Hotel will assist the City in creating more jobs in Galveston, relieving an economically depressed area, further reducing blight, stimulating economic activity, attracting more tourists to

Galveston, and providing a large public park for recreational and educational purposes:  
and

(10) The Park Board has given Moody Gardens, under the 1990 Agreement, the power and authority to collect fees including concession, admission, and rental fees, to have, discharge, and direct all details of the work and to supervise all labor and employees required for operation and maintenance of the premises, to contract for all utilities, cleaning, landscape maintenance, and to generally contract for all goods and services which may be necessary for the operation and maintenance of the Park and to perform all other acts not specifically prohibited in the 1990 Agreement for the proper operation and maintenance of Moody Gardens. Exhibit 20. (Pages 8-10 of the 1990 Agreement).

Together, these factors show, in accordance with Revenue Ruling 85-1 and Revenue Ruling 85-2, an objective manifestation by the Park Board and the City that the Park in general, and the construction, operation, and maintenance of the Aquarium and Hotel specifically, are the Park Board's burden.

Additional Service pronouncements on lessening the burdens of government can be found in Technical Advice Memorandum 8923001 and Private Letter Rulings 9246032 and 9246033.<sup>3</sup> Technical Advice Memorandum 8923001 (Feb. 14, 1989) provides further guidance on the ways in which a governmental unit can indicate that it considers an activity carried on by an organization to be a governmental burden and that it recognizes the organization is acting on behalf of the governmental unit: (i) the governmental unit can invite the organization to participate in an activity actually being performed by the government; (ii) the governmental unit can act jointly with the organization or allow the organization to assume the operation of an activity; (iii) the organization may conduct an activity that is an integral part of a larger government program; or (iv) the governmental unit may otherwise make it clear that it considers an activity to be its responsibility and that an organization conducting such activity is acting on the governmental unit's behalf. In this technical advice memorandum, the National Office of the Service ruled that the ownership and operation of a convention center complex which included a hotel, retail shopping mall, and parking accommodations would not adversely affect a section 501(c)(4) organization's tax exemption because such operation of the convention center complex lessened the burdens of the city and county governments that sanctioned the formation of the section 501(c)(4) organization. The Service ruled that, because of the degree of accountability to the city and the ability of the city to regulate the operation of the convention center complex, the city viewed the convention center complex as its burden, which the city had delegated to the section 501(c)(4) organization. The city and county had attempted, but failed, to directly implement the convention center complex on blighted land. Like the technical advice

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<sup>3</sup> While Moody Gardens, the Foundation, and the Park Board understand that technical advice memoranda, private letter rulings, and General Counsel Memoranda are not precedential authority, and that the Service therefore is not bound thereby, Moody Gardens, the Foundation, and the Park Board believe that technical advice memoranda, private letter rulings, and General Counsel Memoranda provide useful insight into the Service's application of relevant authority to a given set of facts.

memorandum, in the instant case the Park Board has agreed, pursuant to the 1990 Agreement, that Moody Gardens will assume the operation of the Aquarium and Hotel and also like the technical advice memorandum Moody Gardens is conducting an activity on behalf of the Park Board, pursuant to the 1990 Agreement, that is an integral part of a larger government program, i.e., attracting tourists to Galveston Island, creating jobs in an economically depressed area, reducing blight, and providing recreational and educational facilities to the public.

Private Letter Rulings 9246032 and 9246033 (Aug. 18, 1992) also provide guidance with respect to the determination of whether a governmental unit considers an organization's activity to constitute a burden of such governmental unit. In Private Letter Rulings 9246032 and 9246033, the Service articulated factors that may indicate that a governmental unit considers an organization's activity to be its burden: (i) the interrelationship between the governmental unit and the organization, including whether that activity has been engaged in by the governmental unit on a regular basis for a significant length of time; (ii) the degree of control the governmental unit has over the activities of the organization; and (iii) the funding of the organization's activities by the governmental unit. The Service concluded in these private letter rulings that a section 501(c)(3) organization's ownership of office space and a parking garage and its leasing of such office space to a section 501(c)(6) organization that promoted job creation and fostered international trade lessened the burdens of government. First, in the instant case, the City and Park Board have been providing, supervising, and maintaining public parks for inhabitants of and tourists to Galveston Island for many years. Moody Gardens continues this City and Park Board undertaking under the 1990 Agreement with the Park Board. Second, because of the degree of control that the Park Board exercises over Moody Gardens under the provisions of the 1990 Agreement, as outlined above, and because the City and Park Board will be funding, with part of the hotel occupancy tax, effective October 1, 1994, the operation and maintenance of the Conference Center which, along with the Aquarium and Hotel, composes a part of the Park, it is clear the Park Board considers Moody Gardens' activities to be its burden under the standards in these two private letter rulings.

The second requirement of Revenue Ruling 85-1 and Revenue Ruling 85-2 necessary to establish that Moody Gardens lessens the burdens of government is that Moody Gardens must actually lessen the Park Board's and the City's burdens. Rev. Rul. 85-1, 1985-1 C.B. 177, 178; Rev. Rul. 85-2, 1985-1 C.B. 178, 179. The most obvious fact that establishes that Moody Gardens actually lessens the Park Board's and City's burdens is that neither the Park Board nor the City have spent, nor will they have to spend, any public funds whatsoever in connection with the construction, operation, and maintenance of the facilities at the Park, except for the allocation of the hotel occupancy tax for the operation and maintenance of the Conference Center. The Aquarium and Hotel alone will cost approximately \$95 to \$100 million and, upon completion, the Park Board will own approximately \$188 million worth of assets that are public use facilities generating seasonally 700 to 850 jobs and millions of dollars in revenue for Galveston Island, without having to fund the construction, operation, or maintenance of such facilities. The Park Board, the City, Moody Gardens, and the Foundation anticipate that, at the completion of all of the phases of the Park, the Park will be self-sustaining from revenue generated by the Park. These facts are significant because, like the facts in Revenue Ruling 85-

1. absent funding by the Foundation and Moody Gardens, neither the City nor the Park Board would have the funds to provide the public facilities at the Park. In addition to these economic factors, Revenue Ruling 85-1 and Revenue Ruling 85-2 provide that a favorable working relationship between the governmental unit and the organization is strong evidence that the organization actually is lessening the burdens of government. Rev. Rul. 85-1, 1985-1 C.B. 177, 178; Rev. Rul. 85-2, 1985-1 C.B. 178, 179. The same facts outlined above that establish that the Park Board considers the Park in general, and the construction, operation, and maintenance of the Aquarium and Hotel specifically, to be its burden also support the conclusion that, by operating and maintaining the facilities at the Park and by constructing, operating, and maintaining the Aquarium and Hotel, Moody Gardens actually lessens the Park Board's and the City's burden.

Finally, a recent private letter ruling under section 115 of the Code further buttresses the conclusion that, in the proper circumstances, the construction, operation, and maintenance of a hotel lessens the burdens of government. Section 115(1) of the Code provides that gross income does not include income that derives from the exercise of any essential governmental function and accrues to a governmental unit. In Private Letter Ruling 9423038 (Mar. 16, 1994), the Service concluded that a nonprofit corporation that developed and operated a hotel<sup>4</sup> on behalf of a city as part of the expansion of a convention center complex performed an essential governmental function under section 115(1) of the Code. Similar to Moody Gardens' relationship with the Park Board, the nonprofit corporation in the ruling sought to assist the city in accomplishing urban redevelopment, increasing tourism and economic growth in the city, and encouraging educational, civic, and other activities and organizations in the city. The Service's conclusion that the development and operation of a hotel constituted the performance of an "essential governmental function" is entirely consistent with the conclusion that the construction, operation, and maintenance of the Hotel constitutes a governmental burden of the Park Board and that, by constructing, operating, and maintaining the Hotel, Moody Gardens will lessen that governmental burden.

To summarize, (i) the expenditures to fund the construction of the Aquarium and Hotel will be contributions to a political subdivision for exclusively public purposes and thus such expenditures will be made for purposes described in section 170(c)(1) of the Code; (ii) the gift of the Aquarium and Hotel to the Park Board will be made for exclusively public purposes and therefore will constitute the erection and maintenance of public buildings, which is a charitable purpose described in section 170(c)(2)(B) of the Code; and (iii) the construction, operation, and maintenance of the Aquarium and Hotel will lessen the burdens of government and thus will serve a further charitable purpose as described in section 170(c)(2)(B) of the Code. Hence, Moody Gardens' expenditures to construct, operate, and maintain the Aquarium and Hotel will

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<sup>4</sup> Although the ruling refers to the hotel only as the "Facility," it is possible to glean from the factual context presented in the ruling that the "Facility" is a hotel. In addition, we have learned, from conversations with the taxpayer involved in the ruling, that the ruling involved a hotel located across the street from the convention center in Tampa, Florida.

constitute qualifying distributions under section 4942(g)(1) of the Code and will not constitute taxable expenditures under section 4945(d) of the Code.

(3) Educational purposes under section 170(c)(2)(B) of the Code

In addition to serving the above charitable purposes, the construction, operation, and maintenance of the Aquarium and Hotel will serve educational purposes as well. An "educational" purpose includes instructing the public on subjects useful to the individual and beneficial to the community, such as museums, zoos, planetariums, symphony orchestras, and other similar organizations. Treas. Reg. §§ 1.501(c)(3)-1(d)(3)(i)(b), 1(d)(3)(ii) Ex. (4). Furthermore, the Service previously has approved tax-exempt status for aquariums. See, e.g., Tech. Adv. Mem. 8024111 (Jan. 3, 1980); Priv. Ltr. Rul. 8413047 (Dec. 27, 1983). As described above, the history and structure of the Park demonstrate that its facilities are constructed and operated to benefit the public, and to serve Moody Gardens' charitable and educational purposes by operating as a public park offering a variety of educational opportunities, such as the Rainforest Pyramid and the IMAX® theater. Similarly, the Aquarium will be a world-class marine education and research facility, and, among its other goals, will serve to foster an appreciation of the beauty and value of ocean life and to further the environmental education mission of Moody Gardens. Thus, the Aquarium will serve to further the educational purpose of Moody Gardens and also will complement the other facilities at the Park, especially the Rainforest Pyramid. Accordingly, and analogous to the above examples in the regulations of a museum, zoo, and planetarium, the Aquarium will serve a direct educational purpose. Respecting the Hotel, it is proposed solely in furtherance of the Park Board's objectives of effectively utilizing the Park as a facility for attracting visitors to Galveston and for promoting urban rehabilitation. Equally important, in conjunction with Galveston College, the Hotel will be the site of the Moody Hospitality Institute, if adequate funding is found, an educational program for Galveston College and other students that will provide quality comprehensive training in hotel and restaurant management, hospitality management, customer service, and culinary related fields. Consequently, in addition to lessening the burdens of government, the Hotel also will serve a direct educational purpose. Therefore, since education is a purpose described in section 170(c)(2)(B) of the Code, and since both the Aquarium and Hotel will serve a direct educational purpose, Moody Gardens' expenditures to construct, operate, and maintain the Aquarium and Hotel will also for this reason constitute qualifying distributions under section 4942(g)(1) of the Code and will not constitute taxable expenditures under section 4945(d) of the Code.

2. Operation and Maintenance of the Aquarium and Hotel will not Constitute an Excess Business Holding

A "business holding" of a private foundation, on which the excise tax on excess business holdings under section 4943 of the Code is based, means an ownership interest held by a private foundation in a "business enterprise." Code § 4943(d)(1). Thus, in order for the operation and maintenance of the Aquarium and Hotel to constitute a business holding of Moody Gardens.

Moody Gardens' relationship to the Aquarium and Hotel must constitute an interest in a "business enterprise."

Moody Gardens' operation and maintenance of the Aquarium and Hotel under the 1990 Agreement with the Park Board will not be an excess business holding because such operation and maintenance will not constitute a "business enterprise," as required by section 4943(d)(1) of the Code. Section 4943(d)(3)(A) of the Code recognizes that the term "business enterprise" does not include certain activities that are "functionally related," under standards prescribed by section 4942(j)(4) of the Code, to the accomplishment of an organization's exempt purposes. Necessarily, therefore, operations that actually and directly constitute exempt activities must also be excluded from the definition of "business enterprise." Otherwise, an exempt organization's direct conduct of exempt activities would subject it to the excise tax on excess business holdings, while its conduct of activities only functionally related to the accomplishment of its exempt purposes would not give rise to tax. As established above, Moody Gardens' operation and maintenance of the Aquarium and Hotel will directly serve the charitable purpose of lessening the burdens of government, and an educational purpose. Thus, Moody Gardens' operation and maintenance of the Aquarium and Hotel will not constitute an interest in a business enterprise subject to the excise tax on excess business holdings under section 4943 of the Code.

### 3. Income from the Operation and Maintenance of the Aquarium and Hotel will not Constitute UBTI

An "unrelated trade or business," the income from which is UBTI and subject to tax under section 511 of the Code, is defined as any trade or business that is regularly carried on and the conduct of which is not substantially related to the exercise or performance by an organization of its exempt purposes. Code § 513(a). Hence, even if the operation and maintenance of the Aquarium and Hotel otherwise will constitute a regularly carried on trade or business, the income from the operation of the Aquarium and Hotel will constitute UBTI only if the operation and maintenance of the Aquarium and Hotel will not be substantially related to Moody Gardens' exempt purposes. Under the 1990 Agreement with the Park Board, the gross income and net income, if any, from the Aquarium and Hotel operations belong to the Park Board but can only be used to offset the expenses of the Park. Moody Gardens' exempt purposes include lessening the burdens of government and education. As established above, the operation and maintenance of the Aquarium and Hotel will lessen the burdens of government and will serve an educational purpose. Consequently, even assuming that the operation and maintenance of the Aquarium and Hotel will constitute a regularly carried on trade or business, no purpose is served by analyzing whether the operation and maintenance of the Aquarium and Hotel will be substantially related to Moody Gardens' exempt purposes because the operation and maintenance of the Aquarium and Hotel in fact constitutes Moody Gardens' exempt function. This analysis is supported by Private Letter Ruling 9411037 (Dec. 20, 1993). The Service ruled that a section 501(c)(3) organization that provided moderate-income housing lessened the burdens of government. Accordingly, with respect to the question of whether the income from the moderate-income housing constituted UBTI, the Service concluded:



The facts demonstrate that the development and rental of moderate-income housing is an integral part of M's exempt function. This is not merely an activity related to M's overall exempt function. it is M's exempt function. Thus, any discussion of the importance of the activity to the accomplishment of M's exempt function is unnecessary. Because we have concluded that rentals to moderate-income residents as specified is part of M's exempt function, M's proposed activities which involve the rental of moderate-income housing do not constitute unrelated trade or business activity and income from such rentals will not constitute unrelated business income.

(emphasis added). Additionally, Private Letter Ruling 8815031 (Jan. 19, 1988) also supports this analysis:

Therefore, the evidence shows that [the activity in question] is lessening the burdens of government. Revenue Ruling 85-2. Accordingly, [the activity in question] does not constitute unrelated trade or business because it is a charitable activity. Section 1.501(c)(3)-1(d)(2) of the regulations.

Because the operation and maintenance of the Aquarium and Hotel will serve Moody Gardens' exempt purposes, i.e., lessening the burdens of government and education, income from the operation and maintenance of the Aquarium and Hotel will not constitute UBTI.

Technical Advice Memorandum 8923001 (Feb. 14, 1989), discussed above, does not affect this conclusion with respect to the Hotel. In the ruling, the Service concluded that, although the ownership and operation of a convention center complex which included a hotel, retail shopping mall, and parking accommodations would not adversely affect a section 501(c)(4) organization's tax exemption because it lessened the burdens of government, the income from the organization's ownership of a limited partnership interest in the hotel constituted UBTI. The organization in the ruling, however, only owned a 2.0833 percent limited partnership interest in the hotel, and the hotel was otherwise almost entirely owned by a business enterprise with a long history of for-profit operations nationwide. Thus, the organization's ownership of the limited partnership interest merely was an investment in a for-profit business owned approximately 98 percent by private investors. Unlike the hotel in the ruling, at no time will the Hotel be owned by either Moody Gardens or any private investors; rather, at all times the Hotel will be owned by the Park Board, operated by Moody Gardens with the assistance of a hotel management company or consultant, and reflected on the Park Board's books and records as an asset of the Park Board. Also unlike the hotel in the ruling, the Hotel will not be operated or owned by or a franchise of a national hotel chain. Moody Gardens may, however, contract with a national chain on a fixed fee arm's-length basis to use the national chain's reservation system. Therefore, as concluded above, income from the operation and maintenance of the Hotel will not constitute UBTI.

4. The Aquarium Grants and Hotel Grants by the Foundation will Constitute Qualifying Distributions and not Taxable Expenditures

Since Moody Gardens is a private operating foundation under section 4942(j)(3) of the Code and the Foundation will exercise expenditure responsibility as required by section 4945(d)(4) of the Code, the Aquarium and Hotel Grants will constitute qualifying distributions from the Foundation and will not constitute taxable expenditures by the Foundation if the Aquarium and Hotel Grants are paid to accomplish one or more of the purposes described in sections 170(c)(1) or (c)(2)(B) of the Code. Code § 4942(g)(1); Treas. Reg. § 53.4942(a)-3(a)(2); Treas. Reg. § 53.4945-6(b)(1)(v). The Service previously has ruled that funds set aside under section 4942(g)(2) of the Code for the construction of an aquarium constitute qualifying distributions. See, e.g., Priv. Ltr. Rul. 8824055 (Mar. 23, 1988); Priv. Ltr. Rul. 8723053 (Mar. 11, 1987); Priv. Ltr. Rul. 8627055 (Apr. 9, 1986); Priv. Ltr. Rul. 8413047 (Dec. 27, 1983).

The Aquarium and Hotel Grants will be made to fund Moody Gardens' construction, initial operation, and maintenance of the Aquarium and Hotel. As established above, the construction, operation, and maintenance of the Aquarium and Hotel will serve the charitable purposes of erection and maintenance of public buildings and lessening the burdens of government, as well as an educational purpose, all of which are purposes described in section 170(c)(2)(B) of the Code. Moreover, and also as established above, the construction of the Aquarium and Hotel on behalf of the Park Board will constitute a donation to a political subdivision for exclusively public purposes as provided in section 170(c)(1) of the Code. Since the Aquarium and Hotel Grants will be made for purposes described in both sections 170(c)(1) and (c)(2)(B) of the Code, the Aquarium and Hotel Grants will constitute qualifying distributions by the Foundation under section 4942(g)(1) of the Code. Furthermore, since expenditure responsibility will be exercised by the Foundation over the Aquarium and Hotel Grants, the Aquarium and Hotel Grants will not constitute taxable expenditures under section 4945(d) of the Code.

5. The Management Consulting Agreement with Gal-Tex will not affect Moody Gardens' Tax-Exempt Status

Section 501(c)(3) of the Code requires that, in order for an exempt organization to maintain its tax-exempt status, no part of the net earnings of the organization may inure to the benefit of any private shareholder or individual. Stated another way, the regulations provide that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Treas. Reg. § 1.501(c)(3)-1(c)(2). This proscription is commonly referred to as the proscription against "private inurement." In addition, the regulations provide that an exempt organization is not operated exclusively for exempt purposes unless the organization serves a public rather than private interest. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Thus, an organization must not be organized or operated for the benefit of private interests such as designated individuals, the creator or his

family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Id. This is commonly known as the proscription against "private benefit."

These proscriptions against private inurement and private benefit are inapplicable, however, to an arm's length contract for services, such as the Management Consulting Agreement with Gal-Tex, as long as the compensation for such services is reasonable. In the Service's most comprehensive pronouncement on private inurement and private benefit, issued in the context of examining the propriety of joint ventures between exempt health care organizations and health care professionals, the Service described private inurement generally as follows:

The inurement proscription does not prevent the payment of reasonable compensation for goods and services. It is aimed at preventing dividend-like distributions of charitable assets or expenditures to benefit a private interest. This Office has stated "inurement is likely to arise where the financial benefit represents a transfer of the organization's financial resources to an individual solely by virtue of the individual's relationship with the organization, and without regard to the accomplishment of exempt purposes."

Gen. Couns. Mem. 39,862 (Nov. 21, 1991) (quoting Gen. Couns. Mem. 38,459 (July 31, 1980)) (emphasis added). In addition, two cases from the United States Court of Appeals for the Fifth Circuit indicate that the payment of reasonable compensation does not constitute private inurement. Birmingham Business College v. United States, 276 F.2d 476, 480 (5th Cir. 1960); Mabee Petroleum Corp. v. United States, 203 F.2d 872, 876 (5th Cir. 1953); see also Rev. Rul. 73-126, 1973-1 C.B. 220. Regarding private benefit, which is a broader proscription than private inurement and which examines the class of persons benefitted by an exempt organization's activities, it is well settled that the payment of reasonable compensation for services rendered similarly does not violate the proscription against private benefit. See, e.g., University of Mass. Medical School Group Practice v. Commissioner, 74 T.C. 1299, 1306 (1980), and cases cited therein.

Preliminarily, since Gal-Tex is not a disqualified person with respect to Moody Gardens or the Foundation, Gal-Tex is not the type of "insider" that is required for the private inurement proscription to be violated. Furthermore, the Management Consulting Agreement provides for the payment of a reasonable monthly fee to Gal-Tex in exchange for its management consulting services rendered. The monthly fee to be paid to Gal-Tex will be a flat fee and will not be based upon a percentage of Moody Gardens' net profits or gross revenue. While no fee has yet been paid to Gal-Tex, the flat monthly fee will be reasonable and will result from arm's length negotiating and bargaining in good faith. Gal-Tex merely will assist Moody Gardens in operating the Park most efficiently, thus allowing Moody Gardens, the Park Board, and the City to maximize the Park's benefit to the City and its citizens. Hence, Moody Gardens' payment of a reasonable fee to Gal-Tex for its services will not create more than an incidental private benefit; rather, Gal-Tex's services actually will maximize the Park's charitable and educational opportunities and thus will afford a greater segment of the public the occasion to experience the Park's charitable and educational opportunities by ultimately keeping admission prices lower

because of efficiencies of operation. Accordingly, since the Management Consulting Agreement will be an arm's length contract for services rendered under which reasonable compensation will be paid, the Management Consulting Agreement will not constitute private inurement or private benefit and thus will not affect Moody Gardens' tax-exempt status under section 501(c)(3) of the Code.

#### E. MISCELLANEOUS

To the best knowledge of Moody Gardens, the Foundation, the Park Board, and the undersigned, none of the identical issues involved herein is in a return of Moody Gardens, the Foundation, or the Park Board (or of a related party within the meaning of section 267 of the Code or of a member of an affiliated group of which Moody Gardens or the Foundation is also a member within the meaning of section 1504 of the Code).

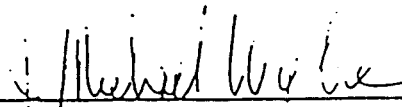
To the best knowledge of Moody Gardens, the Foundation, the Park Board, and the undersigned, the Service has not previously ruled on the same or a similar issue for Moody Gardens, the Foundation, the Park Board, or any predecessor, nor have Moody Gardens, the Foundation, the Park Board, or any representative previously submitted the same or a similar issue to the Service and withdrawn it before a ruling was issued.

The undersigned is aware of no authorities, contrary to the legal positions advanced herein, nor of any pending legislation that may affect the proposed transactions. Additionally, the law in connection with this ruling request is not uncertain and the issues are adequately addressed by the relevant authorities discussed above.

Respectfully submitted,

JOHNSON & WORTLEY  
A Professional Corporation

By:

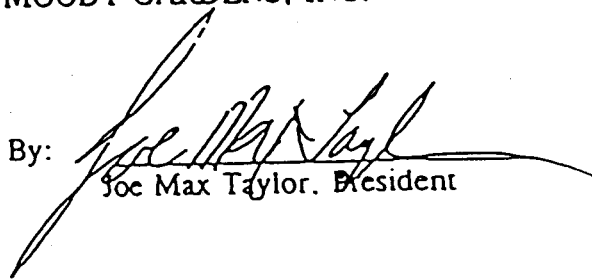
  
\_\_\_\_\_  
J. Michael Wylie

DECLARATION

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and that to the best of my knowledge and belief, the facts presented in support of the requested rulings are true, correct, and complete.

MOODY GARDENS, INC.

By:

A handwritten signature in black ink, appearing to read "Joe Max Taylor", written over a horizontal line.

Joe Max Taylor, President

DECLARATION

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and that to the best of my knowledge and belief, the facts presented in support of the requested rulings are true, correct, and complete.

THE MOODY FOUNDATION

By: 

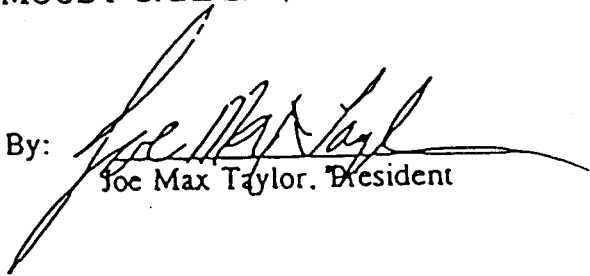
Robert L. Moody, Trustee

DECLARATION

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and that to the best of my knowledge and belief, the facts presented in support of the requested rulings are true, correct, and complete.

MOODY GARDENS, INC.

By:

  
Joe Max Taylor, President

Form 2848  
(Rev. March 1991)  
Department of the Treasury  
Internal Revenue Service

# Power of Attorney and Declaration of Representative

For Paperwork Reduction and Privacy Act Notice, see the instructions.

OMB No. 1545-0047  
Expires 12/31/99

## Part I Power of Attorney

<b>1 Taxpayer Information</b>	
Taxpayer name(s) and address (Please type or print.) PARK BOARD <sup>of Trustees</sup> OF THE CITY OF GALVESTON 2106 Seawall Boulevard Galveston TX 77550	Social security number(s) _____ Employer identification number 74-1505237 Plan number, if any: _____ Daytime telephone number (409) 763-6564

I hereby appoint(s) the following representative(s) as attorney(s)-in-fact

<b>2 Representative(s) (Please type or print.) **</b>	
Name and address J. Michael Wylie Johnson & Wortley 900 Jackson Street Dallas TX 75202	CAF No. .... 7800-8037 OR Telephone No ( 214 ) 977-9685 Fax No ( 214 ) 977-9004 Check if new: Address _____ Telephone No _____
Name and address Geoffrey R. Polma Johnson & Wortley 900 Jackson Street Dallas TX 75202	CAF No. .... Telephone No ( 214 ) 977-9315 Fax No. ( 214 ) 977-9004 Check if new: Address _____ Telephone No _____
Name and address Andrew T. Gardner Johnson & Wortley 900 Jackson Street Dallas TX 75202	CAF No. .... Telephone No ( 214 ) 977-9450 Fax No. ( 214 ) 977-9004 Check if new: Address _____ Telephone No _____

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

<b>3 Tax Matters</b>		
Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Excise - Chapter 42	990 PF	1994

- 4 **Specific Use Not Recorded on Centralized Authorization File (CAF).**—If the power of attorney is for a specific use not recorded on CAF, please check this box. (See the instructions for *Specific Use Not Recorded on CAF* on page 4.)
- 5 **Acts Authorized.**—The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I can perform with respect to the tax matters described in line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks or the power to sign certain returns. (See instructions.)  
List any specific additions or deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, 1981-1 CB 470, for more information.

Note: The tax matters partner/person of a partnership or S corporation is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

6 **Receipt of Refund Checks.**—If you want to authorize a representative named in line 2 to receive, BUT NOT TO ENDORSE OR CASH refund checks, initial here \_\_\_\_\_ and list the name of that representative below.  
Name of representative to receive refund check(s) \_\_\_\_\_



Form **2848**  
(Rev. March 1991)  
Department of the Treasury  
Internal Revenue Service

# Power of Attorney and Declaration of Representative

For Paperwork Reduction and Privacy Act Notice, see the instructions.

## Part I Power of Attorney

### 1 Taxpayer Information

Taxpayer name(s) and address (Please type or print.)

THE MOODY FOUNDATION  
704 Moody National Bank Building  
2302 Postoffice Street  
Galveston TX 77550

Social security number(s)

Employer identification number

74-1403105

Daytime telephone number

(409) 763-5333

I hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

### 2 Representative(s) (Please type or print.)

Name and address

J. Michael Wylie  
Johnson & Wortley  
900 Jackson Street Dallas TX 75202

CAF No ..... 7800-8037 OR

Telephone No ( 214 ) 977-9685

Fax No ( 214 ) 977-9004

Check if new Address  Telephone No

Name and address

Geoffrey R. Polma  
Johnson & Wortley  
900 Jackson Street Dallas TX 75202

CAF No .....

Telephone No ( 214 ) 977-9315

Fax No ( 214 ) 977-9004

Check if new Address  Telephone No

Name and address

Andrew T. Gardner  
Johnson & Wortley  
900 Jackson Street Dallas TX 75202

CAF No .....

Telephone No ( 214 ) 977-9450

Fax No ( 214 ) 977-9004

Check if new Address  Telephone No

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

### 3 Tax Matters

Type of Tax (Income, Employment, Excise, etc.)

Tax Form Number (1040, 941, 720, etc.)

Year(s) or Period(s)

Excise - Chapter 42

990 PF

1994

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List any specific additions or deletions to the acts otherwise authorized in this power of attorney

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38 and Reg. 1.470, for more information.

Note: The tax matters partner/person of a partnership or S corporation is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

6 **Receipt of Refund Checks.**—If you want to authorize a representative named in line 2 to receive, BUT NOT TO ENDORSE OR CASH refund checks, initial here \_\_\_\_\_ and list the name of that representative below

Name of representative to receive refund check(s) \_\_\_\_\_

Form 2848  
Rev. March 1993  
Department of the Treasury  
Internal Revenue Service

# Power of Attorney and Declaration of Representative

For Paperwork Reduction and Privacy Act Notice, see the instructions

## Part I Power of Attorney

### 1 Taxpayer Information

Taxpayer's name(s) and address (Please type or print.)

MOODY GARDENS, INC.  
One Hope Boulevard  
Galveston TX 77554

Social security number(s)

Employer identification number

76-0288131

Daytime telephone number

(409) 744-1745

I hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

### 2 Representative(s) (Please type or print.)

Name and address

J. Michael Wylie  
Johnson & Wortley  
900 Jackson Street Dallas TX 75202

CAF No. 7800-8037 OR

Telephone No. (214) 977-9685

Fax No. (214) 977-9004

Check if new Address

Telephone No.

Name and address

Geoffrey R. Polma  
Johnson & Wortley  
900 Jackson Street Dallas TX 75202

CAF No.

Telephone No. (214) 977-9315

Fax No. (214) 977-9004

Check if new Address

Telephone No.

Name and address

Andrew T. Gardner  
Johnson & Wortley  
900 Jackson Street Dallas TX 75202

CAF No.

Telephone No. (214) 977-9315

Fax No. (214) 977-9450

Check if new Address

Telephone No.

I represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

### 3 Tax Matters

Type of Tax (Income, Employment, Excise, etc.)

Tax Form Number (1040, 941, 720, etc.)

Year(s) or Period(s)

Excise - Chapter 42

990 PF

1994

4 Specific Use Not Recorded on Centralized Authorization File (CAF). — If the power of attorney is for a specific use not recorded on CAF, please check this box. (See the instructions for Specific Use Not Recorded on CAF on page 4)

5 Acts Authorized. — The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I can perform with respect to the tax matters described in line 3, for example, the authority to sign any agreements, consents or other documents. The authority does not include the power to receive refund checks or the power to sign certain returns. See instructions.)

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, 1981-1 CB 307, as Pub. 470, for more information.

Note: The tax matters partner/person of a partnership or S corporation is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

6 Receipt of Refund Checks. — If you want to authorize a representative named in line 2 to receive, BUT NOT TO ENDORSE OR CASH refund checks, initial here \_\_\_\_\_ and list the name of that representative below

Name of representative to receive refund check(s) ▶

**EXHIBIT B**  
(See Page 17)

ASSIGNMENT, MODIFICATION AND CONSENT AGREEMENT

This Assignment, Modification and Consent Agreement (the "Agreement") is executed by and between The Moody Foundation ("Moody"), the Park Board of Trustees of the City of Galveston, Texas (the "Park Board"), Moody Gardens, Inc., a Texas non-profit corporation ("Moody Gardens"), Hope Charities, Inc., a Texas non-profit corporation ("Hope") and Palm Beach at Moody Gardens, Inc., a Texas non-profit corporation ("Palm Beach").

WHEREAS, Moody entered into a certain lease with the City of Galveston said lease being effective January 1, 1983 covering the real property together with improvements thereon, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Property") (said lease, as amended February 2, 1983, January 1, 1986 and January 7, 1988 hereinafter referred to as the "Lease"). A copy of the January 1, 1983 Lease is attached hereto as Exhibit "B", the February 2, 1983 amendment as Exhibit "C", the January 1, 1986 amendment as Exhibit "D", and the January 7, 1988 amendment as Exhibit "E".

WHEREAS, Moody assigned a portion of the Lease to the Park Board by Agreement (the "Hope Arena Agreement") dated January 28, 1987 which promoted the use of the Hope Arena facility as a convention and special events center operated by Hope, a copy of the Hope Arena Agreement being attached as Exhibit "F"; and

WHEREAS, Moody assigned a portion of the Lease to Palm Beach

WHEREAS, Palm Beach assigned such interest in the Lease to the Park Board by Agreement (the "Palm Beach Agreement"), dated May 25, 1989 by and between Palm Beach, the Park Board and Moody permitting the utilization of the Palm Beach at Moody Gardens Complex as a recreational facility operated by Palm Beach to promote tourism and further the statutory purposes and goals of the Park Board, a copy of the Palm Beach Agreement being attached as Exhibit "H"; and

WHEREAS, Moody assigned the remainder of the Lease to Moody Gardens on April 5, 1989, a copy of the assignment to Moody Gardens being attached as Exhibit "I"; and

WHEREAS, Moody Gardens assigned the remainder of the Lease to the Park Board by Agreement (the "Moody Gardens Agreement"), dated December 29, 1989 by and between Moody Gardens, Moody and the Park Board in order to create a world class recreational facility operated by Moody Gardens, a copy of the Moody Gardens Agreement being attached as Exhibit "J"; and

WHEREAS, the Hope Arena Agreement, the Palm Beach Agreement and the Moody Gardens Agreement (collectively referred to as the "Development Agreements" and sometimes individually as a "Development Agreement") provided for, among other matters, that Hope, Moody Gardens and Palm Beach, respectively, manage and operate the various portions of the Leased Premises covered by the respective Development Agreements and variously further provided for the right of reverter to Moody or an assignment to

Moody or Moody's nominee in the event that the Park Board elected to terminate the applicable Management Agreement; and

WHEREAS, Hope, Moody Gardens and Palm Beach are in the process of a corporate consolidation and merger with the surviving corporate entity to be Moody Gardens and, in connection therewith, intend to transfer to Moody Gardens all of their respective rights and obligations under the Development Agreements accruing after the effective date hereof; and

WHEREAS, the Park Board and Moody are agreeable to said transfer; and

WHEREAS, in connection with such transfers and confirmations, and in order to clarify the rights and obligations of the various parties, the Park Board, Moody, and Moody Gardens desire to clarify any and all of the rights and obligations of the City of Galveston, the Park Board, Moody, and Moody Gardens by integrating the Development Agreements into a single instrument superseding and replacing said Development Agreements in order to promote the efficient and successful management and operation of the Moody Gardens Complex, as defined below, and to provide for clarified and consistent rights and obligations in connection therewith; and

WHEREAS, it is the intention of the parties that this Agreement supersede and replace in all respects the Development Agreements.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for good and valuable consideration, the receipt

and sufficiency of which is hereby acknowledged, the Park Board, Moody Gardens, Hope, Palm Beach, and Moody (but only as to certain provisions hereof applicable to Moody) do hereby mutually agree as follows:

1. Assignment to Moody Gardens.

Hope and Palm Beach, respectively, hereby assign and transfer to Moody Gardens, and Moody Gardens agrees to perform, all of Hope's and Palm Beach's respective rights and obligations accruing from and after the effective date of this Agreement under the Hope Arena Agreement and the Palm Beach Agreement, respectively. Hope and Palm Beach join in this Agreement solely to effectuate such assignment. Park Board and Moody hereby consent to such assignment and assumption and agree to look solely to Moody Gardens for any and all liabilities and other obligations of Hope or Palm Beach, respectively, arising out of or in any way connected with the Hope Arena Agreement or the Palm Beach Agreement, respectively, accruing on or after the effective date hereof.

2. Prior Agreements Superseded.

This Agreement replaces and supersedes the Development Agreements in all respects contemporaneous with the effective date hereof and the assignment and assumption of the respective Development Agreements contained in the preceding paragraph.

3. Termination; Reversion or Assignment.

Moody, Moody Gardens, and Palm Beach hereby confirm their respective prior assignments of the Lease contained in the

Development Agreements, together with all improvements and appurtenances to the Leased Property, and fixtures and equipment thereon, to the Park Board; subject, however, to the right of reverter or assignment as hereinafter specified. In the event that Park Board shall determine, for any reason, to terminate this Agreement, Park Board shall first determine whether, in its sole judgment, Moody Gardens has sufficient grant proceeds, income, assets, or liability insurance to meet its obligations or liabilities relating to the Hope Arena - Palm Beach at Moody Gardens - Moody Gardens Complex (the "Moody Gardens Complex"), the subject of this Agreement. If Park Board shall determine that Moody Gardens does have sufficient grant proceeds, income, assets, or liability insurance to meet its obligations or liabilities relating to the Moody Gardens Complex or the operations thereof, upon notice to Moody Gardens and Moody by Park Board in accordance with the terms and conditions of Paragraph 9, this Agreement shall immediately and forthwith terminate and the Lease shall immediately and automatically revert to Moody Gardens. In the event that Park Board shall determine that Moody Gardens does not have sufficient grant proceeds, income or assets to meet its obligations or liabilities relating to the Moody Gardens Complex and operate the Moody Gardens Complex, the Park Board, at its option, may upon notice to Moody Gardens and Moody, immediately assign this Agreement and the Lease to Moody or a §501(c)(3) or §509(a)(1, 2 or 3) organization designated by Moody, and Moody and/or its designee



does hereby irrevocably agree to accept said assignment. In either event, after said reverter or assignment, Park Board shall have no further obligations hereunder and shall be relieved from any further liability hereunder and from the Lease assigned herein. By approving this Agreement, the City of Galveston does hereby agree that such reverter or assignment shall not require additional approval by City Council. In the event of such reverter or assignment, Park Board agrees to execute such documents as are reasonably necessary to effectuate such reverter or assignment. Subject to the terms hereof, Park Board and Moody Gardens agree to perform the obligations, terms and conditions of "Lessee" arising subsequent to the effective date hereof, to the extent permitted by law.

4. Effective Dates.

This Agreement shall commence on the later of (a) October 1, 1990, or (b) as of the date of its signing by all parties hereto and upon the approval of this Agreement by the City Council of the City of Galveston, and shall continue until terminated as herein provided, but in no event shall this Agreement be in effect for a term longer than the term of the Lease, as amended or extended in the future.

5. Management by Moody Gardens.

Moody Gardens agrees that immediately upon the effective date hereof, it will diligently operate, maintain and manage all areas of the Leased Property, and all improvements or property

known as "Moody Gardens", "Palm Beach at Moody Gardens" and "Hope Arena", in every respect consistent with and pursuant to the furtherance of the Park Board's goal of effectively utilizing the Moody Gardens Complex as a major conference/convention and recreational complex, a public beach, botanical gardens and educational park for the attraction of visitors to Galveston. Moody Gardens does further agree to use diligence in the management of the properties for the period and on the terms herein provided, and to furnish the services of its organization for the renting, operating and managing of the properties. Moody Gardens agrees to furnish monthly statements of profits and losses (maintained on an accrual accounting system) to the Park Board. Moody Gardens shall further furnish to Park Board a monthly itemized statement of all accounts receivable and payable, including an aging of all accounts. Moody Gardens will further furnish to Park Board an annual statement of profits and losses on an accrual accounting system, and an annual statement of receipts and disbursements for the fiscal year of Moody Gardens which shall run from October 1 to September 30. Evidence of all receipts and disbursements shall be maintained by Moody Gardens during the term hereof and shall be available for Park Board's inspections at all reasonable times. Moody Gardens does agree to bond those employees of Moody Gardens who handle or are responsible for the funds associated herewith under a blanket fidelity bond in an amount of not less than \$100,000.00. Moody Gardens does agree to timely and fully perform on behalf of Park

Board all obligations of Lessee under or in any manner associated with or arising out of the Lease, and to comply with all laws, ordinances, regulations and other restrictions relating to the Lease, the Leased Property, or any activities associated therewith, all on behalf of the Park Board, and to comply with all applicable rules or regulations of Park Board associated with the Lease, the property subject thereto, and all activities in connection therewith. Moody Gardens will keep the areas covered hereby in a safe, neat, orderly and attractive condition and state of repair.

Moody Gardens agrees to expend any and all net profits generated on the Leased Property or otherwise generated by any activities hereunder on operation, maintenance and construction of improvements on the Leased Property which further the statutory purposes of Park Board and are within the provisions of this Agreement, and that all such expenditures shall be directed toward activities or improvements on or about the Leased Property.

Moody Gardens will keep all books and records in a manner acceptable to Park Board, and in accordance with generally accepted accounting principles except as may be herein expressly stated to the contrary.

6. Authority and Obligation of Moody Gardens.

Park Board hereby grants to Moody Gardens the following authority and powers in connection with the Lease and the Leased Property (the term "Leased Property" shall include all

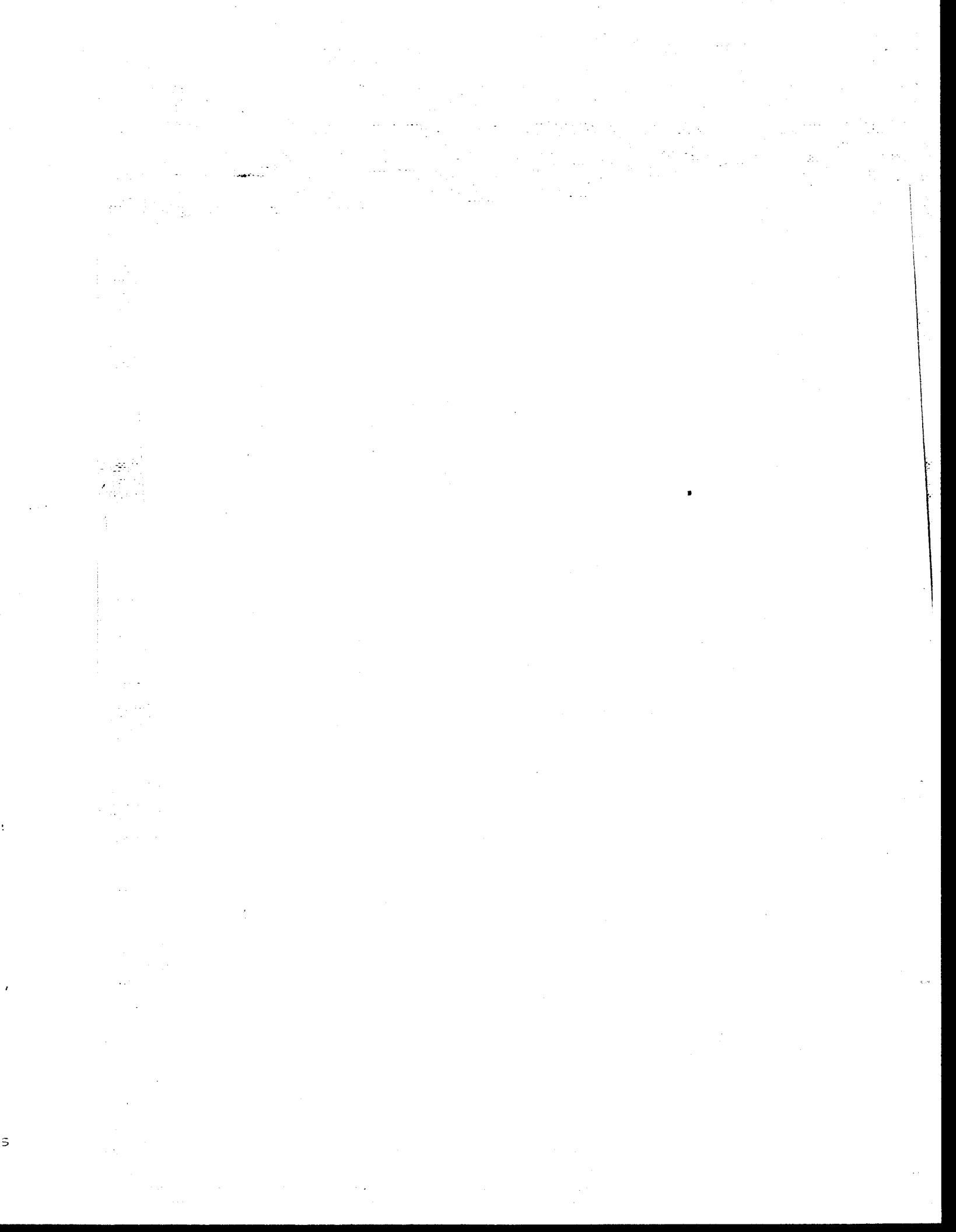
improvements constructed thereon), and Moody Gardens does hereby further agree to assume the following duties and obligations from and after the effective date hereof:

(a) Moody Gardens agrees to promote and advertise the availability of Moody Gardens Complex. All such promotions and advertisements shall be such as would be considered in good taste by persons of ordinary sensibility. Moody Gardens agrees not to utilize the name or logo of the Park Board or the City of Galveston without the prior written consent of the respective parties.

(b) Moody Gardens is hereby granted the authority to collect fees, including but not limited to concession and admission fees, rents or other sums due or to become due and give receipts therefor.

(c) Moody Gardens shall have the authority to hire, discharge, and direct all details of the work and supervise all labor and employees required for operation and maintenance of the premises, it being agreed that for all purposes all such agents or employees shall be employees of Moody Gardens and not employees of the Park Board..

(d) Moody Gardens shall contract for electricity, gas, fuel, water, telephone, window cleaning, trash or rubbish hauling, landscape maintenance, janitor or maid service, and to generally contract for all goods and services which may be necessary for the operation and maintenance of the Moody Gardens Complex. Moody Gardens agrees that all purchase and service



**EXHIBIT B**  
(See Page 17)

:

ASSIGNMENT, MODIFICATION AND CONSENT AGREEMENT

This Assignment, Modification and Consent Agreement (the "Agreement") is executed by and between The Moody Foundation ("Moody"), the Park Board of Trustees of the City of Galveston, Texas (the "Park Board"), Moody Gardens, Inc., a Texas non-profit corporation ("Moody Gardens"), Hope Charities, Inc., a Texas non-profit corporation ("Hope") and Palm Beach at Moody Gardens, Inc., a Texas non-profit corporation ("Palm Beach").

WHEREAS, Moody entered into a certain lease with the City of Galveston said lease being effective January 1, 1983 covering the real property together with improvements thereon, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Property") (said lease, as amended February 2, 1983, January 1, 1986 and January 7, 1988 hereinafter referred to as the "Lease"). A copy of the January 1, 1983 Lease is attached hereto as Exhibit "B", the February 2, 1983 amendment as Exhibit "C", the January 1, 1986 amendment as Exhibit "D", and the January 7, 1988 amendment as Exhibit "E".

WHEREAS, Moody assigned a portion of the Lease to the Park Board by Agreement (the "Hope Arena Agreement") dated January 28, 1987 which promoted the use of the Hope Arena facility as a convention and special events center operated by Hope, a copy of the Hope Arena Agreement being attached as Exhibit "F"; and

WHEREAS, Moody assigned a portion of the Lease to Palm Beach

WHEREAS, Palm Beach assigned such interest in the Lease to the Park Board by Agreement (the "Palm Beach Agreement"), dated May 25, 1989 by and between Palm Beach, the Park Board and Moody permitting the utilization of the Palm Beach at Moody Gardens Complex as a recreational facility operated by Palm Beach to promote tourism and further the statutory purposes and goals of the Park Board, a copy of the Palm Beach Agreement being attached as Exhibit "H"; and

WHEREAS, Moody assigned the remainder of the Lease to Moody Gardens on April 5, 1989, a copy of the assignment to Moody Gardens being attached as Exhibit "I"; and

WHEREAS, Moody Gardens assigned the remainder of the Lease to the Park Board by Agreement (the "Moody Gardens Agreement"), dated December 29, 1989 by and between Moody Gardens, Moody and the Park Board in order to create a world class recreational facility operated by Moody Gardens, a copy of the Moody Gardens Agreement being attached as Exhibit "J"; and

WHEREAS, the Hope Arena Agreement, the Palm Beach Agreement and the Moody Gardens Agreement (collectively referred to as the "Development Agreements" and sometimes individually as a "Development Agreement") provided for, among other matters, that Hope, Moody Gardens and Palm Beach, respectively, manage and operate the various portions of the Leased Premises covered by the respective Development Agreements and variously further provided for the right of reverter to Moody or an assignment to



Moody or Moody's nominee in the event that the Park Board elected to terminate the applicable Management Agreement; and

WHEREAS, Hope, Moody Gardens and Palm Beach are in the process of a corporate consolidation and merger with the surviving corporate entity to be Moody Gardens and, in connection therewith, intend to transfer to Moody Gardens all of their respective rights and obligations under the Development Agreements accruing after the effective date hereof; and

WHEREAS, the Park Board and Moody are agreeable to said transfer; and

WHEREAS, in connection with such transfers and confirmations, and in order to clarify the rights and obligations of the various parties, the Park Board, Moody, and Moody Gardens desire to clarify any and all of the rights and obligations of the City of Galveston, the Park Board, Moody, and Moody Gardens by integrating the Development Agreements into a single instrument superseding and replacing said Development Agreements in order to promote the efficient and successful management and operation of the Moody Gardens Complex, as defined below, and to provide for clarified and consistent rights and obligations in connection therewith; and

WHEREAS, it is the intention of the parties that this Agreement supersede and replace in all respects the Development Agreements.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for good and valuable consideration, the receipt

and sufficiency of which is hereby acknowledged, the Park Board, Moody Gardens, Hope, Palm Beach, and Moody (but only as to certain provisions hereof applicable to Moody) do hereby mutually agree as follows:

1. Assignment to Moody Gardens.

Hope and Palm Beach, respectively, hereby assign and transfer to Moody Gardens, and Moody Gardens agrees to perform, all of Hope's and Palm Beach's respective rights and obligations accruing from and after the effective date of this Agreement under the Hope Arena Agreement and the Palm Beach Agreement, respectively. Hope and Palm Beach join in this Agreement solely to effectuate such assignment. Park Board and Moody hereby consent to such assignment and assumption and agree to look solely to Moody Gardens for any and all liabilities and other obligations of Hope or Palm Beach, respectively, arising out of or in any way connected with the Hope Arena Agreement or the Palm Beach Agreement, respectively, accruing on or after the effective date hereof.

2. Prior Agreements Superseded.

This Agreement replaces and supersedes the Development Agreements in all respects contemporaneous with the effective date hereof and the assignment and assumption of the respective Development Agreements contained in the preceding paragraph.

3. Termination; Reversion or Assignment.

Moody, Moody Gardens, and Palm Beach hereby confirm their respective prior assignments of the Lease contained in the

Development Agreements, together with all improvements and appurtenances to the Leased Property, and fixtures and equipment thereon, to the Park Board; subject, however, to the right of reverter or assignment as hereinafter specified. In the event that Park Board shall determine, for any reason, to terminate this Agreement, Park Board shall first determine whether, in its sole judgment, Moody Gardens has sufficient grant proceeds, income, assets, or liability insurance to meet its obligations or liabilities relating to the Hope Arena - Palm Beach at Moody Gardens - Moody Gardens Complex (the "Moody Gardens Complex"), the subject of this Agreement. If Park Board shall determine that Moody Gardens does have sufficient grant proceeds, income, assets, or liability insurance to meet its obligations or liabilities relating to the Moody Gardens Complex or the operations thereof, upon notice to Moody Gardens and Moody by Park Board in accordance with the terms and conditions of Paragraph 9, this Agreement shall immediately and forthwith terminate and the Lease shall immediately and automatically revert to Moody Gardens. In the event that Park Board shall determine that Moody Gardens does not have sufficient grant proceeds, income or assets to meet its obligations or liabilities relating to the Moody Gardens Complex and operate the Moody Gardens Complex, the Park Board, at its option, may upon notice to Moody Gardens and Moody, immediately assign this Agreement and the Lease to Moody or a §501(c)(3) or §509(a)(1, 2 or 3) organization designated by Moody, and Moody and/or its designee

does hereby irrevocably agree to accept said assignment. In either event, after said reverter or assignment, Park Board shall have no further obligations hereunder and shall be relieved from any further liability hereunder and from the Lease assigned herein. By approving this Agreement, the City of Galveston does hereby agree that such reverter or assignment shall not require additional approval by City Council. In the event of such reverter or assignment, Park Board agrees to execute such documents as are reasonably necessary to effectuate such reverter or assignment. Subject to the terms hereof, Park Board and Moody Gardens agree to perform the obligations, terms and conditions of "Lessee" arising subsequent to the effective date hereof, to the extent permitted by law.

4. Effective Dates.

This Agreement shall commence on the later of (a) October 1, 1990, or (b) as of the date of its signing by all parties hereto and upon the approval of this Agreement by the City Council of the City of Galveston, and shall continue until terminated as herein provided, but in no event shall this Agreement be in effect for a term longer than the term of the Lease, as amended or extended in the future.

5. Management by Moody Gardens.

Moody Gardens agrees that immediately upon the effective date hereof, it will diligently operate, maintain and manage all areas of the Leased Property, and all improvements or property

known as "Moody Gardens", "Palm Beach at Moody Gardens" and "Hope Arena", in every respect consistent with and pursuant to the furtherance of the Park Board's goal of effectively utilizing the Moody Gardens Complex as a major conference/convention and recreational complex, a public beach, botanical gardens and educational park for the attraction of visitors to Galveston. Moody Gardens does further agree to use diligence in the management of the properties for the period and on the terms herein provided, and to furnish the services of its organization for the renting, operating and managing of the properties. Moody Gardens agrees to furnish monthly statements of profits and losses (maintained on an accrual accounting system) to the Park Board. Moody Gardens shall further furnish to Park Board a monthly itemized statement of all accounts receivable and payable, including an aging of all accounts. Moody Gardens will further furnish to Park Board an annual statement of profits and losses on an accrual accounting system, and an annual statement of receipts and disbursements for the fiscal year of Moody Gardens which shall run from October 1 to September 30. Evidence of all receipts and disbursements shall be maintained by Moody Gardens during the term hereof and shall be available for Park Board's inspections at all reasonable times. Moody Gardens does agree to bond those employees of Moody Gardens who handle or are responsible for the funds associated herewith under a blanket fidelity bond in an amount of not less than \$100,000.00. Moody Gardens does agree to timely and fully perform on behalf of Park

Board all obligations of Lessee under or in any manner associated with or arising out of the Lease, and to comply with all laws, ordinances, regulations and other restrictions relating to the Lease, the Leased Property, or any activities associated therewith, all on behalf of the Park Board, and to comply with all applicable rules or regulations of Park Board associated with the Lease, the property subject thereto, and all activities in connection therewith. Moody Gardens will keep the areas covered hereby in a safe, neat, orderly and attractive condition and state of repair.

Moody Gardens agrees to expend any and all net profits generated on the Leased Property or otherwise generated by any activities hereunder on operation, maintenance and construction of improvements on the Leased Property which further the statutory purposes of Park Board and are within the provisions of this Agreement, and that all such expenditures shall be directed toward activities or improvements on or about the Leased Property.

Moody Gardens will keep all books and records in a manner acceptable to Park Board, and in accordance with generally accepted accounting principles except as may be herein expressly stated to the contrary.

6. Authority and Obligation of Moody Gardens.

Park Board hereby grants to Moody Gardens the following authority and powers in connection with the Lease and the Leased Property (the term "Leased Property" shall include all

contracts entered into after the effective date will be entered into at the most favorable or best prices and terms available with third parties competent to provide the quality goods and the required services, and shall secure any discount, commissions or rebates attainable as a result of such contracts.

(e) Moody Gardens will conduct all activities in connection with Moody Gardens Complex and this Agreement in a reasonable, safe, prudent and first class manner.

(f) To the extent not in conflict herewith, Moody Gardens shall have the power and authority to perform any and all other acts not specifically prohibited herein, for the proper operation and maintenance of Moody Gardens Complex to the extent legally permissible. However, notwithstanding any language herein to the contrary, Park Board is not delegating any governmental authority to Moody Gardens, and Moody Gardens agrees to abide by all such rules, regulations and restrictions as Park Board shall from time to time prescribe.

(g) Moody Gardens agrees not to enter into any contract or incur any debt in excess of \$1,000,000.00 without first securing the approval of Park Board, which approval shall not be unreasonably withheld and shall be granted or denied within a reasonable time.

(h) Moody Gardens does hereby agree that the Executive Director of Park Board or a member of the Board of Trustees of Park Board, as determined by Park Board, shall be an ex officio voting member of the Board of Directors of Moody Gardens from the

ed. note: Unusually

Moody ~~softly~~ acknowledges that no  
taxpaying hotel can make a profit  
competing with his tax-exempt  
commercial hotel ~~operation~~ <sup>development</sup>  
~~developed~~ at Moody Gardens.



improvements constructed thereon), and Moody Gardens does hereby further agree to assume the following duties and obligations from and after the effective date hereof:

(a) Moody Gardens agrees to promote and advertise the availability of Moody Gardens Complex. All such promotions and advertisements shall be such as would be considered in good taste by persons of ordinary sensibility. Moody Gardens agrees not to utilize the name or logo of the Park Board or the City of Galveston without the prior written consent of the respective parties.

(b) Moody Gardens is hereby granted the authority to collect fees, including but not limited to concession and admission fees, rents or other sums due or to become due and give receipts therefor.

(c) Moody Gardens shall have the authority to hire, discharge, and direct all details of the work and supervise all labor and employees required for operation and maintenance of the premises, it being agreed that for all purposes all such agents or employees shall be employees of Moody Gardens and not employees of the Park Board..

(d) Moody Gardens shall contract for electricity, gas, fuel, water, telephone, window cleaning, trash or rubbish hauling, landscape maintenance, janitor or maid service, and to generally contract for all goods and services which may be necessary for the operation and maintenance of the Moody Gardens Complex. Moody Gardens agrees that all purchase and service

effective date of this Agreement until termination of this Agreement.

7. Insurance.

(a) Moody Gardens shall obtain and at all times keep in force insurance in a form, and with an insurer, or insurers, reasonably acceptable to Park Board, insuring and protecting Park Board, its trustees, officers, agents and employees, the City of Galveston, its councilmen, officers, agents and employees, and Moody, its trustees, officers, agents and employees against liability from any and all claims for injury or damages to persons or property, including injuries resulting in death, arising from the operation of the business of Moody Gardens on the premises, or from the acts or omissions of Moody Gardens, its agents, servants, invitees and employees in connection therewith, or from any defective or unsafe condition of the premises included in this Agreement, or of any apparatus, equipment or other property of Moody Gardens upon the premises. Subject to the following provisions, such insurance shall be in a minimum amount of \$4,000,000.00, combined single limit coverage, and shall insure against all risks. Park Board reserves the right to require Moody Gardens at any time to increase the amount of such insurance coverage in the event that Park Board's underlying liability coverage insurer requires such increase. Park Board and the City of Galveston shall be named as additional insureds on such policies and Moody Gardens shall furnish Park Board and the City of Galveston with certificates of insurance evidencing

such insurance to be in effect, and providing Park Board and the City of Galveston with thirty (30) days prior written notice of cancellation, amendment, termination or intention not to renew. Moody Gardens agrees at all times to carry statutory worker's compensation insurance. Moody Gardens agrees to keep a copy of the insurance policy or policies on file with the Park Board. In addition, at all times hereunder that alcoholic beverages are served on the premises, Moody Gardens shall maintain in full force and effect a liquor liability policy in a minimum amount of \$1,000,000.00, or more if required as herein specified. All other provisions herein regarding insurance shall apply to such liquor liability policy.

(b) In addition to the insurance described in (a) above, Moody Gardens and Park Board shall enter into an escrow agreement with a national banking institution selected by Moody Gardens and approved by Park Board providing for \$2,100,000.00 in cash to be supplied by Moody Gardens and held in a special escrow account at said national bank, ("the \$2,100,000.00 Insurance and Operating Expense Escrow") which account will constitute an Escrow Fund, providing for \$2,100,000.00 towards (i) the payment, compromise, settlement or discharge of any claim, suit or judgment against Moody Gardens, Moody or the Park Board in excess of the coverage amounts of the insurance described in (a) above and (ii) the payment of any unpaid claims or expenses, or from the failure or inability of Moody Gardens to fully perform its obligations hereunder to pay the operational and/or contractual

claims or expenses of the operation or construction of the Moody Gardens Complex. No funds shall be paid from the principal of the \$2,100,000.00 Insurance and Operating Expense Escrow without the prior written approval of the Park Board. Interest earned on the \$2,100,000.00 Insurance and Operating Expense Escrow may be paid to Moody Gardens and may be used by it in accordance with the terms and conditions of its Grant Contract and Expenditure Responsibility Agreement with Moody. The \$2,100,000.00 Insurance and Operating Expense Escrow shall be in addition to the \$2,000,000.00 Standby Escrow described in (c) below.

(c) At any time during the term of this Agreement, in the event that Moody Gardens secures less than \$4,000,000.00 combined single limit public liability coverage in accordance with the foregoing, (or less than the amount any increased coverage required by Park Board), because it is unable or unwilling to secure the entire \$4,000,000.00 combined single limit coverage (or such increased amount required by Park Board), or is unable to secure the \$1,000,000.00 liquor liability policy (or such increased amount required by Park Board), Park Board and Moody Gardens shall enter into an escrow agreement with a national banking institution selected by Moody Gardens and approved by Park Board providing for an amount not to exceed \$2,000,000.00 in cash to be supplied by Moody Gardens, or such lesser amount as may be sufficient, when combined with the amount of acceptable insurance coverage then in effect which complies with the liability, to bring

the total coverage up to the required amount. Said money shall be held in a special escrow account at said national bank (the \$2,000,000.00 Standby Escrow) which account will constitute an escrow fund, providing for such escrow fund to be expended towards the payment, compromise, settlement or discharge of any claim, suit or judgment against Moody Gardens, Moody or Park Board, in excess of the coverage amounts of the insurance described in (a) above. No funds shall be paid from the principal of the \$2,000,000.00 Standby Escrow without the prior written approval of Park Board. Interest earned on the \$2,000,000.00 Standby Escrow may be paid to Moody Gardens and may be used by Moody Gardens in accordance with the terms and conditions of its Grant Contract and Expenditure Responsibility Agreement with Moody. The \$2,000,000.00 Standby Escrow shall be separate from and in addition to the \$2,100,000.00 Insurance and Operating Expense Escrow described in (b) above.

(d) Failure to obtain the required insurance, or at any time to keep in force the \$2,100,000.00 Insurance and Operating Expense Escrow or the \$2,000,000.00 Standby Escrow (when and if required) may be the basis, at the option of the Park Board, for immediate termination of this Agreement in its entirety and all further rights of Moody Gardens hereunder. Moody Gardens agrees at all times to comply with all requirements of any insurance underwriters of Park Board.

(e) Moody Gardens agrees to keep all improvements and all equipment or other items located or placed on the premises

fully insured for all casualty losses in such form and amount, and with such insurer or insurers as shall be reasonably acceptable to Park Board. Park Board shall be named as an additional loss payee. Moody Gardens shall keep a current copy of the insurance policy or policies on file with Park Board with a certificate of insurance providing thirty (30) days prior written notice of cancellation, amendment, termination or intention not to renew. Failure to obtain or keep in force this insurance shall be grounds, at the option of Park Board, for immediate termination of this Agreement and all further rights of Moody Gardens hereunder. To the extent legally permissible, during the term of this Agreement, Park Board designates Moody Gardens as the agent of Park Board for the limited purpose of negotiating a proposed settlement or compromise of claims against property or casualty insurance companies providing the insurance required under this paragraph, provided such claims are for damages to improvements, equipment or other items situated on or in the portion of the Lease assigned to Park Board under any of the Development Agreements, and further providing such insurance policies were paid for by Moody Gardens, Hope or Palm Beach as the case may be. The final approval of any proposed settlement or compromise must be approved by Park Board to be effective and Moody Gardens shall not be entitled to any commission or payment for acting as such agent, but shall be entitled to reimbursement of necessary and reasonable expenses arising therefrom.

(f) To the extent legally permissible, pursuant to the provisions of Paragraphs 7(e) above and 15(b) hereunder, in the event of a casualty loss, Park Board agrees to endorse all checks received (or turnover all funds received) to Moody Gardens from property or casualty companies for claims under policies covered by a contract of insurance paid for by Moody Gardens.

8. Expenses of Moody Gardens.

In consideration of Park Board's agreements herein, Moody Gardens further covenants and agrees (a) to underwrite the Moody Gardens Complex and the premises covered hereby, and all programs and activities which may be instituted by Moody Gardens on the Leased Property and (b) be responsible for and indemnify Park Board and the City of Galveston from and against any and all expenses or liabilities whatsoever of whatever kind or nature incurred, whether arising from or related to in any way or manner, directly or indirectly, the maintenance, management, operation, future capital expenditures, or any other activity of or related to Moody Gardens Complex and all portions of the premises hereinabove assigned or any condition of or on such premises, arising from any cause whatsoever. Moody Gardens shall, at its own expense, make the above described premises suitable for the above specified use, equip and maintain the same in a suitable and fit condition for such use, and obtain any and all licenses or permits required by law or regulation for the operating of said facility, and Park Board shall not bear any portion of the expense of constructing, equipping, maintaining or

operating the same or furnishing anything in connection therewith whatsoever. Moody Gardens additionally agrees to reimburse Park Board for any additional cost to Park Board of liability or other insurance incurred by virtue of Park Board insuring the premises and naming Moody Gardens and Moody as additional insureds on Park Board's own liability insurance policy, to the extent Park Board is able or required to accomplish same.

9. Termination.

Park Board or Moody may terminate this contract for any reason whatsoever upon twenty (20) days prior written notice to Moody, Moody Gardens and Park Board, as the case may be. Nothing contained herein shall prohibit Park Board from immediately terminating this Agreement in accordance with certain conditions contained in Paragraph 3 and Paragraph 7(d) herein. Moody Gardens may terminate this Agreement only in the event of a breach herein by Park Board after thirty (30) days prior written notice to Park Board by Moody Gardens of the alleged breach, with the right by Park Board to cure such breach within such thirty (30) day period without penalty or termination. After such termination by Park Board or Moody Gardens, Moody Gardens, or Moody, or Moody's designee as provided for in Paragraph 3 hereunder (depending upon which entity becomes the owner of the Moody Gardens Complex), shall be responsible in all respects for the Lease, in accordance with the terms of Paragraph 3 above, and Park Board shall be relieved from any further liability thereunder. In the event of termination by Moody, Moody shall be



responsible for the Lease but Moody's responsibility shall be limited solely to the amount of any unexpended grants to Moody Gardens; however, Moody Gardens shall be responsible in all respects and Park Board shall be relieved from any liability hereunder. However, in the event this Agreement is terminated or assigned to Moody or its designee by Park Board, Moody Gardens or Moody, or its designee, (as the case may be), shall be required to honor any and all scheduled events or reservations made prior to the date of termination. In the event of a termination by any party, if the Lease is conveyed to Moody (or its designee), Moody (or its designee as the case may be), shall be responsible for any liabilities or cash flow shortfall, which were incurred on or before the effective date of termination. In the event the Lease is conveyed to Moody Gardens, the liability of Moody for such shortfall shall be limited to the amount of any unexpended grants to Moody Gardens.

10. Funds from Moody.

In order to induce Park Board to enter into this Agreement, and to enable the performance of the charitable activities contemplated hereby, Moody agrees as follows:

(a) To grant up to \$4,100,000.00 to Moody Gardens for use as Escrow Funds for additional liability insurance and operating deficits. Of said \$4,100,000.00 amount, \$2,100,000.00 shall be granted prior to the effective date of this contract and shall be deposited, subject to an Escrow Agreement, with a national banking institution selected by Moody Gardens and approved by Park Board (the \$2,100,000.00 Insurance and Operating

Expense Escrow), such escrow being described in Paragraph 7(b) hereunder and \$2,000,000.00 of the amount described herein shall be granted only if required in accordance with Paragraph 7(c) above (the \$2,000,000.00 Standby Escrow). All income from any of the Escrow Funds described above may be payable to Moody Gardens and may be used by Moody Gardens in accordance with the terms and conditions of its Grant Contract and Expenditure Responsibility Agreement with Moody. Copies of said Escrow Agreements are attached hereto as Exhibits "K" and "L";

(b) To make grants to Moody Gardens in amounts of up to \$10,000,000.00 per year for three (3) consecutive years, commencing with the initial year of this Agreement, to be utilized by Moody Gardens to fund construction of improvements in the Moody Gardens Complex and the operational expenses of the Moody Gardens Complex. No restrictions shall be placed on said grants which would frustrate or prevent the performance of this Agreement or the fulfillment of the purpose of this Agreement. In addition, Moody is not prohibited from and, at its sole option, may make grants to Moody Gardens in amounts in excess of \$10,000,000.00 per year or for more than 3 years to be used for construction and improvements on the Moody Gardens Complex and operating expenses of the Moody Gardens Complex;

(c) To generally cooperate with Moody Gardens and Park Board in all other respects, in order that all parties hereto may attain the fulfillment of the purposes of this Agreement. However, Moody shall have no financial obligations,

responsibilities or liabilities hereunder other than the grants described above pertaining to (i) the \$2,100,000.00 Insurance and Operating Expense Escrow, (ii) the \$2,000,000.00 Standby Escrow, (iii) the grants up to \$10,000,000.00 per year for three (3) years for construction and operational expenses, and (iv) for such other reasonable sums as Moody may be liable under Paragraph 20, unless or until this Agreement or the Lease is assigned to Moody under Paragraph 3, above. Should the Lease be assigned to Moody's designee under Paragraph 3, Moody's financial obligations, responsibilities or liabilities shall be limited solely and only to the grants described above pertaining to (i), (ii), and (iii) above.

11. Title Restriction.

Moody Gardens acknowledges that the property the subject of the Lease is subject to certain conditions, reservations, restrictions and reserved easements. In addition, other restrictions, reservations, easements or encumbrances may affect the property. In addition the Lease contains various conditions, reservations and restrictions. Moody Gardens agrees to strictly comply with and abide by any and all such reservations, restrictions, easements or encumbrances, and further agrees to abide by all constitutional provisions, statutes, common-law, rules, regulations or ordinances, which may affect or govern the use of the property, or grant the public the right of ingress or egress thereover, or limit the use thereof. Moody Gardens accepts the premises subject to the foregoing. Moody Gardens

acknowledges that any violation of the provisions of the foregoing may result in the reversion of the property covered thereby to the City of Galveston or the United States, or the termination of the Lease.

12. No Partnership or Joint Venture.

It is further understood and agreed between the parties hereto that nothing herein contained shall be deemed, held or construed to make Park Board or Moody a partner, associate, joint venturer or agent, or to create any other similar relationship by and among Park Board, Moody Gardens or Moody, nor shall anything herein be construed to imply that the activities of Moody Gardens or Moody herein shall be construed or imputed to be the activities of Park Board, nor shall anything herein be construed to give Moody Gardens or Moody any authority to act on behalf of Park Board except as herein expressly stated, and in no manner will Park Board be liable for any debts, expenses or actions of Moody Gardens or Moody whatsoever, and Moody Gardens agrees not to expressly or impliedly, by act or omission, lead any third party or the general public to believe that Moody Gardens has any authority to act on behalf of Park Board or Moody or that any relationship exists between Park Board, Moody and Moody Gardens, except as herein expressly stated.

13. Notice to Contractors.

(a) In all agreements which Moody Gardens enters into for the construction of improvements on the premises covered by this Agreement, or equipping thereof or in connection with the

development, operation or maintenance thereof, all such agreements shall contain language whereby such contractor, subcontractor, or any other supplier of goods or services, is advised and acknowledges by its signature thereto that in no manner shall Park Board or the City of Galveston or Moody be liable for any expenses of whatever nature, incurred directly or indirectly in the construction of improvements or equipping or development, operating or maintenance of Moody Gardens Complex or any other activities on the premises, and that all persons incurring such expenses or providing goods or services shall look solely to Moody Gardens for payment thereof. The language to be inserted in all such contracts shall be approved by the attorney for Park Board or where applicable, the attorney for Moody.

(b) Each agreement entered into by Moody Gardens for the construction of improvements on the Leased Premises, the equipping thereof, or in connection with the development, operation, or maintenance thereof shall require the contractor to provide such insurance coverage as Moody Gardens shall deem appropriate, but not less than a commercially reasonable amount. Park Board, the City of Galveston, and where applicable, Moody, shall be named as additional insureds on such policies and Moody Gardens shall furnish Park Board, the City of Galveston and Moody with copies of such policies and with certificates of insurance evidencing such insurance to be in effect, and providing Park Board, the City of Galveston and, if applicable, Moody with 30

days prior written notice of cancellation, amendment, termination or intention not to renew.

14. Expenses and Permits.

Moody Gardens shall, at its own expense, make the above described premises suitable for the above specified use, do any necessary construction, and equip and maintain the same in a suitable and fit condition for such use, and obtain any and all licenses or permits required by law or regulation for the operating of said facility, and Park Board shall not bear any portion of expense of constructing, equipping, maintaining or operating the same or furnishing anything in connection therewith.

15. Destruction.

In the event the improvements on premises are damaged or destroyed by any casualty, Moody Gardens shall repair or restore such improvements promptly unless within ninety (90) days after the damage or destruction, Moody Gardens shall in writing notify Park Board that it has elected not to reconstruct the improvements and Park Board shall have the following options which shall not be mutually exclusive:

(a) Park Board may terminate this Agreement immediately by advising Moody and Moody Gardens in writing in accordance with Paragraph 3, above;

(b) To the extent legally permissible, Moody Gardens may receive all insurance proceeds paid under property or casualty insurance policies paid for by Moody Gardens. All such

proceeds received by Moody Gardens must be utilized by Moody Gardens to construct improvements or conduct operations in accordance with the terms of this Agreement. Park Board may make additional funds available to Moody Gardens, to the extent funds are received by Park Board from third parties. Park Board shall designate the uses of such funds.

(c) Park Board may require Moody Gardens to remove any damaged improvements from the premises, and any trash or debris, as Park Board shall direct, at Moody Gardens' expense, or Park Board may do such demolition cleanup as may be reasonably necessary, and be fully reimbursed for any and all expenses associated therewith from Moody Gardens.

16. Indemnification.

(a) Moody Gardens agrees to INDEMNIFY and HOLD HARMLESS the City of Galveston and Park Board, its Trustees, officers, agents and employees, from any liability in any manner arising out of any unpaid claim from any unpaid workmen, mechanics, materialmen, contractors, subcontractors, suppliers, artisans, employees of Moody Gardens, or any similar claim, of any nature, including any reasonable attorneys' fees or other costs and reasonable expenses incurred by the Park Board (and not reimbursed under any valid contract of insurance) in investigating, defending, settling or discharging any judgment, arising out of any such claim.

(b) Moody Gardens shall INDEMNIFY and HOLD HARMLESS Park Board, its Trustees, officers, agents and employees, the

City of Galveston, its agents and employees, against all costs and expenses, including reasonable attorneys' fees and costs of investigation and defense, as well as legal liability, (but excluding any amount reimbursed to Park Board, or paid directly on behalf of Park Board, by any valid contract of insurance) whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to persons or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of Moody Gardens, its agents, invitees, servants and employees upon the premises, or arising or resulting from any defective or unsafe condition of the premises included in this Agreement, or of any apparatus, equipment or other property of Moody Gardens upon the premises, or in any other manner arising out of Moody Gardens' use or occupation of the premises. Any language to the contrary notwithstanding, the covenants and agreements contained in this Paragraph 16(a) and (b) shall survive the termination or expiration of this Agreement for whatever cause. In addition, the covenants and agreements contained in this paragraph shall be valid and enforceable regardless of whether Park Board or its Trustees, officers, agents or employees shall have been negligent or whether Park Board was in any manner responsible for the negligent or wrongful act or omission or the defective or unsafe condition which may have caused the injury or claim, except for claims proximately caused by the gross negligence or sole negligence of Park Board.



17. Lawful Operation.

(a) Moody Gardens in the conduct of its business and activities hereunder, and occupancy of the premises, (i) shall comply with any and all applicable laws, rules, ordinances, enactments and lawful regulations of the United States and agencies thereof, and of the State of Texas and agencies thereof, and of the City and County of Galveston, and all agencies thereof, and all political subdivisions of the foregoing, (ii) shall be responsible for securing any and all necessary permits, licensing and approvals required in regard to any contemplated activity on the Leased Property, (iii) shall not create nor allow to be created or to exist upon the premises any nuisance, nor shall it allow the conduct of any activity which would admit such loud and offensive noises as to constitute a nuisance, and (iv) shall not permit or suffer any offensive use of the premises, or the commission of waste thereon, and shall not remove sand, gravel or kindred substances from the ground or substantially change the contour or condition of the premises unless approval is first obtained from Park Board, which approval shall not be unreasonably withheld.

(b) Moody Gardens acknowledges that the right is hereby reserved to Park Board, and the City of Galveston, Texas, its officers, agents and employees, to enter upon the premises at any reasonable time for inspection and for any purpose necessary or convenient in connection with the lawful work of such governmental entities, to remove therefrom debris, improvements

or other materials required or necessary for such work, and Moody Gardens shall have no claim for damages of any character on account thereof against Park Board or the City of Galveston, Texas, or any officer, agent or employee thereof.

18. Taxes.

Moody Gardens agrees that any and all taxes and assessments which may be lawfully imposed by any political entity upon the property or business of Moody Gardens or the Moody Gardens Complex shall be paid by Moody Gardens prior to delinquency. Moody Gardens shall be the sole arbiter for contesting the assessed valuation of the property or business, and of the amount of such taxes or assessments. Nothing contained in this paragraph shall ever be interpreted as an admission by Moody Gardens that any property or business of Moody Gardens or the Moody Gardens Complex is not exempt from all taxes and assessments.

19. No Representations.

Moody Gardens agrees that Park Board has made no representations as to the feasibility, suitability or possibility of Moody Gardens constructing, developing or operating Moody Gardens Complex or any other activities on the premises, and Moody Gardens has examined the property and undertakes this Agreement with the property "AS IS" and "WITH ALL FAULTS", and agrees that any expenditures made by Moody Gardens are made at its own risk.

20. Attorneys' Fees.

As additional consideration for the execution of this Agreement, Moody Gardens and Moody agree to pay all reasonable attorneys' fees incurred by Park Board in any manner in connection with the preparation of this Agreement and any amendments or addendums thereto, any negotiations associated therewith, securing all necessary approvals therefor, and Moody Gardens further agrees to pay all reasonable attorneys' fees incurred by Park Board in enforcing any provisions hereof, and any disputes or questions regarding this Agreement unless the matter has resulted in litigation and Moody Gardens prevails. Park Board agrees to require its attorneys to provide such detail of services rendered and expenses as Moody customarily requires of its attorneys prior to forwarding same to Moody for payment.

21. Title to Property.

Title to any equipment and improvements placed by or on behalf of Moody Gardens upon the premises shall at all times be in Park Board, subject to the possibilities of reverter to Moody Gardens and assignment to Moody or its designee, as specified above, provided, however, that in no event shall title to animals whatsoever which may ever be placed, situated or travel over the premises, or any part thereof, ever be held in the name of Park Board, and Park Board shall not be deemed to have any beneficial interest therein, nor shall Park Board ever be deemed to have any association or responsibility in any manner related to any animals which may ever be located in or about the premises. Park

Board agrees not to remove any equipment from the premises which has been paid for by Moody Gardens, Hope, Palm Beach or Moody, without the prior consent of Moody Gardens.

22. Non-Liability.

No member of the Board of Trustees of Moody, no member of the Board of Trustees of Park Board, no member of the Board of Directors of Moody Gardens, and no member of the City Council of the City of Galveston, Texas, and no officer, agent or employee of the parties hereto shall be charged personally or held individually contractual liable by or to the other party under any term or provision of this Agreement, or of any supplement, modification or amendment to this Agreement, because of any breach thereof, or because of his or their execution or attempted execution of same.

23. Personnel.

Any and all employees and agents of Moody Gardens shall not for any purpose be considered the employees of Park Board. Any persons working in or about the premises who are not actually on the payroll of Park Board shall either be independent contractors of Moody Gardens, or shall be employees of Moody Gardens and in which case Moody Gardens shall have the authority to hire, discharge, direct all details of the work and supervise all labor and employees required for operation and maintenance of the premises.

24. Notices.

All notices, consents and approvals to be given by the parties hereto shall be sent in writing, and shall be deemed sufficiently given when same is deposited in the United States mail, sufficient postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the following respective addresses, or to such other address as may be from time to time be designated by any party hereto in a written notice given for that purpose:

Moody: The Moody Foundation  
2302 Postoffice  
Galveston, Texas 77550  
Attn: E. Douglas McLeod

Park Board: Park Board of Trustees of  
the City of Galveston  
2100 Seawall Boulevard  
Galveston, Texas 77550  
Attn: Donald L. Schattel

with a copy to: W. Daniel Vaughn  
McLeod, Alexander, Powel &  
Apffel  
802 Rosenberg, P.O. Box 629  
Galveston, Texas 77550

Moody Gardens: Moody Gardens, Inc.  
One Hope Boulevard  
Galveston, Texas 77550  
Attn: Ralph R. McPheeters

with a copy to: Irwin M. Herz, Jr.  
Greer, Herz & Adams  
One Moody Plaza, 14th Floor  
Galveston, Texas 77550

EXECUTED this 28th day of September, 1990 in multiple originals, each of which shall be considered an original

instrument and together which constitute one and the same Agreement.

ATTEST:

W. D. Miller

PARK BOARD OF TRUSTEES OF  
THE CITY OF GALVESTON

BY: Donell F. Schmitt  
Its: Executive Director

ATTEST:

Jack A. Garcia

HOODY GARDENS, INC.

BY: Robert R. White  
Its: PRESIDENT

ATTEST:

Jack A. Garcia

HOPE CHARITIES, INC.

BY: Robert R. White  
Its: PRESIDENT

ATTEST:

Jack A. Garcia

PALM BEACH AT HOODY GARDENS, INC.

BY: Robert R. White  
Its: PRESIDENT

ATTEST:

E. Douglas McLeod

THE HOODY FOUNDATION

BY: Passel Woods  
Its: TRUSTEE

The provisions of Paragraph 3 of this Agreement pertaining to the City of Galveston are hereby approved.

ATTEST:

\_\_\_\_\_

CITY OF GALVESTON, TEXAS

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT C





business to the defendants' Moody Hotel, but to preclude business from going to competing hotels, such as the plaintiffs. They have done this in different ways, which are discussed in depth below. More generally, the defendants have sought to use the tax exempt status of the Moody Foundation and Moody Gardens, Inc. in order to create a monopoly through which the for-profit/non-tax exempt defendants can improperly benefit.

3. The defendants wrongful conduct dates back to at least the fall of 1994 at which time the Moody Foundation sought permission from the Internal Revenue Service to operate a new, luxury hotel to be built adjacent to the Moody Gardens Convention & Conference Center without losing its tax-exempt status. Not only did the Foundation mischaracterize the true nature of Moody Gardens in its written request, but more importantly, since having received approval, the Foundation has acted completely inconsistent with the agency's private letter ruling. For example, despite having explicitly portrayed the Gardens' primary purpose as educational in its presentation to the Internal Revenue Service, the defendants now actively and predominantly market the luxury hotel and conference center, in tandem with the Gardens, for *commercial and tourist business*.

4. More critically, however, the defendants have apparently already engaged in illegal tying. Despite the fact that the Convention Center was intended to serve all Galveston businesses — including all of the island's hotels, of course — the defendants have required that in order to use the Convention Center, users also must stay at the Moodys' luxury hotel. In fact, even today, when callers dial the Convention Center's main telephone number, they are directed by the automatic phone menu to only *one* option for hotel accommodations — the defendants' Moody Hotel. In addition, the defendants not only jointly market their hotel with the Convention Center, but

apparently have gone so far as to prevent competitor hotels from placing their own advertising brochures in the Convention Center.

As a recent study prepared for the City of Galveston noted, "Convention Centers that serve the whole community are typically owned and operated by local government units who are independent of any particular hotel interest . . . . [W]ithout carefully negotiated control mechanisms, a community Convention Center operated by a hotel interest may not have reasonable incentives to serve the entire Galveston Convention Center market." The report concluded that "[s]eparation of control of the [Galveston convention] center and the hotel interests is an important goal." That goal has already been impeded here. The non-profit Moody organizations exercise conspicuous control over the Convention Center, while a host of Moody for-profit entities — such as defendant Gal-Tex Management Company, Inc., — lurk in the background waiting to capitalize in this market that has no competition. Gal-Tex, Inc. is a for-profit company that is already under contract to manage the hotel for a substantial fee. Gal-Tex is "owned" by the Libbie Shearn Moody Trust, the trustee of which is Moody National Bank. And the Chairman of the Board of Moody National Bank is defendant Robert L. Moody, Sr. The web is indeed an incestuous one.

5. Plaintiff Fertitta Hospitality, LLC, which owns and operates the San Luis Hotel and Conference Center, cannot successfully compete with the Moody Hotel as a result of its unfair and illegal monopolistic practices. The plaintiff, and competition generally, is harmed by such practices. Accordingly, this Court should act to restore and maintain a competitive, free market.

### JURISDICTION AND VENUE

6. This action arises under Sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. §§ 1 and 2) and the laws of the State of Texas. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1337 and the principles of pendant jurisdiction.

7. The unlawful activities hereinafter allegedly occurred in significant part in interstate commerce, and have substantial effects on interstate commerce. The Moody Gardens Convention & Conference Center attracts out-of-state visitors who seek overnight accommodations. Moreover, the conspiracy involved conduct that occurred in interstate commerce, including communications with the Internal Revenue Service in Washington D.C.

8. Venue is properly in the Southern District of Texas pursuant to 28 U.S.C. § 1391.

### THE PARTIES AND OTHER ENTITIES

9. Plaintiff Fertitta Hospitality, LLC ("Fertitta"), is a Texas limited liability company with its principal place of business in Galveston, Texas. It owns and operates the San Luis Hotel and Conference Center in the City of Galveston, Texas, which is a direct competitor of the Moody Hotel that is now under construction.

10. Defendant Moody Gardens, Inc. is a Texas non-profit corporation with its principal place of business in Galveston, Texas. Moody Gardens, Inc. has been served and has appeared herein. It is exempt from federal taxation pursuant to 501(c)(3) of the Internal Revenue code. Moody Gardens, Inc. was formed by The Moody Foundation in 1988, "(i) to operate a botanical gardens and park in Galveston, Texas on a racially nondiscriminatory basis, (ii) to lessen the burdens of government, (iii) to conduct educational programs and research regarding botanical

subjects, and (iv) to carry on other charitable, scientific, literary or educational activities . . . ." It is solely responsible for the construction, operation (including contracting for all goods and services), and maintenance of the Moody Gardens Park, which currently includes the Moody Gardens Convention & Conference Center, a "Rainforest Pyramid," a "3D IMAX" theater, restaurants, and the Moody Hotel, a 300-room hotel that is under construction.

11. Defendant, Robert L. Moody, Sr., ("Bobby Moody"), is a Texas resident and citizen. He is being named as a defendant in his individual capacity and as primary trustee for The Moody Foundation. Mr. Moody has been served and has appeared herein. Bobby Moody is the scion of the Moody family. He exercises dominion over the Moody family's various charitable and business enterprises primarily through his control of the Moody Foundation, where he is the principal trustee. (The two other trustees are his mother, who is nearing the age of ninety, and his son.) The Foundation was established in 1942 as a nonprofit trust and is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. The Foundation is classified as a "private foundation" under the Internal Revenue Code. A three member Board of Trustees — Bobby Moody, Frances Moody Newman and Ross R. Moody — governs the Moody Foundation. In 1983, the Foundation leased from the City for 40 years the property on which Moody Garden sits and on which the Moody Hotel will be built. In addition, Bobby Moody, with and through other family members, also owns or controls, directly or indirectly, a number of other entities that do business on a for-profit basis with Moody Gardens. Bobby Moody is the Chairman of American National Insurance Corporation ("ANICO"), the Chairman of the Board of Moody National Bank of Galveston, and an officer of Gal-Tex. (ANICO is a principal asset of both the Moody Foundation and the Libbie Shearn Moody Trust.)

12. Defendant Gal-Tex Management Company, Inc. ("Gal-Tex") is a for-profit Texas corporation with its principal place of business in Galveston. Gal-Tex has been served and has appeared herein. Gal-Tex owns several hotels and operates additional hotels. Pursuant to a written agreement, Gal-Tex assists Moody Gardens, Inc. with the management of Moody Gardens Park for a monthly fee of Twenty-Five Thousand Dollars (\$25,000). Gal-Tex will manage the Moody Hotel and pursuant to the parties' contract, the Gal-Tex fee will increase as a result.

### BACKGROUND FACTS

13. The Defendants' Improper Procurement of Tax-Exempt Status for the Moody Hotel. On September 23, 1994, Moody Gardens, Inc., the Moody Foundation, and the Park Board of Trustees of the City of Galveston, Texas, submitted a formal request for a private letter ruling ("the Request for Ruling" or "Request") to the Internal Revenue Service, asking for a determination that Moody Gardens, Inc. could operate the Moody Hotel without losing its tax-exempt status.<sup>1</sup> The Request for Ruling portrayed Moody Gardens Park as "a charitable and educational public park" used to "provide therapy and training for the disabled" and "various educational programs." Request at 3. For example, the Request emphasizes Moody Gardens therapy program — "Hippotherapy, a rehabilitative horseback riding therapy for disabled persons" — listing it first under the heading "Moody Gardens' Current Operations at the Park." Request at 9. In fact, upon information and belief, educational and therapy programs constitute a very small percentage of the Gardens' total business.

14. In their Request for Ruling, the defendants represented that:

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<sup>1</sup>A true and correct copy of the Request for Ruling is attached as Exhibit A.

- (1) "The Hotel is solely intended to be a convenience for the visitors to the Park, and *will be designed and operated to be ancillary to the exempt operations of the Park,*" and
- (2) "[I]t is expected that approximately 90 percent of the Hotel's guests will be participants in events at the Conference Center, and scientists, students, visitors, and other participants *involved in the charitable, educational, and scientific programs* available at the Park. To the extent that there is capacity at the Hotel exceeding such use, rooms will be made available to the general public."

Request at 14, 15 (emphasis added).

15. The defendants may well be correct in assuming that 90 percent of the hotel's guests will be conference center attendees. Indeed, it is just as likely that 90 percent of the conference center attendees will be guests at the hotel as a result of its tying and probable monopoly control. But what is particularly noteworthy is the defendants' deceitful claim as to the true nature of their operations and anticipated market. To the Internal Revenue Service, the Moodys speak of "exempt operations" and "scientific programs." To the public at large, however, they sing a distinctly different tune:

The luxurios [sic] hotel will feature a 15,000 square-foot ballroom, flexible meeting rooms, elegant and casual dining options, spas, workout facilities, an exotic pool with swim-up bar and a variety of other services to pamper guests.

"The Texas convention market is very competitive," said Edwina Fraley, marketing director at Moody Gardens. "Meeting planners for larger conventions are demanding host hotels to be adjacent to the meeting facilities for the convenience of their conference guests. Our new hotel, coupled with the Convention Center and our outstanding pyramid attractions, will provide visitors to Galveston Island a truly unique meeting or vacation experience."<sup>2</sup>

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<sup>2</sup>The quotes are excerpted portions of a press release available on the Moody Gardens web site on the Internet. <<http://www.moodygardens.com/News/hotel.html>>

(Incidentally, nothing could better demonstrate the hotel's actual intended market or the way in which the hotel is improperly tied to the "City's" Convention Center than the defendants' own marketing brochure, a copy of which is attached as Exhibit B. Of course, the defendants could not reveal to the Internal Revenue Service the hotel planners' true aim, lest they also reveal the glut of tourist hotels in Galveston; the 50 percent occupancy rate of Galveston hotels; and the fact that no feasibility study was done to justify the project.)

16. Defendants' Request for Ruling also failed to disclose the following relevant facts. Historically, the Moody Foundation has engaged in a regular practice of conditioning grants on the recipient's use of commercial companies that are owned (directly or indirectly) by the Moody family. That practice has *already* occurred here. As previously stated, Gal-Tex Management, Inc. has contracted to manage the hotel for a fee (which purportedly is in excess of market rates). Gal-Tex is a for-profit company that is owned by the Moodys.<sup>3</sup>

17. In addition, the defendants were able to gain approval from the Internal Revenue Service by representing that expenditures to construct the hotel would "qualify as a contribution to a political subdivision for *exclusively public purposes*." What the defendants did not tell the Internal Revenue Service is that defendant Bobby Moody in particular, as well as a host of Moody for-profit entities — such as the American Insurance Company, Moody National Bank and the 3R Trust — all stand to benefit uniquely, directly, and handsomely from construction of the hotel.

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<sup>3</sup>The Moody Foundation, which is a substantial contributor to Moody Gardens, has a 75 percent remainderman interest in the Libby Shearn Moody Trust, which, as previously noted, owns 100% of Gal-Tex. Additionally, upon information and belief, the proposed operation of the hotel by Gal-Tex likely constitutes self-dealing under Section 4941 of the Internal Revenue Code and Gal-Tex is not truly a "disqualified person" for tax purposes, as represented by the defendants in their Request.

18. The misrepresentations and failures to disclose by the defendants were material factors causing the IRS to issue the private letter ruling requested by Moody Gardens Inc., the Moody Foundation, and the Park Board. Like the Patent Office, the Internal Revenue Service is dependent on information provided to it by the applicant on an *ex parte* basis. But for the false statements made by the defendants to the IRS, the IRS could not and would not have ruled that the income that Moody Gardens, Inc. will earn from the Moody Hotel is tax exempt.<sup>4</sup>

19. The Defendants' Illegal and Anti-Competitive Conduct Since Their Procurement of Tax-Exempt Status. Subsequent to the issuance of the private letter ruling permitting the operation of the Moody Hotel on a tax-exempt basis, Moody Gardens Inc. and Gal-Tex have acted in a manner inconsistent with the private letter ruling. As previously mentioned, Moody Gardens, Inc. has not only marketed the hotel in direct competition with commercial hotels on Galveston Island, but it has done so in a way that is completely at odds with what it portrayed to the Internal Revenue Service.

20. But aside from tax issues, the defendants have engaged in precisely the sort of conduct that the anti-trust laws were meant to address and prevent. Specifically, the Moody Defendants have used their control of the Galveston Convention Center as a means of guaranteeing increased business at their hotel, while reducing the business at their competitors'.

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<sup>4</sup>In addition, on March 31, 1993, the City agreed, at the request of the Park Board, to divert a one-seventh, or approximately \$500,000/year, of the hotel occupancy tax paid by all hotels in the City to subsidize the Moody Hotel and Conference Center. This subsidy benefits only the defendants, since the Convention Center is not large enough to attract conventions of sufficient size to fill more than the Moody Hotel. This subsidy was not authorized or approved by the State of Texas and is beyond the property authority of the City.



21. There is no question that the defendants control the Galveston Convention Center. First, there is an agreement entered into by the Galveston Park Board and Moody Gardens, Inc. in which the city expressly delegated control of the Convention Center to the defendant. (A copy of the management contract is attached as Exhibit C.) Second, irrespective of the actual terms or intent of the management agreement, the practical reality is that the defendants exercise virtually unchecked dominion over operation of the Convention Center, at least with respect to advanced bookings. And just as the independent consultant's study warned, the effect of this arrangement in which the Moody Defendants — as opposed to the City of Galveston — control the Convention Center is that the defendants do not have "reasonable incentives to serve the entire Galveston Convention Center market." Indeed, the defendants have not only failed to serve the entire Galveston market, they have actively attempted to thwart it. A fact that is manifest by the following examples:

- On at least one occasion, the defendants have explicitly conditioned use of the Convention Center on users staying at the Moody Hotel. When the facts of this blatant and improper tying came to light, the defendants apologized to the plaintiff and to the Galveston Visitors & Convention Bureau and promised that it would not happen again. The only way to guarantee that it will not happen again, however, is for this Court to intercede.
- Even today, when potential users of the Convention Center call the Convention Center's main telephone number, the automated menu directs them to only *one* accommodation option — the Moody Hotel. This exclusionary practice engaged in by the defendants is inconsistent with the prevailing custom and practice in the industry.
- The defendants have not merely marketed the Convention Center in tandem with their hotel — giving the intentional and misleading impression to the public that the two are inextricably linked — but the defendants have actually

precluded competing hotels from placing their own advertising brochures in the "city's" Convention Center.

### COUNT I

#### Attempted Monopolization in Violation of Sherman Act § 2

22. Plaintiff incorporates by reference and realleges the allegations set forth in the preceding paragraphs.

23. The defendants have engaged in the following exclusionary conduct with the specific intent and effect of creating a dangerous probability of monopoly power in the Convention Center hotel market on Galveston Island:

- a. conditioning use of the city Convention Center on users staying at the Moody Hotel;
- b. directing potential users of the Convention Center who call to only one accommodation option — the Moody Hotel;
- c. engaging in marketing practices meant to induce the public to believe that the only available hotel accommodation for the Convention Center is the Moody Hotel;
- d. precluding competitor hotels from advertising or marketing at the Convention Center;
- e. providing misleading information to the IRS in order to gain tax-exempt status for the operation of the Moody Hotel; and
- f. misusing the tax-exempt status of Moody Gardens Inc. and the Moody Foundation to obtain an unfair and anti-competitive advantage for Gal-Tex in the Convention Center hotel market on Galveston Island.

24. In addition, in conjunction with fraudulently obtaining tax-exempt status for the hotel, the defendants have acted to cause the following illegal events in an effort to achieve monopoly power:

- a. *Violation of Tex. Rev. Stat. Ann. art. 717k-2:* In converting a loan of \$400,000 made to the City of Galveston by the Moody Foundation into a conditional grant, the defendants improperly secured for themselves the possibility of receiving accrued interest in excess of the statutorily-allowed maximum rate. (The conditions of the grant relate explicitly to the defendants' attempt to enhance the Moody Gardens Complex, which was part of their attempt to monopolize.)
- b. *Violation of Tex. Const. Art. XI, § 5:* As part of the illegal grant arrangement described above, the defendants required that proceeds from the Hotel Operating Tax (the HOT tax) be diverted until the year 2000. That deferral runs afoul of the constitutional prohibition on municipalities incurring debts or obligations that are not payable from current fiscal year revenues.
- c. *Violation of Tex. Tax Code § 351.001 et. seq.:* In receiving the HOT tax revenues, the defendants are benefitting and enriching *private*, for-profit entities, which is inconsistent with the explicit language of the Tax Code, which requires that only *public* purposes be served through HOT tax revenues.

25. Although the Moody Hotel has not yet started operation, there is a dangerous probability that the defendants will monopolize the Convention Center hotel market in Galveston to the exclusion of competition, including the plaintiff's San Luis Hotel, which currently competes in that market.

26. The foregoing conduct, both individually and collectively, constitutes an unlawful attempt to monopolize as well as a conspiracy to monopolize in violation of Sherman Act § 2.

27. As a result of the foregoing unlawful and anti-competitive conduct, plaintiff has suffered antitrust injury and injury to its business and property as well as irreparable injury.

## COUNT II

### Conspiracy to Restrain Trade in Violations of Sherman Act § 1

28. Plaintiff incorporates by reference and realleges the allegation set forth in the preceding paragraphs.

29. As a result of the conspiracy, Moody Gardens Inc. and Gal-Tex are now in a position to unfairly exploit their market power in the following respects, to the detriment of competition, consumers, and of competing hotels. Specifically:

- a. Moody Gardens Inc. and Gal-Tex are now in a position to tie — and indeed have already tied — use of the City-subsidized Moody Gardens Convention & Conference Center, which defendants control, to the use of the Moody Hotel, which defendants also control.
- b. Moody Gardens Inc. and Gal-Tex are now in a position to charge prices below cost (when the unlawful tax subsidy is not considered) and below the cost of more efficient rival hotels that must pay taxes.

30. The foregoing conduct, both individually and collectively, constitutes a violation of Sherman Act §1, 15 U.S.C. § 1.

31. As a result of defendants' unlawful and anti-competitive conduct, plaintiff has suffered antitrust injury and injury to its business and property and is threatened with continuing irreparable injury.

### COUNT III

#### Abuse of an Essential Facility in Violation of Sherman Act § 2

(Against Moody Gardens Inc.)

32. Plaintiff incorporates by reference and realleges the allegations set forth in the preceding paragraphs.

33. Moody Gardens Inc. controls the operation of a unique resource: the City of Galveston's official Convention Center (hereafter "the Convention Center").

34. There is no other comparable complex in Galveston. The Moody Gardens Convention & Conference Center was built as a result of the unique combination of circumstances, including its tax-exempt status, grants from the Moody Foundation, and special preferences from the City, which cannot now be reasonably duplicated.

35. In order to compete effectively in the Convention Center hotel market on Galveston Island, a hotel must have access on a non-discriminatory basis to the Convention Center.

36. With the construction of the Moody Hotel, Moody Gardens Inc. and Gal-Tex will control both the booking of the Convention Center and the booking of hotel rooms relating to the Convention Center. As a result, Moody Gardens Inc. and Gal-Tex will have a significant competitive advantage in the Convention Center hotel market in Galveston to the detriment of both competition and the plaintiff. And as previously described, the defendants have already abused that advantage in a variety of ways.

37. By constructing and operating a tax-exempt hotel on the grounds of the Moody Gardens Complex, and by engaging in the sort of improper, anti-competitive conduct that they already have, Moody Gardens Inc. and Gal-Tex have a dangerous probability of eliminating competition in the Convention Center hotel market in Galveston, Texas.

38. The foregoing conduct by Moody Gardens Inc. constitutes anti-competitive misuse of an essential facility and is a violation of Sherman Act § 2.

39. As a result of the foregoing unlawful and anti-competitive conduct, plaintiff has suffered antitrust injury and injury to its business and property as well as irreparable injury.

COUNT IV

Texas Antitrust Laws

40. The allegations contained in the preceding paragraphs are incorporated by reference and made a part hereof as if restated in full.

41. The foregoing conduct constitutes a conspiracy in restraint of trade and an attempt to monopolize in violation of Section 15.05 of the Texas Business and Commerce Code.

42. As a result of this violation of Texas law, plaintiff has suffered injury to its business and property and is threatened with continuing irreparable injury.

PRAYER FOR RELIEF

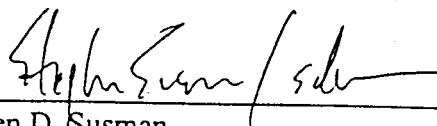
Wherefore, plaintiff prays:

- A. That the Court adjudge and decree that the defendants have violated the federal and state antitrust laws;
- B. That the defendants be perpetually enjoined and restrained from any of the following conduct:
1. Operating the Moody Hotel;
  2. Awarding any contracts relating to the Moody Hotel except by competitive bidding;
  3. Providing any incentive for users of the Convention Center to also use the Moody Hotel;
  4. Jointly marketing the Convention Center and the Moody Hotel;
  5. Precluding or unreasonably limiting marketing by competing hotels at the Convention Center;
  6. Failing to disclose in all marketing material that the Moody Hotel has no connection with the Convention Center and that other suitable hotels are located conveniently to the Convention Center;

7. Marketing the Moody Hotel to anyone other than non-profit groups;
  8. Marketing the Moody Hotel as a general purpose hotel;
  9. Booking more than 10 percent of the rooms at the Hotel at any one time for guests who are not participating in educational, charitable, or scientific programs at Moody Gardens; and
  10. For any and all injunctive relief not specifically requested but that the Court deems appropriate.
- C. That the Court award damages in favor of plaintiff against all the defendants in an amount to be determined at trial, trebled in accordance with the antitrust laws, plus interest;
- D. That in addition to treble damages, the Court award plaintiff the costs and disbursements of this action, including reasonable attorneys' fees; and
- E. That the Court retain jurisdiction for the purpose of enabling plaintiff to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of any orders made in this action, for the modification of any such orders, for the enforcement of compliance therewith and the punishment of any violations thereof.

Dated: October 16, 1997

Respectfully submitted,



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Stephen D. Susman  
State Bar No. 19521000  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002-5096  
Telephone: (713) 651-9366  
Fax: (713) 653-7897

Attorney-in-Charge for Fertitta Hospitality, LLC

EXHIBIT D



## A mix of charity and capitalism

By MICHAEL A. SMITH

The Daily News

**GALVESTON** — When Moody Foundation lawyers sought Internal Revenue Service permission to build a \$57-million hotel at Moody Gardens, they wrote a lot about charity.

The 100-page application is peppered with descriptions about how Hope Arena, aside from being a city convention center, would provide "various types of therapy for the disabled, including hippotherapy." And the application highlights such noble aims as the advancement of "health, science, education advancement and the diffusion of knowledge among the people of Texas."

But over the last 17 years, the facility has gone through a metamorphosis as dramatic and surprising as the one from caterpillar to butterfly.

Moody Gardens budgets show that those much-cited noble aims of education and therapy are dwarfed in comparison to more business-like endeavors of selling food, beverages and day passes to swim at Palm Beach.

And while all agree that Moody Gardens has evolved into a world-class facility, many

say that the facility has abandoned its original purpose and become a tax-exempt business enterprise.

Officials at Moody Gardens and the Moody Foundation, a \$700-million private charity that underwrites its expansion and operating losses, say all of the park's attractions have educational and charitable components.

But of the 1 million people who visited the park in 1996, only 300 went there for therapy at Hope Arena, according to a study done for the foundation. That same report states that only 56,000 of the 1 million visitors were students from Texas and Louisiana.

And while the treatment of most patients at Hope Therapy is underwritten, most also pay some portion of it through private or government health insurance, said Edwina Fraley, director of marketing at Moody Gardens.

And the school children who attend Moody Gardens also are required to pay, although less than other visitors, Fraley said.

Under a ticket price schedule published in March, students on educational trips to the park paid from \$4 each for an hour on the Colonel paddle-wheel boat to \$12 each for a package of any three attractions.

**EXHIBIT E**

# A tale of two hotels



▲ The University Hilton, built in 1969, has about 86 guest rooms. (Photo by Kevin Bartram)

## They share a mission, but similarities end there

By MICHAEL A. SMITH  
The Daily News

### **GALVESTON**

The Moody Foundation was allowed to build its hotel, in part, at least, because of its designation as "a teaching facility."

**GALVESTON** — A first-time visitor to the University of Houston's main campus must look closely to find the Hilton Hotel and Conference Center.

The squat building is dwarfed by almost every other structure on the sprawling campus.

The library, the University Center, the twin 18-story dormitory towers, the buildings housing colleges of humanities, fine arts and communication, engineering, natural sciences and mathematics, social sciences, law, education, architecture, optometry, pharmacy,

Third in a four-part series

## A Grand HOTEL



*Moody Gardens is a gift to the city of Galveston from its most prominent family and a monument to that family — its "footprint on this earth." But ot in the tourist industry say the tax-ex hotel will be a boot on their necks.*

**today:** We compare the Moody Htality Institute with the teaching hotel University of Houston.

**tomorrow:** What's going to h to Galveston's hotel industry when hotel rooms go online at Moody Gar

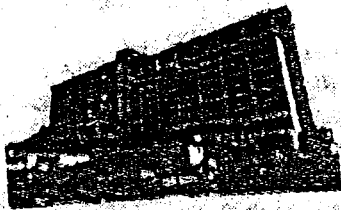


### University of Houston Hilton Hotel and Conference Center

Cost	\$4.5 million
Constructed	1969
Square feet	250,000*
Guest rooms	86
Room rate	\$70-\$100
Education	College degree

\* Includes classroom space and teaching facilities.

Features include a computer lab with 90 workstations for students to learn hotel industry reservations systems and a large food production lab. Graduates receive bachelor's or master's degrees from the University of Houston.



### Moody Gardens hotel

Cost	\$57 million
Constructed	In progress
Square feet	450,000
Guest rooms	304
Room rate	\$125
Education	Certificate

Guests will primarily be tourists visiting Galveston Island. Plans for features designed specifically for teaching are not clear. Students will be educated under the auspices of The Moody Hospitality Institute and Galveston College.

Daily News graphic/Ken Walker

Continued from Page A1

technology and even some of the maintenance sheds offer larger silhouettes.

And you have to look pretty closely to find similarities between the University Hilton and Moody Gardens Hotel, which is still more than a year from completion but already dominates its place on the Offatts Bayou skyline.

But there are similarities, and chief among them is a legal designation that allows both the university and the Moody Foundation, a \$700-million private charity, to be in the hotel business at all.

The same Internal Revenue Service codes that allow private charities to avoid paying income tax demand that they spend their money "exclusively for charitable, scientific and educational purposes."

"It's my opinion that the designation as a teaching facility was important to our getting IRS approval for the project" said Doug McLeod, the foundation's director of development.

"It would have been difficult without that designation."

And so a key thread in the tight weave of tax laws that allowed the foundation to build the hotel was its designation as an educational facility, just like the University Hilton.

In fact, when Moody Foundation tax lawyers sought IRS approval to build the hotel, they compared its programs to those at "Cornell, Florida State, Michigan State and other universities."

But aside from their legal status and the fact they bear the names of famous people, how alike are the two hotels?

#### The physical plant

Built in 1969 with a \$4.5-million endowment from the Conrad Hilton Foundation, the University Hilton contains about 250,000 square feet of "walking around" space, said Alan Stutts, dean of the Conrad Hilton College of Hotel Restaurant Management.

The hotel has 86 guest rooms, which list for about \$100 a night but usually rent for about \$70. The hotel stays about 70 percent full. Unlike a working hotel, much of the Hilton's 250,000 square feet are devoted to classroom and laboratory space, Stutts said.

For instance, the hotel has a large food production lab where students must study before they venture into its two working kitchens, Stutts said.

There is also a computer lab with workstations where students learn several different reservations systems in the hotel industry, Stutts said.

When the Moody Gardens hotel opens in December 1998, it will be the latest newest and arguably the best hotel on Galveston. It will also be walking distance from Moody Gardens attraction and The Galveston Island Convention Center at Moody Gardens.

The \$57-million hotel will have more guest rooms, more than three times as many as the University Hilton and more than the San Luis, the island's current largest with 243 rooms.

Those rooms will rent for about a night, McLeod said.

#### The guests

Most of the Hilton's guests are visiting scholars and people who have come to the university for academic conferences, Stutts said. People who come to give or hear a lecture or

latest advances in superconductivity search, for example.

"It's possible to reserve a room through Hilton's reservation system because we are a Hilton franchise," Stutts said. "We pay the fee to have the name, but we're not really large to be a working hotel."

Like the Hilton, the Moody Gardens hotel will draw most of its guests among people who were already familiar with the gardens, according to Stutts' application. But instead of att

lecture on robotics at the Cullen College of Engineering or a talk on glaucoma at the University of Houston College of Optometry, those folks will have come to take in a film at the IMAX theater or to take a swim at Palm Beach.

#### The students

At any given time, 800 students, or about nine per hotel guest room, are enrolled in the university's hospitality management program, Stutts said. Lectures for all of their major subjects are given in the hotel, along with all of the laboratory work related to hospitality courses.

The students are also required to spend time working in areas of the hotel that actually serve guests, he said. At the end of it all, the students can walk across a stage in caps and gowns and receive diplomas from the University of Houston.

"We offer everything from bachelor of science degrees to a master of hotel management, which is similar to an MBA," Stutts said.

About 3,000 students have graduated from the university program since it began in 1969, Stutts said.

Such details as how many students will be enrolled in programs at the Moody Hotel have not been worked out, McLeod said.

What is clear, is that the students will study under the auspices of both Galveston College and The Moody Hospitality Institute, he said.

Galveston College will develop all educational materials and curriculum and employ certified teaching staff, according to the program outline.

The college will also provide accreditation and "classroom space and culinary lab space necessary for the completion of these program efforts."

What students get is "short-term training in customer service and hospitality-related topics," and "intermediate term non-credit training and credit training for up to one full year" on a variety of topics.

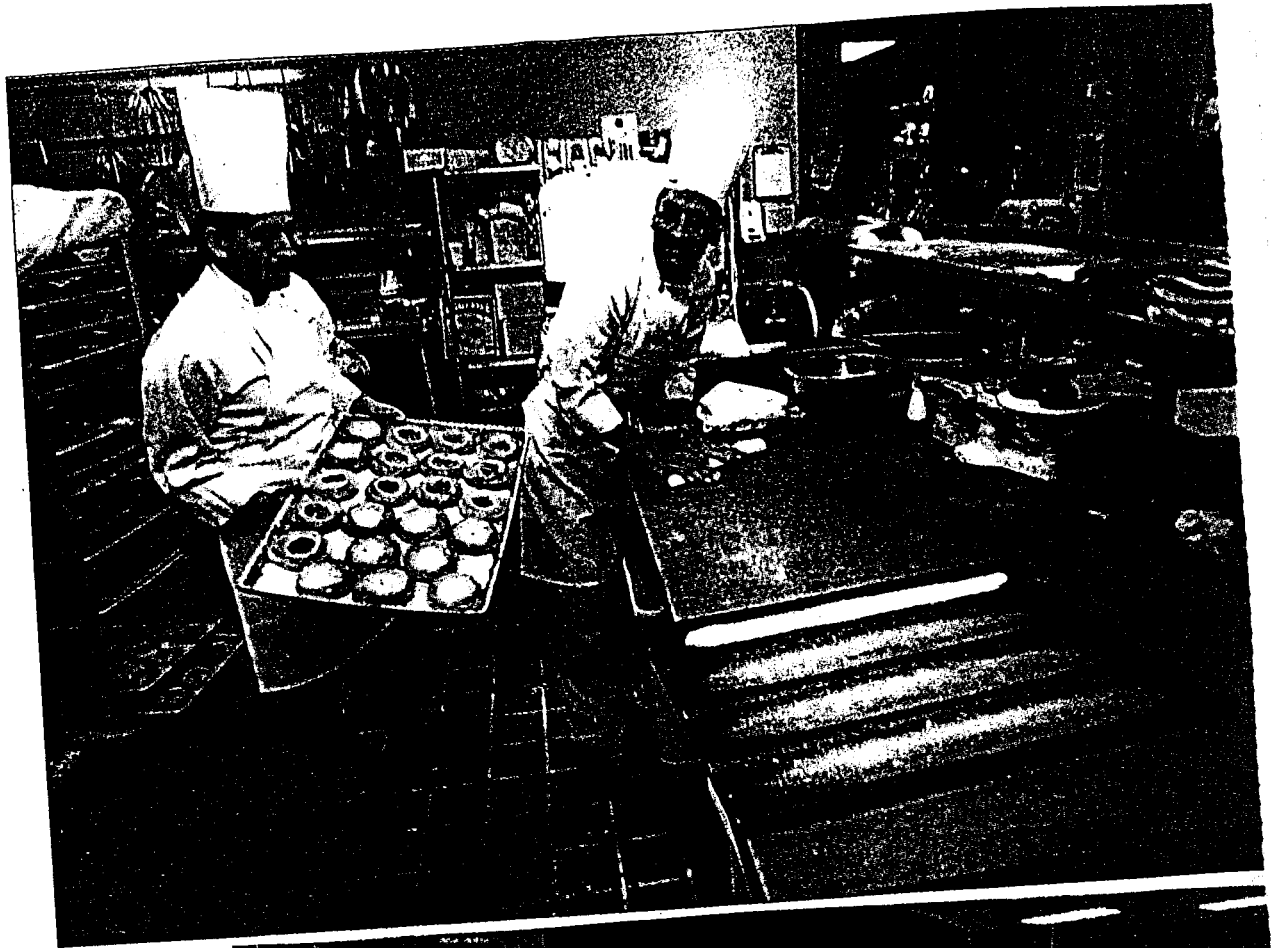
"They'll get classes on how to treat customers," McLeod said. "These programs will provide a badly needed service; there is a critical shortage of well-trained people for the hospitality industry on the island."

The most comprehensive program planned so far will offer students an associate's degree intended to "prepare mid-management and management level employees," according to the outline. But an associate's degree is generally not enough for most hotel chains, Stutts said.

"It's hard to say with complete certainty because it depends, in part, on the philosophy of the company," Stutts said. "Companies are going to have hourly positions for people with associate's degrees. But most are going to require at least a BA for management positions."

While Stutts and other academicians tout degrees, some in the industry say they are less beneficial than working in a well-run hotel.

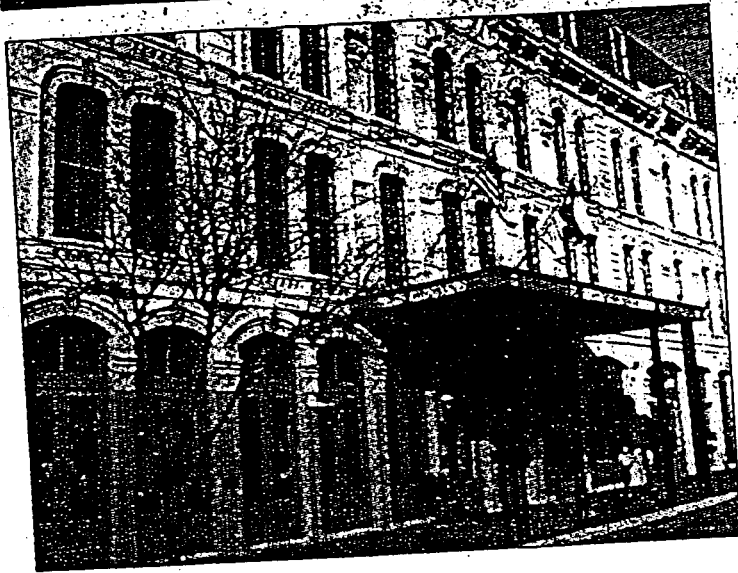
"There is no substitute for experience," said Don Hansen, executive director of the Texas Hotel & Motel Association. "I would never minimize the value of any degree, but the number of highly successful people in this industry who do not have degrees is absolutely legion."



▲ The University Hilton has two working kitchens to help train its hotel management students.

► Students fill one of the large lecture halls in the Hilton Hotel on the University of Houston campus during a restaurant-management class.  
(Photo by Kevin Bartram)

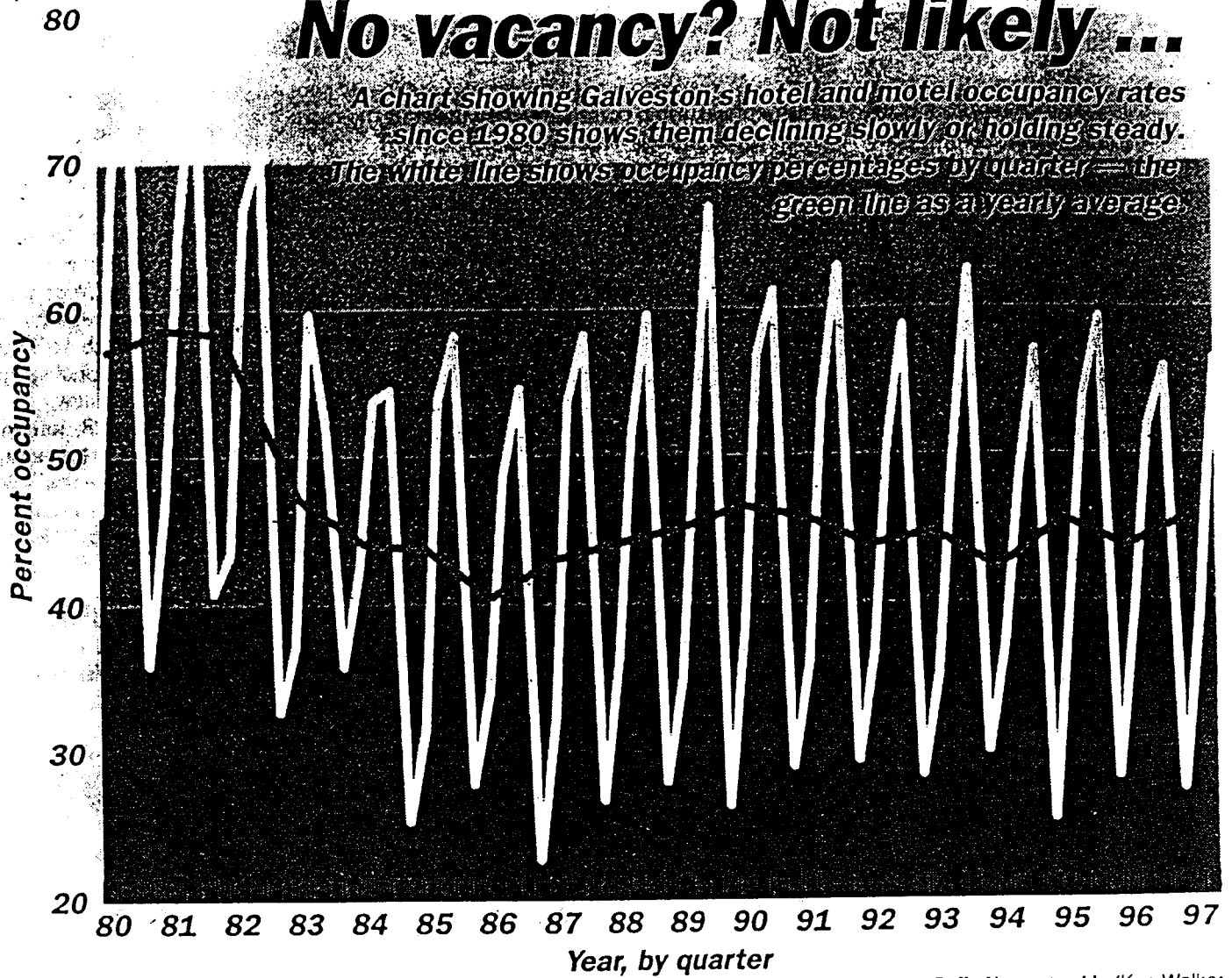




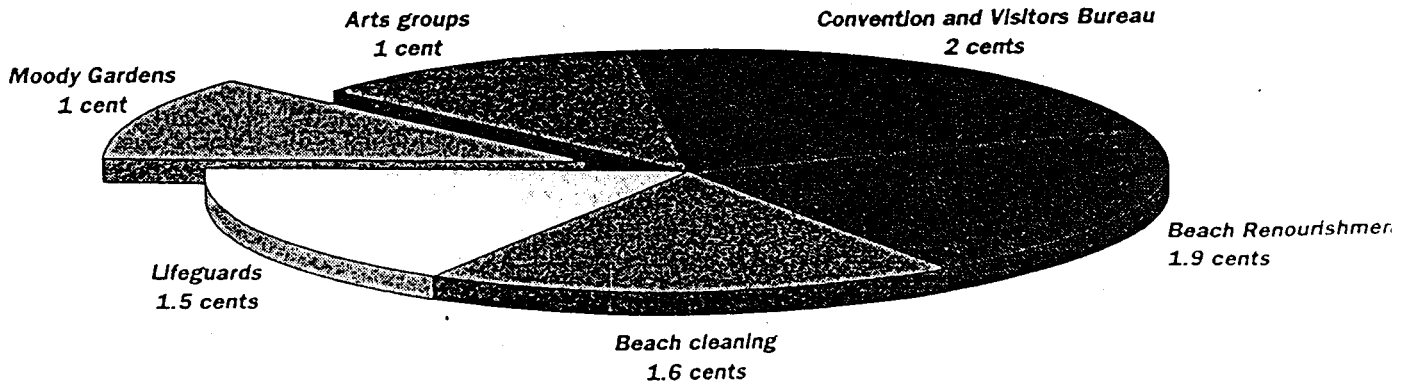
▲ The island's top hotels — including, clockwise from top left, the Hilton and San Luis, Hotel Galvez and the Tremont House — are expected to feel the pinch when the Moody Gardens hotel opens. (Photos by Kevin Bartram)

# No vacancy? Not likely ...

A chart showing Galveston's hotel and motel occupancy rates since 1980 shows them declining slowly or holding steady. The white line shows occupancy percentages by quarter — the green line as a yearly average.



Daily News graphic/Ken Walker



## Where hotel taxes go

Local hotel owners collect a 9 percent tax, which amounts to 9 cents on each dollar of the room price. State law mandates that two of those nine "pennies" be dedicated to beach maintenance. The seven remaining pennies can be used to fund local projects including tourism development, various arts groups and operations of the convention center at Moody Gardens, and beach. The chart shows how each of the nine pennies refunded to Galveston is allocated.



**EXHIBIT F**

# Where the money goes: The gardens' impact

## **GALVESTON**

By **MICHAEL A. SMITH**  
The Daily News

There are two key questions about Moody Gardens: How much money does it put into the local economy and how much does it make for the Moody family?

**GALVESTON** — About \$20 million moves through Moody Gardens annually, funding both its daily operations and expansion, but sharp disagreement exists about how much of the money makes it into the local economy.

And questions have been raised about how much of the money makes it into the pockets of the Moody family.

A focal point of those questions is the close relationship between the tax-exempt park and corporate entities controlled and influenced by Robert "Bobby" Moody.

### **Gal-Tex Management Co.**

Gal-Tex Management is a for-profit company that is 50-percent owned by the Moody Foundation, of which Robert Moody is one of three trustees.

In 1990, Moody Foundation, Moody Gardens Inc., the city and the park board agreed to have Gal-Tex manage the park for an annual fee of \$300,000 a year.


While some question the propriety of the close relationship, Moody representatives said there were sound economic reasons for it.

"The park lost a lot of money during the first

Last of a four-part series

Moody Gardens is a gift to the city of Galveston from its most prominent family — its footprint on this earth.

**A Grand HOTEL**



But others in the tourist industry say a tax-exempt hotel at the gardens will be a boot on their necks.

**today:** What's going to happen to Galveston's hotel industry when 300 rooms go on line at Moody Gardens?

few years of operation," said Doug McLeod, director of development for the Moody Foundation. "The foundation decided they needed to find the most frugal person they could to op-

### **Continued from Page A1**

erate the park, and that person was Gene Lucas."

Lucas, the president of Gal-Tex, has worked for Moody-owned companies for more than 50 years and also is a member of the park board.

Moody representative also say that the gardens are getting a good deal from Gal-Tex. They point to a report done by consultants from Atlanta, Ga., stating that \$300,000 a year is less than the going market rate for the amount of work Gal-Tex does.

### **Moody National Bank**

Robert Moody is chief executive officer, director and chairman of the board of Moody National Bank, which in 1997 performed more than \$150,000 in transactions with Moody Gardens, according to a vendor summary.

About \$10,000 of those were purchases of cashiers checks, said Moody Gardens Executive Director Mike Riley, and \$149,053 were deposits from the employee pension fund into the trust division of Moody National Bank.

### **Coyote Liquor**

Coyote Liquor is owned by the 3-R Trust, which was established by Robert Moody for the benefit of his children. In 1997, the company sold \$13,157 of goods to Moody Gardens.

While some have questioned the relationships like those among Coyote, Moody National Bank and Gal-Tex with the nonprofit Moody Gardens,

attorney Irwin M. "Buddy" Herz says the issue is a lot about nothing.

Herz said that the companies made little profit from their relationship with Moody Gardens and that none of it got back to Robert Moody.

"When you go one by one through all the gobbledygook and the facts which are blown out of proportion to mislead the public, you will see that these terrible things Moody Gardens was supposed to have

done were fully disclosed and in all instances done through fair, arm's-length contracts," Herz said.

Herz and others close to Moody Gardens say the real issue is how much money and how many jobs the park creates for the rest of the island.

### **Jobs for locals?**

In 1996, Moody Gardens created 819 jobs, which generated more than \$19 million in economic benefit, according to a

study commissioned by the Moody Foundation.

But trade unionists say only a fraction of the construction work in progress there goes to Galveston County residents.

And the foundation's own study shows that only a fraction of the millions spent by the gardens each year on such routine items as food and office supplies goes to local companies.

Moody Foundation officials say they've "bent over back-

## OUR VIEWS

## Moody Foundation's gift or rift?

## Provision should be kept to protect city

**The issue:**

Galveston Parks Board considers surrendering provision that allows city to transfer ownership of Moody Gardens.

**We suggest:**

Provision is important for both city and parks board.

**T**he Galveston Parks Board of Trustees ought not to surrender the give-back provision in its ownership agreement with the Moody Foundation on the Moody Gardens complex.

Now, this is so complicated that many might never try to decipher it. However, we think the issue is important in Galveston.

Let us begin simply by saying that the provision is an important protection for the parks board and the city.

The board should listen to the foundation's points and try to work out some agreement that satisfies the foundation's needs but retains this vitally important legal and financial protection.

**A tax-free gift**

A bit of background: Moody Gardens was given to the Galveston Parks Board of Trustees to allow it to operate tax-free.

As part of that "gift," the foundation agreed to two very important provisions. First, the foundation agreed to fund operating losses at the complex, and those losses have been sizable.

The foundation also agreed that the parks board

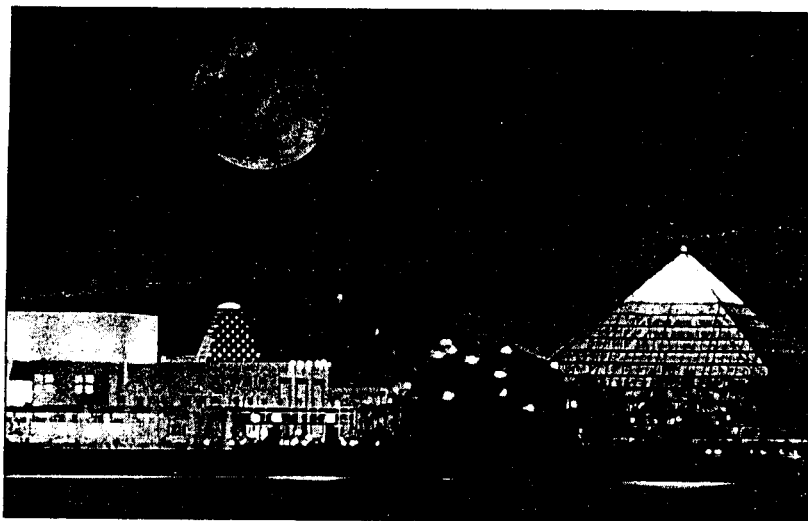
could simply give the complex back to the foundation with 20 days notice. That was important to protect the parks board and the city in the event that the foundation should choose to abandon the project. Incidentally, the foundation also may cancel its agreement with 20 days' notice.

Now, the foundation is asking the parks board to give up the give-back provision. Board members will discuss the issue on April 29.

Galveston attorney Irwin M. "Buddy" Herz, spokesman for the foundation, said the parks board no longer needs the give-back provision. Now, Herz argues, the provision leaves the foundation vulnerable to the whims of future boards.

Maybe. However, the parks board's role in all this is to protect the interests of the public, not just the foundation's.

Without the provision, foundation spokesmen like Herz would have the whip hand in all negotiations with the board. The foundation could walk away from the complex, leaving the parks board and thus the city of Galveston stuck with



▲ Moody Gardens

an enormous, unmanageable and money-losing enterprise.

The board's choice in that event would be either to shut down Moody Gardens or find some way to fund its losses. Actually, that may be no choice at all. If Moody Gardens is the city's only convention center, Galveston may be in the position of being unable to close it down, even if the city wanted to do that.

**Another money-losing gift**

That's not a good deal for the people, and it reminds us a bit too much of the Moody Civic Center. That edifice is another money-losing gift to the city. Financially, all of us would be better off without it. However, because of community politics, the city can't just close the old Seawall Boulevard facility.

Furthermore, without the

give-back provision, the parks board has no bargaining power. Such power may be necessary to mediate between Moody Gardens and other, private hotel and restaurant interests such as Tilman Fertitta. Fertitta filed suit recently against the Foundation, alleging it receives unfair city tax support.

**Need for provision**

Ironically, Herz and others associated with Moody Gardens have themselves reinforced the need for the give-back provision.

They have done that by threats to abandon the complex whenever challenged, as in the Fertitta suit.

Let us make a few things clear. First, Moody Gardens is a wonderful asset for Galveston. With its beaches, the rain-forest pyramid, convention center, the coming aquarium and hotel,

it adds much to the community.

Second, Moody Gardens has the right to expect a secure future and a predictable relationship with the parks board and the city.

The parks board might be able to resolve the foundation's concerns simply by tending the time period in the give-back provision. Now, the board could give the property back to the foundation in 20 days. Make that three months, even six months.

However, the board should never simply give the provision because it protects the interest of ordinary citizens.

● This editorial was written by Dolph Tillotson, editor and publisher of The Daily News. His email address is [dolph.tillotson@galvnews.com](mailto:dolph.tillotson@galvnews.com).

# Moody money



▲ Patients at Hope Therapy at Moody Gardens ride in the arena near the convention center. Moody Gardens has been the biggest beneficiary of Moody Foundation charitable gifts. (File photo)

## Most of foundation's giving is to groups run by its trustees

**GALVESTON**

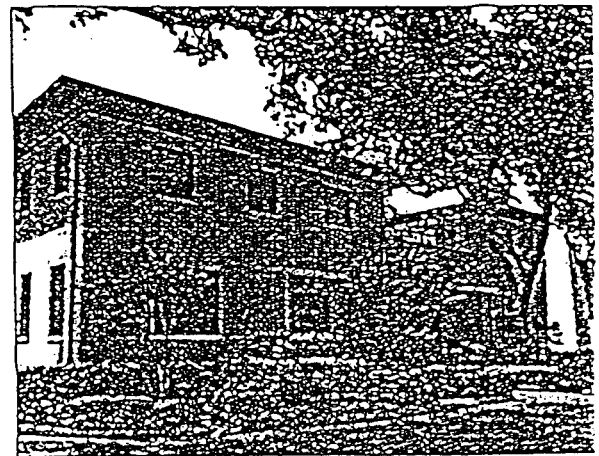
By MICHAEL A. SMITH  
The Daily News

If the Moody Foundation must freeze grants because it faces uncertain expenses, why continue funding its single largest expense?

**GALVESTON** — What has the Moody Foundation done for Galveston lately?

From 1991 to 1996, the 55-year-old foundation pumped \$256,146,718, a full 97 percent of its charitable giving, into operations on the island, according to annual reports and audited financial statements.

Organizations as diverse and worthy as Reedy Chapel A.M.E. Church, the AIDS Coalition of Coastal Texas, Lassie League Softball and the



SPCA benefited from foundation grants.

But a recent disclosure that the foundation has frozen grants until two controversial issues are resolved has some alleging it's using its charitable giving as a club to keep the Park Board of Trustees in line.

And still others complain that while it's true that more

▲ The Transitional Learning Community treats patients with head injuries and is one of the charities supported by the Moody Foundation. (Photo by David Doemland)

● See MOODY FUNDS/Page A12

## Moody funds

Continued from Page A1

than 90 percent of the foundation's outlay goes to Galveston projects, the bulk of that sum stays with organizations controlled by foundation trustees Robert "Bobby" Moody, Frances Moody Newman and Ross R. Moody.

What the numbers show is that from 1991 through 1996, the foundation's largest beneficiaries were Moody Gardens and the Transitional Learning Community, on whose boards Robert Moody serves.

Over that period the two entities received about \$233 million of the foundation's \$264 million in total commitments, while Galveston charitable organizations received just more than \$23 million.

That's a split of 88.38 percent for Moody Gardens and the TLC, almost 9 percent for other Galveston charities and about 3 percent for nonprofit groups around the state.

Each year, from 1991 through 1996, the foundation on average, committed more than 68 percent of its gifts to Moody Gardens and the TLC, while other Galveston charities received an average of 24 percent.

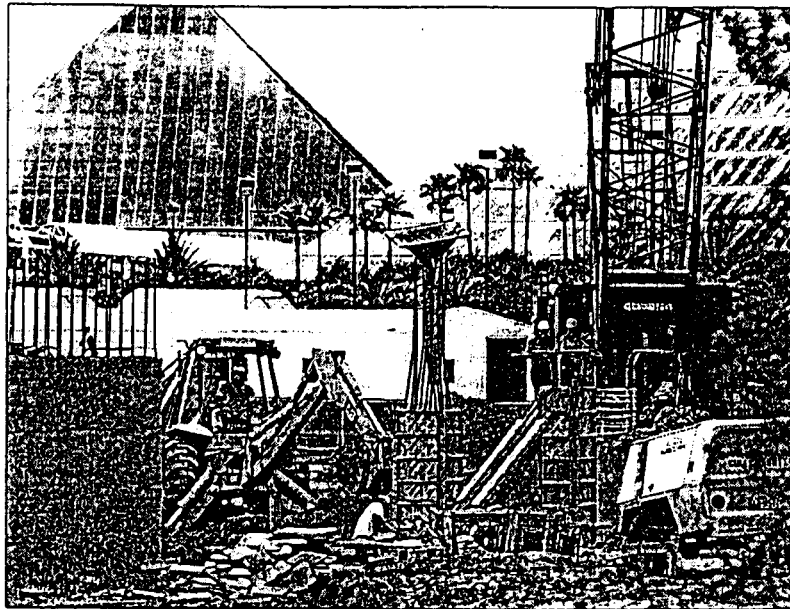
Commitments to those two organizations hit a six-year peak in 1996 when together they received more than \$153 million — more than 97 percent — of the foundation's commitments, while island-based charities got \$3.4 million in commitments and those in other Texas cities split up less than half a percent.

Moody Foundation Attorney Irwin M. "Buddy" Herz said the foundation had to defer allocating grants at least until its trustees meet on June 3.

He said trustees made the decision at their February meeting because a lawsuit and controversy over an agreement with the park board leaves the foundation unsure what its expenses will be.

Hotel owner Tilman Fertitta sued in November claiming a tax-subsidized hotel under construction at Moody Gardens has an unfair competitive advantage over its tax-paying neighbors.

In April, controversy erupted over a request by Moody Gardens Inc. to amend an agree-



◀ Construction crews work on the site of the hotel at Moody Gardens. Research shows that Moody Gardens was one of the Moody Foundation's biggest beneficiaries from 1991 to 1996. (Photo by David Doermland)

### Moody Foundation Commitments 1991 - 1996

● Total commitments 1991-1996 .....	\$264,061,064
● Total to Moody Gardens and Transitional Learning Community .....	\$233,387,137
● Total to other Galveston charities .....	\$23,073,359
● Percent to Moody Gardens and Transitional Learning Community .....	88.38%
● Percent to Galveston charities .....	8.74%
● Average annual commitment 1991-96 .....	\$44,010,177
● Annual average to Moody Gardens and Transitional Learning Community .....	\$38,897,856
● Annual average to Galveston charities .....	\$3,845,560
● Average annual percent to Moody Gardens and Transitional Learning Community .....	68.64%
● Average annual percent to Galveston charities .....	24%

Source: Annual reports and 1996 financial statement

ment that cedes ownership of the garden's facilities to the park board.

As the agreement is written, the board can give the facilities back to Moody Garden's Inc. for any reason with 20 days notice and Moody representatives want it changed so that it can't be returned without cause.

Herz said legal and consulting fees generated from Fertitta's lawsuit and a slate of concessions some park board trustees want in order to support amending the agreement make the foundation's future expenses uncertain.

And as legal and consulting

fees — which have reached about \$500,000 — mount, they begin cutting into the amount the foundation has to give each year, he said.

He said also, however, that Moody Gardens — the foundation's single biggest recipient will continue to be funded, which the begs the question:

If the foundation must freeze grants because it faces uncertain expenses, why continue funding the single largest expense?

Moody Foundation Director of Development Doug McLeod said it would be extremely expensive to halt the huge construction

project already under way at Moody Gardens.

"Moody Gardens has to be funded," McLeod said. "We have construction schedules and we have to be concerned about maintaining economy of scale."

Others, though, worry that aside from freezing charitable grants, the foundation is beginning to commit too much of its efforts to money-generating operations at Moody Gardens.

"I would hate to see them continue giving more and more to the gardens at the expense of real charitable organization," said Park Board Trustee Steve Greenberg.

# The big ten beneficiaries

The Moody Foundation's largest beneficiaries over the last six years have been Moody Gardens and the Transitional Learning Community, which received a combined \$233,049,102.

The top 10 also included the University of Texas Medical Branch at Galveston, Lone Star Performing Arts, Galveston College, the Moody Scholarship Program, Texas A&M University at Galveston, Harbourview Care Center, the Galveston Historical Foundation and the Lone Star Historical Drama Association.

"Whatever sparks the interest of one of the trustees is what gets funded," says Moody lawyer Irwin M. "Buddy" Herz.

**Moody Gardens**

**\$166,862,846**

**TLC**

**\$66,186,256**

**UTMB**

**\$9,958,816**

**Lone Star Performing Arts**

**\$2,775,000**

**Galveston College**

**\$2,179,414**

**Moody Scholarship Program**

**\$1,900,000**

**TAMUG**

**\$1,750,000**

**Harbourview Care Center**

**\$1,275,276**

**Galveston Historical Foundation**

**\$1,133,309**

**Lone Star Historical Drama Association**

**\$655,000**

**EXHIBIT G**

# City gets another offer of a gift it can't refuse

By JACK STENGLER  
The Daily News

**GALVESTON** — Once again the city has been made an offer it cannot refuse.

Through the Park Board of Trustees, the Moody Foundation has offered the city ownership of Palm Beach at Moody Gardens and of The Colonel, a paddlewheel vessel which for tax purposes has been operated as a museum.

The Colonel Museum Inc. operates the vessel, but the IRS has said that in order to maintain this status, more history must be presented in the operations and the moonlight cruise must be discontinued.

Reports from the operator indicate the moonlight cruise was going to be discontinued anyway, because it brought in only a small part of the revenue, and there are plans to share exhibits with the neighboring Elissa museum.

The park board has approved in concept taking over the two facilities, but final approval must come from the city, and an operating agreement must be first worked out with each facility.

The Colonel Museum Inc. is expected to continue operating the vessel, and Palm Beach at Moody Gardens Inc. would operate Palm Beach, should the city decide to accept them.

Palm Beach faces the possibility that its improvements and leasehold will be assessed for taxation by the Galveston Central Appraisal District.

Chief Appraiser Guy Emanis has said if the operation remains the same on Jan. 1, the CAD is prepared to set tax values on the leasehold and improvements.

However, if the facility goes under city ownership, or it is proved the Palm Beach facility should be tax exempt for some other reason, then it would not be placed on the tax rolls. The easiest escape is public ownership.

The Park Board of Trustees, in discussing these two offers, has come up with a new wrinkle to be included in operating agreements, not only for the two new Moody Foundation offers but also for the



City  
beat

but was given to the city.

The trustees think, correctly, that now is the time for these operating agreements to include some type of payment to the park board for the time its employees spend administering these gifts.

With the proliferation of these offers, handling the paperwork could require a significant expenditure by the park board.

It would be hard for the city to refuse to take these gifts, because of the sums of money the foundation has put into a host of city projects, and the favorite cry when a pet activity runs into funding difficulties is, "Let's send an application to the Moody Foundation."

However, the city, through acceptance of these gifts, also is doing a very important service for the foundation, because municipal ownership provides those who run the various facilities a wide latitude of operations not otherwise available.

Accordingly, the city should be compensated for providing these favors.

The bottom line here is that the City of Galveston is helping the Moody Foundation (Palm Beach) to better compete with the Racquet Club by letting the Moody Foundation (Palm Beach) have a broader scope of operations due to the City accepting ownership of Palm Beach!



# Foundation asks Park Board to operate Colonel, Palm Beach

By JACK STENGLER  
The Daily News

GALVESTON — The Moody Foundation has requested the Galveston Park Board of Trustees approve an expansion to Hope Arena, and assume operation of The Colonel paddlewheel vessel and Palm Beach.

Doug McLeod of the foundation and Donald Springer, a principal in the Houston architectural firm of Morris Architects, made these proposals at Wednesday's meeting of the Park Board's budget and audit committee and at a Park Board workshop.

Under rules of the Internal Revenue Service and an opinion by the Texas Attorney General the foundation could operate The Colonel only as a museum and cannot retain the commercial operation of Palm Beach.

"Neither of these facilities are on the tax rolls, so there would be nothing removed from city taxable properties," McLeod said.

"Under our (Moody Foundation) non-profit charter we cannot continue to operate these two facilities. These are classed as commercial operations," he said.

McLeod said the foundation proposes enlarging Hope Arena, now operated by the Park Board, with a \$10 million convention and

"Under our non-profit charter we cannot continue to operate these two facilities. These are classed as commercial operations."

Doug McLeod

conference center.

The expansion would be two stories with a total of 40,000 square feet.

Springer said the second floor would contain a 9,500 square foot conference and ballroom facility, which can be divided into nine separate rooms.

It also would have sky boxes with a 100-seat capacity, overlooking the areas area of the facility, and a balcony overlooking Moody Gardens and Palm Beach.

The first floor would include a 6,000 square foot banquet kitchen, and 6,000 square feet for exhibits.

The upstairs facilities would accommodate 1,050 people for a reception and 750 people for a sit-down dinner.

These proposals will be recom-

mended for acceptance by the Park Board, which is expected to take action at its Dec. 21 meeting.

A formal announcement of the proposed Hope Arena expansion, with architects' drawings, will be made in the near future.

In other business, the Marine Corps League asked the parks board to select a site at Seawolf Park for erection of a Vietnam veteran's monument.

The estimated cost of the memorial is \$100,000 and it is to contain the names of all county residents who were killed during the war.

McLeod said the memorial would not cost the Park Board any money, with the Moody Foundation to be asked to provide \$50,000 and the memorial committee to raise the remainder.

Don Schattel, executive director to the park board, reported the Galveston rail trolley system made a net profit of \$3,524.40 during the two-day Dickens' on The Strand earlier this month.

He said the revenues for Dec. 3 were \$3,448.50 and on Dec. 4 were \$1,611.50, or a total of \$5,060. Expenses were \$1,517.60.

# Moody to relinquish paddle-wheeler, beach

Action required to retain non-profit status

By Ken Lanterman

OF THE HOUSTON POST STAFF

GALVESTON — In an effort to enhance marketability and to prevent jeopardizing its non-profit status, the Moody Foundation has requested the Galveston Park Board of Trustees to assume ownership of the Colonel paddle-wheeler and Palm Beach at Moody Gardens.

Foundation officials learned this summer following an audit by the Internal Revenue Service that some of the money-making events conducted by the paddle-wheeler — its moonlight cruises, for example — put the foundation at risk of losing its non-profit status.

They also realized that the foundation's non-profit status prevented Palm Beach, the popular white sand beach on Offats Bayou, from participating in several co-promotional marketing ventures that would have resulted in the foundation receiving grants from private companies — most notably a \$500,000 grant from the Coca-Cola Co.

"We figured that with the entities in the park board's hands they would not be as restricted as we are in doing some of the things we'd like to do," said Doug McLeod, the foundation's director of development. "We feel it (the board) wouldn't be as inhibited as we are in generating the money the two

entities should be making."

The board approved assuming ownership of the beach and paddle-wheeler pending contract negotiations.

McLeod said that under the terms of the contract, the foundation would sign a management agreement with the board allowing it to continue operating the two ventures with the same personnel, and stipulations to reinvest profits in the paddle-wheeler and beach.

"It would be a similar situation we have with them with regard to Hope Arena," he said.

"Since we turned it over to them, the city has been able to use the arena for conventions, which we were not permitted to do."

McLeod said the IRS gave the foundation a clean bill of health in its audit but frowned on the moonlight cruises.

"They said they were too commercial," McLeod said.

Under the foundation's charter, the paddle-wheeler must promote the history of the area on all its cruises for the foundation to maintain its non-profit status.

The moonlight dinner cruises, which McLeod said generate the bulk of operational revenue for the ship, are purely commercial. The history lessons are set aside.

"We asked them (IRS auditors) what we should do and they suggested what we are doing now," McLeod said.

## Galveston County

# City takes over Colonel

By JACK STENGLER  
*The Daily News*

**GALVESTON** — The Galveston Park Board of Trustees accepted The Colonel, a replica of a Mississippi River paddlewheeler, Wednesday as a gift from The Colonel Museum Inc.

The vessel comes under the ownership of the city, through the Park Board, in an agreement between the museum organization and the Park Board.

The pact is for three years and Park Board Chairman Don Mafrige said the move should not result in any cost to the Park Board.

The Colonel will continue to be operated and managed by The Colonel Museum Inc.

The vote was not unanimous, however, with board member and attorney C.G. Dibrell III opposing entering into the agreement.

"I'm against the whole thing," Dibrell said.

Attorney Irwin Herz, attorney for the museum, has said The Colonel no longer can be operated as a museum if it continues to make evening or moonlight cruises.

Herz said the Internal Revenue Service has said that museums cannot do these things.

Under the city ownership, however, the operation can conduct the cruises, where Herz says the major income is derived, and retain its non-profit status.

"The Colonel has to continue to conduct the cruises for this is where the major portion of its income is derived, otherwise the Moody Foundation will have to subsidize it," Herz said.

Dibrell said he believes there are others who could operate the vessel and while the Park Board is in the business of attracting tourists to Galveston, it also has to make some profit for its operation.

"The Colonel has never made a profit and there is a slim chance that it will," Dibrell said.

Herz said the annual net loss of the operation has been reduced

from \$400,000 to \$114,000 in three years and there is some hope it will break even this year.

Dibrell said taking over the vessel puts the Park Board in a position of potential heavy liability should an accident occur, but the Park Board hinged acceptance on the operator getting an additional \$60 million of liability insurance coverage.

This would be added to its present \$40 million coverage.

Herz said this seems acceptable to him, but the foundation board will have final say.

Dibrell also was critical that under the agreement the Park Board has no management control over the vessel and its operation.

He added that it is ironic that the Park Board was asked to vote on the agreement Wednesday and the Moody Foundation board is expected to consider the Park Board request for a \$50,000 grant for 1989 Mardi Gras expenses Saturday.

Trustee Jim Yarbrough said The Colonel was never set up to make money and that the agreement provides \$300,000 in an escrow account to cover excess expenses.

# EXHIBIT V

**This document will demonstrate the incredible amount of havoc, grief, headache, heartache, and controversy that Congress has perpetrated on the citizens of Galveston, Texas, because of the lack of sensible tax laws which would bar a tax-exempt charity from operating a huge commercial business complex directly competing with local taxpaying businesses such as hotels, restaurants, and shops. The amount of time and money wasted on this issue is so huge as to be unfathomable. It is truly a tragedy that Congress has taken no action to prevent tax-exempts from operating commercial enterprises. Included herein, through letters and newspaper articles, is a partial history of the fight still being waged against a tax-exempt charitable foundation who is hiding behind the laws of Congress which allows tax-exempts to wage unfair competition against taxpayers.**

*Thomas E. Cook*

**THOMAS E. COOK, III  
J. MICHAEL FIEGLEIN  
36 COLONY PARK CIRCLE  
GALVESTON, TEXAS 77551  
(409) 744-2195  
FAX: (409) 744-0080**

December 17, 1997

Honorable Nick Lampson  
417 Cannon House Office Bldg.  
Washington, DC 20515-0001

Dear Congressman Lampson:

We wish to direct your attention to a problem of serious magnitude that greatly affects small businesses in our county. That problem, which rises to Constitutional proportions, involves unfair competition by tax exempt organizations (TEOs) against small business taxpayers. These taxpayers are being denied their Constitutional right to equal protection under the law. This problem has not just suddenly appeared, but has been allowed to evolve over the past twenty (20) years. Currently, it poses a huge monetary problem for our government and the small business taxpayers. TEOs are using their tax exemption to compete with, and cause harm to, small business taxpayers.

Unless you have personally operated a small business and have been forced, due to inaction by our government, to face the unfair competition from a TEO, you cannot appreciate the frustrations one encounters: unfair, uncaring, unjust, rage, guilt, isolation, and just being put out in the cold to die. TEOs sound so good, so innocent. Charity, education, benevolence are all concepts associated with TEO. But, when a TEO attacks you and attempts to destroy everything you have worked for all your life, you feel victimized; you feel like you have been raped. The tragedy, up to now, is that no one seems to care. When your Constitutional Rights are being violated, somebody needs to care! That someone is the Congress of the United States. Congress must protect and defend the Constitution. Congress MUST act and end the abuse!

The tax laws must be written in a manner that ensures a level playing field and equal protection under the law for all taxpaying businesses. Congress must exercise great care to ensure that the tax laws which apply to TEOs are CLEAR, CONCISE, and DEFINITIVE so that loopholes do not exist. Businesses are willing to pay their fair share of taxes so long as everyone is treated equally. However, small business taxpayers are being denied equal protection under the law, and, because of tax loopholes, are being forced to compete with TEOs. This unequal protection under the law goes against the most basic concepts upon which our Republic was founded. We fought a Revolutionary War to end such suffering endured while under the reign of the King of England. We

poured tea into the Boston harbor to protest unfair taxation. Congress must face its responsibility and absolutely ensure that no taxpayer is denied his Constitutional Right to equal treatment under the law.

The Fourteenth Amendment to the United States Constitution provides that every citizen of the United States is entitled to equal protection under the law. Currently, TEOs are allowed to engage and compete in **exactly the same** commercial businesses as our small taxpaying businesses. Because Congress has not closed the tax loopholes, the following is the reality faced by our small businesses today:

Congress says to one large group of citizens: **"You must operate commercial businesses and you must pay taxes"**. Then Congress turns to a specially favored group (TEOs) and says, **"You are tax exempt! You may operate the same commercial businesses as the small taxpaying businesses, but you will pay no taxes."** This action is a clear violation of the guarantee of equal protection under the law provided by the Fourteenth Amendment to our Constitution.

The tax law grants special tax exempt status to certain organizations to give them incentives to carry out truly charitable, educational and benevolent purposes, **not** to engage in businesses which compete directly with our taxpayers. Currently, some TEOs are using their tax exempt status to **unfairly take advantage and compete with taxpayers**; and they are causing great harm to taxpaying businesses. Congress never intended to happen. **But**, it is occurring. Case in point: less than 200 yards from my business, a large charitable foundation is building a hotel and intends to operate it and other businesses, using their tax exempt status, to compete with small taxpaying businesses in our community. Worse yet, an agency of the State of Texas has joined in the collusion, and has agreed to act as an accommodation (sham) owner of the hotel and businesses, in order to facilitate the foundation's scheme to build and operate commercial businesses and **avoid payment of all taxes!** Businesses, built and operated by grants from a tax free foundation, **pay no sales taxes, no property taxes, and no income taxes.** Small taxpaying businesses, who find themselves in direct competition with the tax free foundation, will **definitely suffer financial harm.**

**Everyone is beginning to believe that they can be tax exempt!** Unless Congress closes the loopholes, an increasing number of TEOs will decide to own and operate commercial businesses, putting more small business taxpayers out of business. In self-defense, more taxpaying businesses will decide to seek tax exempt status in order to operate their commercial businesses tax free. Why not? The loopholes are there! If Congress doesn't act, then our country will have a steady decline in the number of small business taxpayers and a sharp increase in the number of TEOs who operate commercial business. This is very unfair and very unhealthy for our democracy.

The abuse created by the loopholes in the tax laws is unconscionable and unconstitutional. It is the taxpayers who Congress must protect above all, for they are the "bread and butter" who drive the machinery of our government. It is taxpayers who provide the tax revenues to run our government. **The tax exempts pay nothing!** Abuse by the TEOs harms our taxpayers **and our government.**

Congress must enact legislation to close tax loopholes which currently permit TEOs to abuse and cause financial harm to taxpayers. Congress must set proper priorities to ensure fairness and evenhandedness: small taxpaying businesses are the kings; they

Since we have taken on this task, and it has been publicly reported, we have received tremendous support from the citizens of Galveston. Each supporting person has declared that the commercial competition by the Moody Foundation at Moody Gardens is a grave injustice that should be corrected. And, each person has encouraged us to continue the fight to present the issue until Congress makes the necessary changes to prevent its occurrence. Public opinion is steadfastly supportive of action to halt competition by this tax-exempt foundation.

We thank you for taking the time to study the issues raised here. Your support to close these very damaging and dangerous tax loopholes is essential and is sincerely solicited. We are available to meet with you or a member of your staff at your convenience.

Sincerely,

Best regards,

J. Michael Fieglein

Thomas E. Cook, III

TEC:JMF:sc  
Enclosures

*Copy to: Senator Phil Gramm  
Congressman Nick Lampson*

Thomas E. Cook, III  
36 Colony Park Circle  
Galveston, Texas 77551  
(409) 744-2195  
Fax (409) 744-0080

February 26, 1999

The Honorable Jim Kolbe  
205 Cannon House Office Building  
Washington, D.C. 20510

Dear Congressman Kolbe:

I am favorably impressed by your sense of fairness and your willingness to investigate the financial harm caused to small business taxpayers by tax-exempt organizations operating commercial businesses.

My name is Tom Cook and I own a private health club in Galveston, Texas. For the past twelve years I have been fighting in a life-or-death battle against a large, non-profit, tax-exempt, charitable foundation (the Moody Foundation) to halt the construction of facilities which would not only compete with us but also put us out of business. The Foundation is determined, even though tax-exempt, to own and operate commercial business just like the taxpayers. Their actions are reprehensible and Congress must intervene!

Thus far our representatives have heard our complaints and our fears, but we have not seen any aggressive movements to close the tax-loopholes which permit this type of abuse to continue. What we need is for Congress to pass legislation to close these loopholes and prevent charitable organizations from owning and operating commercial businesses in competition with taxpayers. Would you sponsor such legislation? We, and our nation, would be forever grateful to you. We pledge to help you in any way you direct. If you are willing, please have an assistant or legislative aid contact me at the above address or phone number. I have enclosed copies of the following:

1. A presentation to inform members of Congress of the problems they are creating by allowing these tax loopholes to exist, and an appeal for prompt legislation to protect taxpayers from being unfairly encroached upon and financially harmed by tax-exempt charities.
2. A complaint filed with the IRS regarding violations at Moody Gardens by the Moody Foundation.
3. A letter to IHRSAs with supporting facts.



Thank you, Congressman <sup>OLBE</sup>~~Kline~~, for your support in directing the IRS to look into the tax-exempt health club issue.

Best regards,

Thomas, E. Cook, III

TEC/er

Encl.

## Foundation asks Park Board to operate Colonel, Palm Beach

By JACK STENGLER  
The Daily News

GALVESTON — The Moody Foundation has requested the Galveston Park Board of Trustees approve an expansion to Hope Arena, and assume operation of the Colonel paddlewheel vessel and Palm Beach.

Doug McLeod of the foundation and Donald Springer, a principal in the Houston architectural firm of Morris Architects, made these proposals at Wednesday's meeting of the Park Board's budget and audit committee and at a Park Board workshop.

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Doug McLeod

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April 25, 1997

TO ALL GALVESTON PARK BOARD TRUSTEES

Dear Mr. Lewis:

The Galveston Racquet Club requests that you vote to defer consideration of deleting the 30 day give-back clause contained in the contract with Moody Gardens. The reason for this is simple. More time is needed to study all the possible ramifications that might result to the Park Board and our City. The matter is a highly complex issue and requires your careful consideration, with all the facts at hand, before you cast your vote.

If you hastily vote in favor of the Moody proposal, without carefully considering all the problems that could be created by your action, it will be too late to undo it and make it right. The Park Board has nothing to lose by waiting and examining, and fully and fairly analyzing the issues. The Park Board has everything to lose by acting affirmatively now. By taking your time and getting all the facts, you will be able to make changes to the agreement that are in the best interests of all concerned parties. The Park Board, the Foundation, and the citizens of our city must all be treated fairly and with respect. By taking additional time to study the situation the Park Board will be able to make good and valuable changes in the agreement that will be beneficial to all parties and hurt absolutely no one. This is a worthy goal and one you can easily attain if you are not rushed into making a decision. My mother always cautioned me that "haste makes waste" and we all have learned this is true.

Moody Gardens does not have to build and operate every type of business to be a resounding success. There are some businesses they should enter into and some they should not. The Foundation is not harmed in the least by having reasonable restrictions and the Park Board and the City will all benefit from such a fair relationship. The Park Board should not threaten Moody Gardens that it will just give it back and the Foundation should not threaten to build and operate whatever it wants to regardless of the outcome to the Park Board and the City. We all need to work together to make Galveston the winner. No one need be the loser.

The Racquet Club is worried that the fitness center at Moody Gardens will unfairly compete with our facility and force it out of business. We need your help to keep our club alive so it can continue to pay rent, property taxes and sales taxes to the City. Presently these items represent over \$100,000 per year. The City does not want to see the Club put out of business. The City cannot stand to lose that revenue. If Moody Gardens

operates the fitness center the City receives nothing. And, it really doesn't help Moody Gardens to be in the fitness business.

When you are negotiating changes in the contract with Moody Gardens during the next few months we ask that you negotiate some provisions to keep the Racquet Club alive. This is not a difficult problem for the Park Board and it would be sincerely appreciated by the Club and the City of Galveston.

Moody Gardens is a wonderful development and a huge asset for Galveston. The projects developed there and the businesses operated there should, for the most part, be projects not normally undertaken by our private tax paying businesses. Good examples of these are the Aquarium, the tropical Rain Forest, the 3-D I-Max Theater, the I-Max Ride, the Museum. There are countless more developments that would enhance Moody Gardens and greatly benefit our city without destroying any of our taxpaying businesses through unfair competition.

It appears the Big Three are near a compromise and all the hotels will benefit. Please use your persuasive powers to work out a plan to ensure the Racquet Club will survive and remain a valuable taxpayer in our community.

Please defer your vote on the 30 day give-back clause so that you can have enough time to study and understand all the problems and then make changes in the agreement that will benefit everyone.

Best regards,

Tom Cook

Dear member Park Board of Trustees:

The Galveston Health & Racquet Club has followed with great interest the recent newspaper articles regarding the unfair competition by certain of the developments at Moody Gardens. We are extremely concerned as to the development of additional facilities at Moody Gardens that will compete unfairly with local tax-paying businesses and particularly the Racquet Club.

The Racquet Club applauds the Moody Foundation for its foresight in developing Moody Gardens. It is a wonderful attraction for Galveston. But, we are very worried that the Racquet Club will be financially ruined and forced into bankruptcy by the proposed construction of new facilities that compete unfairly with the Racquet Club. I have spoken to both Mr. Herz and Mr. McLeod regarding the Club's legitimate concern that a large fitness facility will be constructed either within the new hotel or on property adjacent to the hotel. Such a facility would cause bankruptcy to the Racquet Club and force it to go out of business. The investors in the Racquet Club will lose their entire investment of \$1.4 million. Additionally, it will cost the City hundreds of thousands of dollars in lost revenue from rent, City taxes, school taxes, City ad valorem taxes, county advalorem taxes and sales taxes.

Is this what the Park Board wants? Do you believe this will be good for the City of Galveston? You, as Trustees of the Park Board, are in total control. Please stand up and be counted on to do what is right; what is fair.

The Park Board has the ultimate authority to decide the type of projects to be built at Moody Gardens. It is very important that this Park Board, and particularly at Moody Gardens provide the guidance for future years of development on Galveston Island. The Park Board and the City want to support the Moody Gardens development. But, have done everything possible to ensure the project's success. Because of the City's support and your support:

1. Palm Beach pays no income taxes
2. Palm Beach pays no ad valorem taxes
3. Palm Beach pays no rent on the land it occupies
4. Palm Beach pays no sales tax on its purchases of goods and services used at Palm Beach

What more could you or anyone else do? After doing all this it is totally unfair that you be asked by the developers of Moody Gardens to go one step further and permit the construction of facilities that compete unfairly against already existing tax paying businesses in Galveston. We don't deserve your wrath. We have done nothing to you. We are good for the City because we pay rent, ad valorem taxes, sales taxes, and income taxes. We add to your City's tax base. Does it make any sense to run us out of business and replace us with facilities at Moody Gardens that are tax exempt? This is one of the causes of the erosion to the City's tax base. Basic logic would dictate that you close up tax exempt operations and replace them with tax-paying businesses.

Moody Gardens tried to help the Racquet Club overcome some of its losses from their unfair competition. Doug McLeod, Director of Development for the Moody Foundation, helped the Racquet Club as much as he could. McLeod promoted the Club to all employees at Moody Gardens and he assisted those employees by having Moody Gardens pay a portion of their membership dues. McLeod's sincere efforts were helpful and greatly appreciated but it was impossible for the Racquet Club to overcome the devastating cash shortfall of \$70,000 per year in dues income alone, which doesn't even count the lost initiation fees which the Club receives from sales of swim memberships.

Instead of closing the doors and declaring bankruptcy, the Racquet Club decided to invest in additional facilities to try to make up the cash loss caused by Moody Gardens. The Racquet Club's investors put up another \$300,000 to build a fitness center with current state of the art equipment.

Now Moody Gardens is causing new financial concerns for the Racquet Club. A large fitness center will be constructed or included in the new Moody Gardens hotel. If offered to the general public, such unfair competition would force the Racquet Club into bankruptcy. Both Buddy Herz and Doug McLeod have informed the Racquet Club that the new fitness center will not put the Racquet Club out of business. However, Moody Gardens has put nothing in writing nor made any guarantees to the Racquet Club.

It is clear that to protect Galveston's taxpaying businesses the new developments at Moody Gardens must be carefully planned. The Moody Foundation, the Galveston City Council and the Galveston Park Board of Trustees should work closely, hand in hand, to be sure that the projects at Moody Gardens do not compete unfairly with local taxpaying businesses. The proposed aquarium and the new I-Max Ride will be great assets and there are countless other developments that would enhance Moody Gardens and greatly benefit our city without unfairly competing with taxpaying businesses. The Park Board can reasonably control what type of new facilities are added at Moody Gardens. The City and the Park Board's consent to the assignment of the Moody Foundation's lease to the Park Board was the original cause of the unfair competition. The Park Board can prevent Moody Gardens from adding facilities which harm our local taxpayers. If Moody Gardens insists on unfair competition the Park Board can elect upon 30 day notice to reassign the lease back to the Moody Foundation. While this will not completely end the unfair competition, it will go a long way to leveling the playing field for Galveston taxpayers.

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**THOMAS E. COOK, III -- J. MICHAEL FIEGLEIN**

36 Colony Park Circle \* Galveston, Texas 77551

(409) 744-2195 \* FAX: (409) 744-0080

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April 3, 1998

Congressman Bill Archer  
1236 Longworth House Office Building  
Washington, DC 20510

RE: Abuse of small business taxpayers by Tax Exempt Foundations

Dear Congressman Archer:

In a recent speech to the Galveston Chamber of Commerce, Texas Senator, Kay Bailey Hutchison, stated, "I believe small business is the economic engine of America." and "We need to help small businesses grow and prosper." Mike Fieglein and I received her comments with great interest and we also hope that you feel strongly about helping small businesses survive and prosper.

In our last letter to you we outlined a most serious problem facing small businesses, which because of loopholes in the tax law, are forced to endure unfair competition aimed directly at them by certain private tax exempt charitable foundations. Congress intended for these tax exempt entities to be charitable, and NOT to engage in commercial business operations. When charity becomes only incidental to a foundation's real motives, then the foundation should forfeit its 501(c)(3) tax exempt status.

It is imperative that Congress prevent tax exempts from unleashing enormous wealth and power against defenseless small businesses which are required to pay taxes. Congress, by granting tax exempt status, allows charities to grow into financial giants capable of doing tremendous good, or capable of incredible economic evil. Congress has the power and the duty to control these charitable entities to ensure that the main purpose remains benevolence and charity. Uncontrolled, these entities, like the humans who run them, can become ambitious and greedy, drifting off course, causing extraordinary damage to small business taxpayers who do not have the economic benefits available to tax exempt organizations.

A perfect example of a charity which has drifted off course and virtually lost its charitable mission is The Moody Foundation and Moody Gardens, Inc., of Galveston, Texas. Charity has become incidental to the Moody businesses. The main purpose has become operation of commercial business, using wealth, power, control, intimidation, and threats to do as they please. Charitable grants have become only a small percentage of their activities, and then always with "strings" attached. Over 63% of Moody foundation expenditures during the past six years has been to commercial business projects at the Moody Gardens Complex, controlled by the foundations and its trustees. This is truly an example of a foundation out of control. It is a

foundation that, because of tax loopholes and manipulations, has forgotten that its real mission is charity. Its new mission has become:

1. funding development of commercial businesses with tax exempt funds
2. marketing of its commercial business enterprises
3. generating tax exempt cash flow from operation of commercial businesses

It is quite impossible and inherently unfair for a small taxpaying business to be suddenly caught up in the unfair competition posed by a large, powerful, and supposedly **charitable**, tax exempt foundation. If a foundation were truly charitable, this unfair competition would never happen. Small businesses do not fear fair competition. But, competition from a business that is tax exempt, developed by a tax exempt foundation, and whose operations are funded by that same foundation is blatantly unfair and wholly inappropriate. The Moody Foundation employs power brokers to force its will on the citizens of Galveston, including Sheriff Joe Max Taylor. Any person who expresses an opinion that is contrary to the wishes of the Moody Foundation is subject to the ire of one or more of these power brokers. Such action by a charity is inappropriate and irresponsible. A charity's mission could never include causing harm to small business tax payers. This raises the question, which begs an answer: Why does a charitable foundation need a Sheriff to argue its position and to lobby for approval of decisions to operate commercial businesses at the Moody Gardens Complex?

A few years ago, when the Galveston Health and Racquet Club was first being financially harmed by unfair competition from the Moody Foundation's commercial enterprise at Moody Gardens, another of those power brokers made the statement, "If the Racquet Club can't compete, the Racquet Club needs to go out of business!" If the Moody Foundation was truly charitable, that statement would never have been made. The Galveston Health and Racquet Club does not fear competition from legitimate competitors. But competition from a business that is tax exempt and funded by a tax exempt private foundation is **not** fair and is wholly inappropriate.

We intend to make Congress aware of the problem created by the loopholes in our tax code, and the manipulations allowing tax-exempt business competition that have led to this injustice. We hope to enlist your support for the necessary curative measures.

A charitable foundation should just be a charitable giver with no expectation of generating commercial cash flow, and with no strings attached to any charitable grant. That is what Congress intended when it granted tax exempt status to certain organizations. Congress intended for charities to grow, and to grow tax free, **but only** for charitable purposes; **not** to use those tax free funds to build and operate commercial enterprises.

We have included newspaper accounts of these issues involving the Moody Foundation and Moody Gardens, Inc., to help illustrate this serious problem. Someone in Congress must sponsor legislation to eliminate these abusive tax loopholes and manipulative practices, and assure that charities remain charitable, and nothing more. We hope you will support such legislation after you have studied the issues carefully. The Moody Foundation has a billion dollars to utilize in its commercial endeavors, and can destroy, in one day, what it has taken one small taxpayer 25 years to build. The magnitude of the funds held by the foundation does not give it the right to utilize its tax-exempt status to take advantage of the opportunities that are properly reserved **only** to taxpaying enterprises.



deserve our maximum protection in order for their businesses to survive. Tax exempt status is proper **only** so long as tax exempt status is used **100%** for charitable, educational and benevolent purposes. TEOs who compete tax free in the business arena are the enemy of our government and the enemy of our taxpayers who carry the tax burdens of funding our government.

Those who work hard, pay taxes, and strive to endure are being harmed. Our government has dictated to taxpayers: invest your capital, hire employees, work hard, be industrious, make a profit and pay your share of taxes so that our government can carry out its responsibilities to the betterment of all citizens. Our Government, through tax loopholes, has armed tax exempts with the power to steal business opportunities from our taxpayers.

Our founding fathers would have called this action "treason" against the taxpayers. This blatant unfairness is contrary to all we hold dear in our society and to all that our country represents. This **abuse** must be stopped.

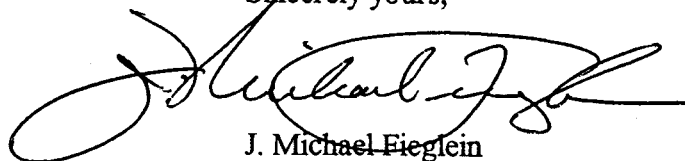
TEOs must not be permitted to operate commercial businesses while enjoying the benefits of tax exempt status. Congress must amend the Internal Revenue Code and require the specially favored tax exempts to **confine** their activities to **truly** charitable and educational purposes.

The Internal Revenue Code must be amended to eliminate the ability of a tax exempt organization to engage in, develop, fund, operate, or capitalize a commercial business enterprise and, at the same time, remain tax exempt itself. The current controls provided by the Internal Revenue Code are easily circumvented by shrewd and artful tax advisers.

Legislation must be passed to provide that in the event a TEO participates directly or indirectly in a business enterprise which competes with taxpaying businesses, then the TEO will lose its tax exemption with respect to **all** of its income and assets. In addition, significant penalties must be enacted to prevent self-dealing and private or personal inurement, by persons directly associated with TEOs. Currently, the Internal Revenue Code contains no **real** penalties against self-dealing and private inurement. As a result, those who manage some TEOs are engaged in rampant self-dealing and private inurement. These people are truly abusive and they must be stopped.

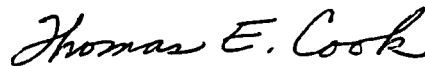
We would greatly appreciate the opportunity to meet with you and your staff to discuss in depth the issues outlined above and to provide the factual information upon which we base our premise that immediate affirmative Congressional action is required.

Sincerely yours,



J. Michael Fieglein

Best regards,



Thomas E. Cook, III

TEC:sc

Copy: Dick Arney

MUCH CARE & STUDY MUST BE TAKEN PRIOR TO VOTE ON GIVE-BACK  
CLAUSE

The Park Board of Trustees' decision regarding the 30 day give-back clause in the agreement with Moody Gardens will have far reaching and very long lasting results. It is not a decision to be taken lightly or in haste. A decision that is later determined to be harmful to the City cannot be changed and may put the City in a poor bargaining position for many, many years, even 100 or more years. The Foundation's life is perpetual and may virtually never end. The current Park Board Trustees nor the Foundation know who will be the Trustees of the Moody Foundation in 10 years much less 50 or 100 years. What will be their views for the City at that time? Will the City agree with them? The City and the Park Board cannot afford to give the Foundation *carte blanche* for what may be an eternity.

The Park Board must act responsibly to protect the City and its citizens now and long into the future. The Park Board and the City has the ultimate responsibility to operate Moody Gardens. The Foundation may decide for any reason (good or bad) to abandon the project or cancel the operating agreement. The Foundation has that right and the Park Board is at great risk if it occurs. The Park Board has not decided, nor can it know, what businesses would be prudent for it to own and operate at Moody Gardens. Even the Foundation does not know. The Park Board must have the ability to work hand-in-hand with the Foundation as the Foundation moves forward over the next 50 to 100 years with various developments at the Gardens.

The Park Board must keep control of its destiny and the City's destiny. No one knows what the future will hold. But if the Park Board gives up the 30 day clause, it doesn't matter what the future is, at least for the Park Board and the City. They will have given up their right to participate, to have an opinion, or to bargain what is best for the City. Without the give-back clause the Park Board is virtually a non-entity, at least to Moody Gardens. The Park Board would have no clout and could not bargain or even exercise gentle persuasion. What a tragic event for all our citizens.

There are so many things to consider. The Park Board simply must delay their vote on this matter until it has adequate time to consider all sides of the issue and come up with changes that will be fair to all concerned parties.

## PARK BOARD MUST STILL HAVE PARITY

Moody Gardens representatives now state that there is no need for the City and Park Board to have parity in bargaining with Moody Gardens. The reason given is that now Moody Gardens has invested \$130 million and intends to invest \$140 million in the future. The amount of money invested **should not be a measure** of the relative need for parity. Parity is needed forever so that the Park Board can control forever what the Park Board will own and operate at Moody Gardens. By agreeing to own Moody Gardens, the Park Board has enabled Moody Gardens to build and operate businesses and avoid all income taxes, sales taxes, school taxes, property taxes, and rent that should apply to the operation of those businesses. The Park Board has become the enabler for the tax avoidance scheme by Moody Gardens to be put into action. But, the Park Board must have the right at any time for any reason to stop the unfair competition with our local taxpayers, if it goes too far. What is too far? That's up to the Park Board to decide. Obviously if Moody Gardens, over the years, develops businesses that compete with most of Galveston's taxpayers, then they have gone too far. It must be decided on a case by case basis as the development unfolds. The Park Board must remain in absolute control until the entire development is complete and an agreement is reached that nothing else will be built at Moody Gardens that competes with the taxpayers. There are so many things that can be built at Moody Gardens that don't compete with local taxpayers, i.e., 3-D I-Max theater, Rain Forest, Aquarium, and hundreds more. New developments need to be confined to those areas. But, what if 8 years from now Moody Gardens decides to open a JUMBO DISCOUNT GROCERY store or a SAND PENNY SUPER SAVER automobile dealership. Because of their tax exempt status businesses operated by Moody Gardens can offer their products and services far cheaper than competing taxpayer owned businesses. If the Park Board gives up the 30 day give-back clause now, then the Park Board will have no power to bargain with Moody Gardens. The Park Board will own a JUMBO DISCOUNT GROCERY store and a SAND PENNY SUPER SAVER automobile dealership. The Park Board will have no recourse and will be forced to own and operate these businesses. The Park Board must keep the right, **for any reason**, to give back the Moody Gardens project. Moody Gardens wants the Park Board to be able to return Moody Gardens to the Foundation only if "a material breach" occurs. What is a material breach? That's for a judge and jury to decide. The Moody Gardens can afford \$200,000 in legal fees to fight the Park Board in a lawsuit. But the Park Board cannot, and why should it weaken its position and be subject to very costly litigation from the Moodys. Again, the City would find themselves unable to bargain with the Moodys because they couldn't afford the legal fees. The Park Board must retain the right to give the Gardens back **for any reason** with no litigation, only reasonable argument and discussion, and absolutely no high legal fees.

NEWSPAPER: GUEST COLUMN

**THE DAILY NEWS: HERALD OF TRUTH**

Like many others, we have read, with much concern, The Daily News' accounts of some of the controversies surrounding the planned developments at Moody Gardens. The GRC is very concerned that because of their tax exempt status some developments at Moody Gardens may unfairly compete with The Racquet Club and force it out of business. The Foundation is aware of our concerns but thus far has been unwilling to commit to not putting us out of business.

A recent article in the Daily News quoted a Moody Foundation representative as saying that "half-truths and untruths" had crept into the news coverage regarding the convention center development at Moody Gardens. No position taken by The Daily News has been unwarranted, unfounded in fact, or inappropriate. Those who oppose the printing of the truth may feel otherwise or say it is negative reporting. The truth can put one in a positive light or a negative light. The facts of one's actions control the light. The Foundation is 100% responsible for the press it receives. In past years many good things were written about the charity of the Foundation. But somewhere along the way the Foundation lost sight of its charitable purpose and began to concentrate on operating commercial businesses that could compete with local taxpayers. The Foundation would have you believe that their operation of commercial businesses is only incidental to their charitable and educational purposes. The facts, however, are quite different. In 1996, as reported in The Daily News, 97% of all Moody Foundation grants went to businesses controlled by Foundation trustees and only 3% went to charities not controlled by Foundation trustees. In 1996 alone, it could be said that the Foundation's charitable purposes have become wholly incidental to their main focus of funding the operations of commercial businesses under their control. A true charity has no business purpose and no investments to protect from competition. The Foundation's new direction has also resulted in its need to influence and control the decisions of local governing bodies. The results of their actions have placed them in the light they now find themselves. That light is viewed by them as negative press.

But this new direction is what has created the concern and worry of the public, particularly businesses that don't share in the benefits and advantages afforded a tax exempt foundation. It is this concern and worry that keeps the public from voicing its support for the Foundation. That lack of support may "hurt" those who represent the Foundation, but they have earned it. Just as quickly as support and praise have vanished, the Foundation can earn them back by simply returning to its charitable purposes and removing itself from competition with our local taxpaying businesses. The Daily News has done an admirable job of reporting the facts and taking positions that are in the best interest of our entire community. Our governing bodies, who heretofore have been reluctant to voice opinions different from those of the Foundation, have responded by taking a close look at the issues and the concerns of our taxpayers who are hurt by the

Foundation's tax free competition. So, the truth is that The Daily News has performed an invaluable service to our community by causing the important issues to be brought out for discussion and resolution in a manner which will be in the best interests of the entire community.

All citizens should be concerned about the abuse and financial harm suffered by tax paying businesses as a result of tax exempt foundations using their tax free wealth to compete unfairly. The only reason to grant tax exempt status to a foundation is to enable it to perform its charitable duties. There is no valid reason for a foundation to be free of tax if the foundation engages in commercial businesses and thereby uses its tax exemption to compete unfairly with our hard-working taxpaying businesses. A foundation that operates commercial businesses must pay taxes on all of its income and assets just like all other business enterprises. This would create a level playing field for all taxpayers.

Apparently, tax free foundations have found a large tax loophole in the Internal Revenue Code. This loophole, permits tax free foundations to go beyond their original charitable purposes and allows a foundation to fund operations of commercial businesses controlled by trustees of the foundation. This loophole must be closed.

A national movement exists to curb the abuse by private foundations and public charities of their tax exempt status and this national movement exists for good reason. The impact on taxpayers, their families, their businesses, and the tax revenue lost as a result, is enormous and simply unfair and wrong. All of you who are tired of carrying the burden of those who abuse you and the system, please copy this article and forward it to each senator and representative in Washington DC and Austin, Texas, asking them to stop this abuse and close this loophole.

When the voice of the people is heard, government will react. The voices which were silent in the praise of the Foundation need to make themselves heard in order to eliminate this terrible disparity in treatment and the discrimination it endorses by wrongly showing favoritism to non-taxpayers. The Daily News has been and must continue to be the herald for the voice of, and the ambassador for, the people, and not the tool of special interests.

*Joni Cook*  
*Galveston, Tx.*

parks board, the Moody Foundation will be able to create a health facility on its property.

Some 23 years ago, local citizens built a taxpaying business, the Galveston Health and Racquet Club, for approximately \$1.5 million. Their life dream will come to an end if the parks board passes this amendment.

It doesn't make any sense to destroy the livelihood of dedicated loyal citizens and then turn around and duplicate the same facility just a quarter of a mile away.

Eddie Marx  
Galveston

### Does city care whether businesses live or die?

Dolph Tillotson's editorial on May 4, was absolutely correct. Galveston's economy is in terrible shape and it will only get worse unless our city leaders discard the failed theories and practices of the past.

Galveston needs to nourish and protect our taxpaying businesses. A city cannot punish and frighten its taxpaying businesses and hope others will come here to take the place of those businesses who go broke or just give up.

A good example of this is happening now. A large charitable, tax-exempt foundation is asking the city and the Park Board to give the foundation incredible powers to develop tax-free businesses at Moody Gardens which can compete unfairly with local taxpaying businesses.

What message does that send to our taxpayers? A simple, truthful one: the city does not care if you live or die, financially speaking.

The City and the Park Board must refuse the foundation's request.

Tom Cook  
Galveston

.....

*The Moody Foundation has asked the Galveston Parks Board of Trustees to amend its contract for operating Moody Gardens. Moody Gardens representatives say they need added protection to protect the huge investment in the gardens from Galveston's politics. Some Parks Board members have opposed the amendment, saying the city needs to retain some leverage over the foundation to keep it from competing against private businesses. The following letters are from the manager and owner of the Galveston Health and Racquet Club.*

### Amendment One would threaten a private business

On behalf of the Galveston Health and Racquet Club, its owners and its 45 employees, I would like to express my concern about Amendment One, a contract between the Moody Foundation and the Galveston Parks Board.

If Amendment One is passed by the

.....

*A poll released just Day showed 56 per cent of the city's own residents*



## LETTER TO THE EDITOR

Dolph Tillotson's editorial on Sunday, 5/4/97, was absolutely correct. It's way past time to get our head out of the sand and do something. Galveston's economy is in terrible shape and it will only get worse unless our city leaders discard the failed theories and practices of the past. Galveston needs to nourish and protect our taxpaying businesses. Galveston must attract new taxpayers to our city. If we do not accomplish this goal, Galveston is doomed to certain failure. A city cannot punish and frighten its taxpaying businesses and hope others will come here to take the place of those businesses who go broke or just give up. A good example of this is happening now. A large charitable, tax exempt foundation is asking the City and the Park Board to give the Foundation incredible powers to develop tax free businesses at Moody Gardens which can compete unfairly with local taxpaying businesses. What message does that send to our taxpayers? A simple, truthful one: the City does not care if you live or die, financially speaking. That's a very harsh message for a city to send if the city truly wants to attract taxpayers to its base. The Foundation does not care. It has no mission to attract taxpayers to Galveston. Its mission apparently is to fund the operation of new businesses and make as much profit as possible. The more taxpayers who go broke, the more profit the businesses funded by the Foundation make. It sounds like the thinking of a for profit business. But, it is not. Cloaked in Park Board ownership the businesses operated at Moody Gardens are tax free. Ironically they pay no rent, no school taxes, no property taxes, no sales taxes, and no income taxes. If this doesn't scare you, then I'm amazed and truly sorry for you. Because it would scare the pants off of General Motors or IBM. Neither of them would ever choose to compete with a business operated by Moody Gardens. Why? A few words come to mind: unfair, illogical, ignorant, financial suicide to name a few. The City and the Park Board must refuse the Foundation's request. What is built and operated at Moody Gardens must be controlled by its owner, the Park Board. The Park Board must never have to file a lawsuit just to be able to return Moody Gardens to the Foundation.

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## Greenberg challenges Herz to polygraph

**By Michael Smith**

The Daily News

Published September 27, 1997 12:01 AM CDT

**GALVESTON --** Park Board Trustee Steve Greenberg challenged attorney Irwin M. "Buddy" Herz to a high-tech duel on Friday.

Instead of pistols at 20 paces, Greenberg wants himself and Herz wired to polygraph machines while they answer questions about a July 25 lunch meeting involving Greenberg, Robert L. "Bobby" Moody, Herz and two others.

The challenge is just the latest confrontation in a year-long controversy surrounding the construction of a hotel and proposed designation of a city convention center at Moody Gardens.

The hotel and details about the convention center's operations already have prompted hotelier Tilman Fertitta to file two lawsuits.

Lately, debate has focused on a handful of issues including how convention bookings should be handled.

Fertitta wants the Convention & Visitors Bureau to book the center. Herz says Moody Gardens must control bookings as long as it underwrites the center's losses.

This month, Greenberg called for a Sept. 30 deadline to resolve the issues.

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## Future of Moody grants still cloudy

**By Michael A. Smith**  
The Daily News

Published May 22, 1997 12:01 AM CDT

GALVESTON -- The future of millions in frozen Moody Foundation grants to charitable organizations remains uncertain despite the surprise move Wednesday by Moody Gardens representatives who withdrew a controversial request to amend their agreement with the Park Board of Trustees.

The foundation and gardens are locked in a lawsuit with hotelier Tilman Fertitta, who claims the gardens will have an unfair competitive advantage when it opens a hotel on tax-exempt property.

The foundation also had asked the park board to modify its contract so that the board can't return ownership of Moody Gardens to the foundation without cause.

What effect Wednesday's move ultimately will have on the grants' status remains to be seen, said foundation development Director Doug McLeod. He said the situation would be helped if Fertitta had dismissed his lawsuit, as he recently said he would if the Moodys stopped their push for the amendment.

Moody attorney Irwin M. "Buddy" Herz said the foundation has decided to defer making grants all over Texas until the lawsuit and the controversy around amending the agreement are resolved. He

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said the decision was made by the foundation's three-member board during its February meeting.

Legal and consulting fees spent fighting Fertitta's suit and assessing the damage the foundation would suffer if the gardens were returned have reached about \$500,000, Herz said, adding that no one in the organization knows how high they might go in the future. Faced with uncertain expenses, foundation trustees had no choice but to defer awarding grants, he said.

"Only the foundation's trustees can make decisions about grants," McLeod said.

"But I think that if Mr. Fertitta were to dismiss his lawsuit we would be in a much better position to assess our finances."

Some critics of the decision pondered how the tax-exempt foundation could suspend grants and stay on the right side of the Internal Revenue Service.

But an IRS expert says the foundation is probably well within its rights. Jason Kall, who works in the Houston IRS office, said foundations can cease giving to charities for years under some conditions.

He said the IRS demands foundations give an annual average of 5 percent of their net assets, minus 1.5 percent for expenses. He said they can also give less in some years and make up the shortage in future years.

The Moody Foundation has given between 8 percent and 10 percent, depending on how net assets are calculated, over the last six years, according to numbers taken from foundation reports.

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## Study slams plan for city center at Moody Gardens

By Michael A. Smith

The Daily News

Published May 22, 1997 12:01 AM CDT

GALVESTON -- Moody Gardens might lack an incentive to serve the entire island if it's allowed to operate both a hotel and convention center, according to a consulting firm hired by the city.

The memo from C.H. Johnson Consulting Inc., delivered to park board trustees Wednesday, is critical of five other aspects of the plan to designate a renovated conference center at the gardens as the city's official convention center.

The memo cautioned the park board not to let the gardens operate both the center and a nearby hotel without "carefully negotiated control measures," and urged them not to act on a controversial amendment until the study is finished.

The Moody Foundation and gardens are locked in a lawsuit with hotelier Tilman Fertitta, who claims the gardens will have an unfair competitive advantage when it opens a hotel on tax-exempt property.

Until Wednesday they were asking the park board to amend its contract so that the board can't return ownership of Moody Gardens to the foundation without cause.

Fertitta, who's been a vocal opponent of the proposed amendment and the involvement of tax-exempt Moody

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operations in the city's tourism industry, credited the memo for Wednesday's development.

"That's why they withdrew their request, because they thought the park board would take one look at it and not approve (the amendment)," he said.

Moody Gardens attorney Irwin M.

"Buddy" Herz said he'd not had a chance to closely review the memo, but said it contains incorrect information.

Herz also questioned how Fertitta got his hand on the memo before Moody representatives did. "We did not hear about this memo until just before the park board meeting, but Mr. Fertitta had it for two days. Something smells about this whole transaction," He said.

Park Board trustees said they had not had time to assess the memo.

The memo is critical of guidelines governing the expansion of the Moody Gardens conference center and says funding a proposed transportation system will dull, not sharpen, the city's competitive edge.

It calls the center's proposed name -- The Galveston Island Convention Center at Moody Gardens -- an oxymoron, and advised against committing a one-cent slice of the city's hotel tax to funding bonds for a parking garage at Moody Gardens.

**What's wrong with the proposed consent between the Moody Foundation and the Galveston Park Board of Trustees? Here are excerpts from a draft memo from C.H. Johnson Consulting, the firm hired to study the need for a convention center in Galveston:**

At the request of the City, Johnson Consulting reviewed the Amendment with

respect to its impact on future convention center development in Galveston. Our review leads us to the conclusion that the Amendment does not serve the City's interest in future convention center development.

- The Amendment appears to anticipate that Moody Garden Hotel management will have complete control over any future convention center management and observations.

If the Moody Gardens Convention Center is chosen as the site for further development, the City may want the ability to control or otherwise influence the quality, cost and booking policies of the convention center.

Convention centers that serve the whole community are typically owned and operated by local government units who are independent of any particular hotel interest.

Conversely, hotel convention centers which serve the interests of a single hotel property are usually operated by hotels. Without carefully negotiated control mechanisms, a community convention center operated by a hotel interest may not have the reasonable incentives to serve the entire Galveston convention center market."

- Section 7(b) states that Moody Gardens will not consider expansion unless "the city-wide 'class A' hotel occupancy rate has been at least 65 percent, or the Convention Center Hotel occupancy rate has been at least 80 percent, for 12 consecutive months ..." In our view, it is highly improbable that either of the required conditions will occur for twelve consecutive months at any time within the next decade in Galveston. This provision effectively

precludes Moody Gardens as a potential site for future convention center development in Galveston.

- Section 7(c) provides for Moody Gardens to render certain transportation services to other hotels and to charge users of the convention center for such services. Johnson Consulting views this as an unsatisfactory solution to the transportation problem.

The dispersion of hotels in Galveston places the City at a competitive disadvantage with respect to many other peer cities. In other cities that share a similar problem, transportation is often subsidized by the convention center or the convention and visitors bureau.

The proposed charges to convention center users will increase, rather than reduce, the current competitive disadvantage caused by the transportation problem.

- Section 7(g) changes the name of the Moody Gardens Convention Center to the "Galveston Island Convention Center at Moody Gardens." The clear orientation of the existing facility is as a hotel convention center and the provisions in Section 7(b) effectively preclude further development into a community convention center. Therefore, the chosen name is an oxymoron.

- Section 7(h) proposes to issue eight million dollars in revenue bonds and Section 7(i) dedicates a one cent room tax to payment of debt service on the revenue bonds. The proceeds of the bonds may support development of a hotel and convention center parking facility at Moody Gardens.

This provision removes a potential funding option which may be used to support a portion of convention

center development or operations at  
Moody Gardens, the Moody Civic  
Center, a downtown location or  
some other site within Galveston.

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# Community must welcome private investment

6/8/97

**T**he Moody Foundation of Galveston plans to spend an estimated \$120 million on the Moody Gardens complex. Many people wonder why anybody, including those of us on the Parks Board of Trustees, should be anything but grateful.

That's a good question.

The Moody family has made many wonderful contributions to Galveston and, if managed properly, Moody Gardens could be among the most important of them.

However, the public-private-foundation relationship at Moody Gardens raises important questions for our community.

Remember, the parks board — a publicly owned entity — owns Moody Gardens. The board simply cannot avoid doing its best to be sure the facility operates always in the public interest.

There are good reasons for concern.

First, Galveston has for decades concentrated too much economic and social power in too few hands. Old families, powerful people and foundations not only gave generously, they dominated the community at the expense of outside investment.

Ask yourself why is it that for more than 100 years out-

**STEVE GREENBERG**



side investors have routinely bypassed Galveston Island. There is a reason, and that reason is the perception that "outsiders" will not have a fair chance to compete.

In the early 1980s I worked for Interfirst Bank in Galveston. I recall a major developer from Houston who made the following statement to me: "My lenders will loan me money for projects anywhere but in Galveston; they don't want to get involved in these local political fights."

Consider the difficulties facing a developer such as 39-year-old Tilman Fertitta. Fertitta has personally invested \$40 million on the island. His challenge is to make a profit while paying taxes.

Now he faces direct competition from a new hotel, a convention center and resort facilities whose losses are funded by tax money and through a tax-exempt foundation.

Multiply Fertitta's dilemma

among all the potential private investors in the tourism industry or any other industry.

The solution is not to attack the Moody Foundation. Instead, the community must work to create an environment that encourages and welcomes outside, private investment.

If the foundation wants to give Moody Gardens to the people of Galveston, surely trustees of the foundation will understand that we must set fair competitive ground rules for its operations. That means the public must retain a high degree of control over convention bookings and the use of Moody Gardens facilities.

Galveston for many years has been so eager to accept "gifts" from monied local interests that it has ignored the impact of that choice on the overall long-term health of the economy.

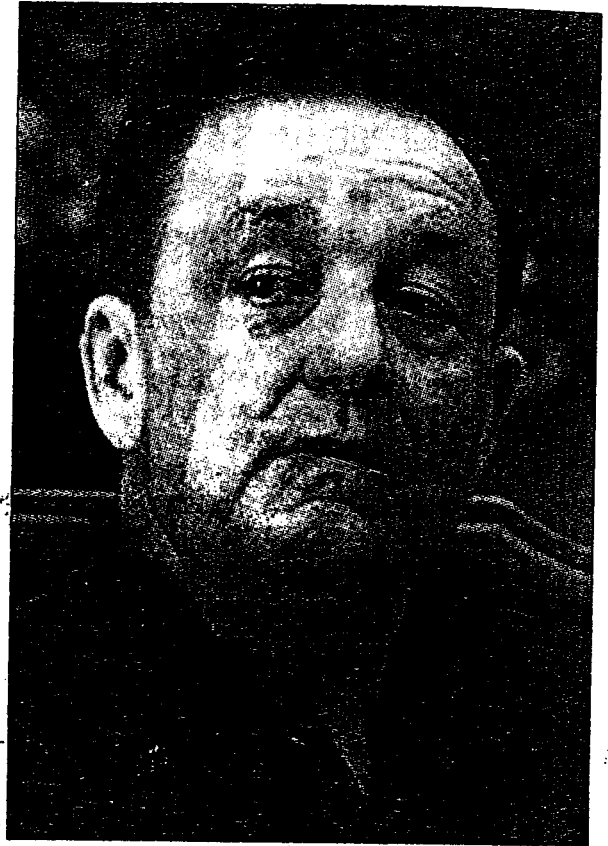
That may explain, at least partially, why the city's economy is stagnant, why unemployment here is twice the average for the state, per capita income is about two-thirds of the state average and why so many of our children grow up in poverty.

● Steve Greenberg is a member of the Galveston Parks Board of Trustees and is a former city councilman.



# Millionaire warfare

MONDAY 12/29/97



Second in a four-part series

## A Grand HOTEL



*Moody Gardens is a gift to the city of Galveston from its most prominent family — its "footprint on this earth." But others in the tourist industry say a tax-exempt hotel at the gardens will be a boot on their necks.*

**today:** We take another look at hotelier Tilman Fertitta's lawsuit against the Moody Foundation

**tomorrow:** A tale of two hotels. We compare the Moody Hospitality Institute to the University of Houston teaching hotel.

▲ Multimillionaires Tilman Fertitta, left, and Robert L. "Bobby" Moody are at odds about the development of a hotel at Moody Gardens. (Photos by Kevin Bar-

## A giant hotel leads to a titanic battle

By MICHAEL A. SMITH  
The Daily News

**GALVESTON**

GALVESTON — The island is only 30 miles long and 2.5 miles across at its widest point. It's a small space to hold three of the state's 10 richest men, especially when they all have money in the tourist industry.

The \$57-million luxury hotel still is about a year from opening.

So it was perhaps inevitable that Robert L. "Bobby" Moody, Tilman Fertitta and, to a less public extent, George Mitchell would wind

● Continued on Page A7

up butting heads over something.

Something, it turns out, is a \$57-million luxury hotel that is still about a year from opening and each day looms a little larger over Offatts Bayou. The hotel's 18-story steel skeleton already dwarfs Moody Gardens' Rainforest Pyramid and dominates the initial view of the island from the apex of the Causeway.

And some, including Fertitta, say that when its 304 top-flight rooms open in December 1998, they'll take a large chunk of the island's \$350-million-a-year tourist industry.

#### The issue of taxes

The conflict stems from the fact that the hotel at Moody Gardens is exempt from some taxes and supported by others and from a plan to designate a conference center there as the city's official convention center.

Open warfare erupted in November 1996 when hotel owner Fertitta filed a lawsuit in district court claiming Moody Gardens, which receives about \$500,000 a year in tax money, would have an unfair advantage over private-sector operations when the hotel and convention center opened in December 1998.

The year-long struggle among three of Galveston's most successful sons has been as wide-ranging as it has been long, drawing in battalions of issues and factions and sparking regular salvos of offers, counter-offers, allegations, recriminations and slurs.

It has spawned two lawsuits by Fertitta against Moody and his operations, one in state court that was dropped and one still alive in federal court.

It also has offered the high drama of a very public fight among two rich men with very different styles.

#### A clash of personalities

Moody was born to the island's wealthiest family. He's the product of a stern, conservative grandfather, years of military-school training and decades in the staid insurance industry. Moody dresses off the rack, flies on Southwest Airlines and knows how to delegate.

"Bobby is hard driving but very good to his associates," said Moody's brother-in-law, Doug McLeod. "A number of those closest to Bobby have worked for the Moodys for three or four decades, including Gene Lucas who has been a Moody employee for 55 years."

Fertitta was born to one of the island's most colorful families with roots in the island's gangster past. He's made and lost and made his fortunes in the fast-moving retail and hospitality industries. Fertitta wears hand-tailored suits, flies in his own helicopter and likes to deal with details himself.

There is a long-standing joke among Fertitta's employees that goes like this: "Tilman can spot a burned-out light bulb from his corporate jet."

The first months of controversy were marked by Fertitta making allegations.

"The three teams of lawyers I've put together have never seen an incestuous relationship like they have in Galveston," he said. "It's not my desire to be embattled in litigation with a Galveston icon, but I will not let the Moody Foundation compete unfairly without a fight."

Moody, meanwhile, has personally kept to the high road, leaving rhetorical dueling to McLeod and attorney Irwin M. "Buddy" Herz.

The pair form a good-cop, bad-cop team with McLeod playing the conciliator and Herz the brawler, describing Fertitta as a "welcher," his and Mitchell's informal partnership as an "unholy alliance" and their efforts as a campaign of "rhetoric, innuendo, half truths and untruths."

In public, Mitchell has kept his own counsel.

The expletives and the sound of gnashing teeth that set the pitch for much of the year have quieted during last few months, but many of the issues raised still echo.

#### The winter campaign

In December 1996, Fertitta and

fellow hotel owner Mitchell broached the idea of leveling the playing field by taking back from Moody Gardens a one-cent slice of hotel-tax revenue. That annual sum of nearly \$500,000 pays Gal-Tex Management Company, which is 50 percent owned by Moody Foundation, to manage the convention center at Moody Gardens.

The city, they suggested, could take the almost \$500,000 and use it instead for the "promotion of tourism ... for the benefit of all hotel operators in the city."

But by February, after a series of closed meetings, Fertitta, Mitchell and Moody representatives were all

instead advocating adding a penny to the tax so both Moody Gardens and the promotion of tourism could have a slice of the funds. The idea went dormant in late February when the Hotel/Motel Association voted against it. It has since evolved into a plan to "cap" hotel-tax revenues used to fund programs from summer lifeguards to the Galveston Historical Foundation and spend the excess on expanding the convention center.

#### The convention center study

One of the hottest battles fought last winter was over a plan, developed by former City Manager Bern Ewert, to have a consultant from "as far away from Galveston as possible" decide where the city convention center should go.

The city council first approved spending \$50,000 in Community Development Block Grant funds to pay for the study, but some members later balked at the idea.

The study got under way in May after Fertitta, Mitchell and Moody agreed to split its costs.

The study, completed in October, recommends that the convention center be at Moody Gardens. But it also states that the center must offer at least 100,000 square feet of exhibit space to draw crowds large enough to fill the 304-room Moody hotel and spill over into others.

A plan is now being negotiated to expand the center at Moody Gardens to 67,000 square feet.

#### A change of venue

In July, Fertitta dropped his state lawsuit and filed an anti-trust suit in federal court. The city and park board were not named as plaintiffs in the new suit which alleges that since 1994, Moody — and co-defendants Gal-Tex Management Co. and Moody Gardens Inc. — unlawfully conspired to monopolize the conference center and resort hotel market in Galveston.

It also alleges that the three defendants misled the Internal Revenue Service to get permission to build a tax-exempt hotel at Moody Gardens using grant money from the \$700-million Moody Foundation.

"The defendants are closely related entities that have acted together in attempt to monopolize the ... market

in Galveston," reads the complaint.

"Generally speaking, the defendants have sought to use the tax-exempt status of Moody Gardens and the Moody Foundation to create a monopoly through which the for-profit/nontax-exempt defendants can improperly benefit."

As he did with the state suit, Fertitta has said he'll drop the federal suit if the Moodys agree to a slate of provisions designed to protect private-sector hotels from unfair competition.

There are three main stipulations to his offer.

One is that neither Moody Gardens nor Gal-Tex could control convention bookings at the Moody Gardens con-

vention center. Second is that any discounted Moody Gardens tickets offered to guests of its hotel be available to all hotel guests. And third is that an islandwide transportation system be developed to take tourists back and forth from the park to hotels.

Park board and Moody Gardens staff members reached tentative agreement on many of the items in November, but Fertitta has not dropped his suit — a fact that Herz says proves Fertitta has not been negotiating in good faith.

Fertitta counters that while there has been plenty of talk, there is still no signed agreement and he'll keep his suit alive unless and until an

agreement is signed.

"There is no agreement still," Fertitta said. "That's the problem; there is no signed agreement. I'd love to drop the lawsuit because it's costing me about \$1,000 a day, but not until they sign an agreement."

Fertitta said also that if there is an agreement, it will be because he had the gall and money to take on the island's most powerful family.

But for Moody, the whole affair is just another example of Galveston's traditional inclination toward strife.

"You can never get anything done here," he said, "because there is always somebody keeping everything all stirred up."

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## Moody Foundation to release some funds

**By Michael A. Smith**

The Daily News

Published June 05, 1997 12:01 AM CDT

GALVESTON -- Moody Foundation trustees have voted to release some grant money frozen since February, according to a foundation attorney.

The foundation decided to defer making grants all over Texas because of mounting expenses incurred in fighting a lawsuit filed by hotel owner Tilman Fertitta, officials said.

Legal and consulting fees spent fighting Fertitta's suit have reached about \$500,000, attorney Irwin M. "Buddy" Herz has said.

On Wednesday, Herz said the foundation's three trustees -- Robert L. "Bobby" Moody, Frances Moody Newman and Ross R. Moody -- voted Monday to release some grant funds.

Herz said he could not comment on what grants were funded, which were rejected and which, if any, remain in limbo.

He also declined comment about the total amount allocated Monday, but said it was similar to amounts allocated each quarter during recent years.

"Only the trustees can comment on those issues," he said.

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## BUSINESS

# Fieglein speaks out on Moody clause

By MICHAEL A. SMITH

The Daily News

**GALVESTON** — Those who toil in the private sector should fear an unfettered operation at Moody Gardens, an attorney told a group of island Republicans on Tuesday.

Attorney Michael Fieglein asked members of the Pachyderm Club to help prevent the removal of a "give-back" clause in the agreement that cedes ownership of Moody Gardens to the Park Board of Trustees.

"I'm trying to influence you to influence anybody you know on the park board, to not give away the most valuable asset the park board owns," Fieglein said.

The clause in question allows the board to return ownership of Moody Gardens to the Moody Foundation "for any reason whatsoever" with 20 days notice.

Doug McLeod, chairman of Moody Gardens' board, says the clause is outdated and makes the charitable organization vulnerable to Galveston's unpredictable politics.

Others, including Fieglein and hotel owner Tilman Fertitta, say the clause is the only lever the city has to make the deep-

## GALVESTON

pocketed foundation play fair with private sector businesses.

The proposed change affects only one of several termination clauses in the agreement by which the Moody Foundation gave the gardens to the city, which then leased its management to Moody-owned Gal-Tex Hotel Corp. for \$300,000 a year.

The arrangement allows the Foundation to forgo paying taxes on the \$130 million property, while the island's tourism industry benefits from the garden's facilities and attractions.

Fieglein said his client, the Galveston Health and Racquet Club, lost about \$50,000 a year when tax-exempt Moody Gardens opened a general-admission swimming pool at its Palm Beach facility.

"They don't have the tax or rent burdens," he said. "So they were able to offer memberships for \$25 a year while we were talking in terms of \$25 a month."

Fieglein said the club's owners now are worried about competing with a planned 5,000-square-foot fitness center at the Moody Gardens hotel.

And other businesses could suffer the same lopsided competition if the give-back clause is deleted, he said.

"We could have Bobby's Crab Shack out there unless there is some method of controlling what goes up at that facility," he said.

McLeod, however, said the Internal Revenue Service prevents Moody Gardens from conducting business not related to charitable operations.

"Mr. Fieglein makes it sound like we could open a car dealership if the clause was removed," McLeod said. "That's simply not the case. The IRS has very strict regulations that apply to us no matter what."

He said the planned fitness facility is intended for guests of the hotel, although people not staying at the hotel could buy a day pass.

But he said there are no plans to sell extended memberships to the facility.

"We have no intention of operating a private health club," McLeod said.

The Park Board of Trustees is slated to discuss deleting the give-back clause during a special meeting beginning 10 a.m. Thursday.

# The last dissenter: Mr. Cook goes to Washington

By MICHAEL A. SMITH  
The Daily News

**GALVESTON** — For Tom Cook, every rivet driven into the superstructure of the Moody Gardens hotel is a new nail in the coffin of his livelihood.

The \$57-million hotel will open in December 1998, almost near enough to cast a shadow over Cook's Galveston Health & Racquet Club.

Along with its 304 guest rooms, the hotel will house a state-of-the-art fitness center that Moody officials say might be open to the public.

Aside from being newer, as well appointed and almost as large as Cook's, the Moody fitness center will be exempt from most of the taxes Cook has to pay, and it will be subsidized by the \$700-million Moody Foundation, a tax-exempt private charity.

The laws allowing tax-exempt organizations to build and operate such things as hotels and gyms are complex in the way only tax codes can be. And the relative costs and benefits to the island of two decades of Moody Gardens expansion are subjects of protracted controversy, ongoing negotiation and one federal lawsuit.

But for Cook, the whole situation can be simplified to a simple business equation.

Tax exemption means the Moody facility can offer comparable service at a lower price.

"It absolutely will put me out of business if they open the health club to the public," Cook said.

Moody officials will not promise in writing not to sell cut-rate memberships to the general public and the city and park board of trustees have given him no protection, Cook said.

"As long as they maintain the right to offer memberships to the public, I'm in limbo," Cook said. "I don't know if I should risk investing in the business. I

can't do much of anything. The only thing left to do is to go to Washington and get the loopholes in the tax code closed."

To accomplish that, Cook and Galveston attorney Michael Feiglein have hired a private detective to gather information about Moody Garden's finances and are lobbying some high-powered Texas politicians for support.

The two say they've piqued U.S. Sen. Kay Bailey Hutchinson's interest enough for her to assign a staff member to their endeavor.

They are also trying to line up support from Rep. Dick Army and Rep. Bill Archer to start congressional hearings on the issue, Feiglein said.

"What they are doing is perfectly legal under the current tax code," Feiglein said. "But it should not be allowed. If charities want to encroach into areas where private businesses are operating, they should have to pay the same taxes."

Doug McLeod, Moody Foundation's director of development, says it's Cook who wants to stifle competition.

He said also that the hotel fitness center is not meant to compete with Cook's business.

"We have to have a first-class fitness facility to compete with every other convention-center hotel," McLeod said.

Cook and Feiglein say they've tapped into a national movement, headed by the International Recreational Sports Association, bent on curbing the incursions by nonprofits into the private sector.

But McLeod says he's not worried that Congress will change the tax code enough to hurt Moody Gardens.

"Congress is not going to take up the issue next year and maybe not for years to come," he said. "And they can't get the code changed just as it applies to us; it will have to apply to everybody. So they'll be taking on the Moody Foundation and every other private foundation in the country."

*The \$57-million hotel will open in December 1998, almost near enough to cast a shadow over Tom Cook's Galveston Health & Racquet Club.*

# Despite efforts, conflict of interest still alive

**G**alveston's political and civic life had been dominated for generations by boards whose members often had financial interests in the public business they controlled.

That hasn't changed in spite of the fact that this year, by an 80-percent vote, citizens of Galveston passed three charter amendments aimed at reducing such conflicts.

The amendments prohibit board members who do business by contractual agreement with the board, including an entity owned by the board, on which they serve, from voting on contractual arrangements the board makes with other members of the same board.

The amendments cover not just the individual, but the individual's employer and relatives (the wording is the same as the state conflict-of-interest law).

Also, when the city council appointed new members to the parks board, Mayor Roger Quiroga boasted that the city avoided appointing people with obvious conflicts of interest.

Nonetheless, even after the new appointments to the park board, there are four members who have direct or indirect contractual connections with the board. I believe the amendments apply to all four and they should be aware of that

## GUEST COLUMN



### ● STEVE GREENBERG

as they conduct business.

The connections between these men, their employer and the various Moody family interests demonstrate the complexity of the problem and, not coincidentally, they show how well the Moody interests have played the game of local politics.

The four with potential conflicts are: Allen Flores, who has a contract to operate R.A. Appfel Park; Gene Lucas, employed by Gal-Tex Hotel Corp., which by contract operates Moody Gardens; and Raymond Lewis and Melvin Williams, who are employed by the University of Texas Medical Branch, which has 20 different contracts with Moody Gardens.

In the case of Lewis and Williams, it is worth noting that their boss, John Stobo, president of UTMB, now sits on the board of Moody National Bank. The bank controls The Libby Shearn Moody

Trust, which controls 51 percent of Gal-Tex, which operates Moody Gardens, owned by the park board.

All of that sounds complicated, but it demonstrates the manner in which our community's boards, foundations and political entities are tied to one another.

The recently passed amendments were designed to prevent "vote swapping" that might occur between several board members who have a personal or financial pressure on a board member.

Example: If an employee of UTMB voted for a contract favorable to Moody Gardens, that employee could potentially be rewarded by UTMB, which could in turn be rewarded by the Moody Foundation, which funds Moody Gardens and controls 33 percent of Gal-Tex, with grants or other benefits.

Of course, if the employee voted against such an issue, the employee and university also can be punished.

My point is simple: Personal interests often take precedence over the public good in Galveston. In spite of efforts to change that, a potential for conflicts still is very much alive.

● Steve Greenberg recently completed a two-year term on the park board.

## LETTERS TO THE EDITOR

# Restaurateur drops suit alleging monopoly on Isle

By **KEVIN MORAN**  
Houston Chronicle

**GALVESTON** — Houston restaurateur Tilman Fertitta has withdrawn a federal antitrust lawsuit charging Galveston's Moody Gardens and Moody Foundation trustee Robert L. "Bobby" Moody with trying to monopolize hotel business here.

The move comes after Moody Gardens representatives last week signed an agreement calling for establishment of an independent system of booking conventions into the city convention center at Moody Gardens, Fertitta said.

Fertitta, who owns the San Luis Hotel and Conference Center on Galveston's beachfront, had said that Moody was trying to monopolize hotel business on the island by insisting that managers of a 300-room luxury hotel under construction at Moody Gardens should control convention booking.

Moody Gardens and the city's Park Board of Trustees, which owns the convention center at Moody Gardens, announced plans for an independent booking agency in October.

"The booking policy agreement entered into last week between the Park Board of Trustees of the City of Galveston and Moody Gardens

lays to rest, for now, the Moody organization's ability to monopolize the convention center to the detriment of other hoteliers in the City of Galveston," Fertitta said.

His attorney, Steven L. Scheinthal, said Friday that the park board has agreed that Moody Gardens will not be allowed to offer discounts to Moody Gardens attractions in connection with room rates at the new hotel.

"The park board's in control of the convention center, so there can't be any unfair competition from this point forward," Scheinthal said.

Still to be worked out are arrangements for transportation to the convention center for conventioners staying at the San Luis and other hotels, Scheinthal said.

Fertitta, who spent \$40 million buying and remodeling the San Luis complex, had protested the tax-exempt Moody Gardens building a hotel that will be exempt from local property taxes and federal income taxes. Fertitta maintained such a hotel would compete unfairly with private, tax-paying hotels.

Moody and Moody Gardens officials denied any intentions of monopolizing the hotel business in Galveston or engaging in unfair business practices.





**Saturday**

January 24, 1998

**THE DAILY NEWS**

# OPINION

**FEEDBACK:** Call Managing Editor Heber Taylor at 1-800-561-3611, Ext. 245 — or send email to [heber.taylor](mailto:heber.taylor)

## LETTERS TO THE EDITOR

### **City and park board were never supposed to fund Moody Gardens**

The park board is looking for funding for the Moody Convention Center?

I thought the Moody Foundation was the charity giving to the park board. Now the Moody Foundation wants the park board to fund the expansion of the convention center to benefit the foundation's development at Moody Gardens.

The city and the park board were never supposed to pay one penny for the developments at Moody Gardens. The city has no money and cannot afford to borrow the money.

Next the city will raise our property taxes and for what — to pay for the convention center expansion to help fill up the rooms at the tax-exempt Moody hotel.

Results published in our newspaper prove that Moody Gardens has made little impact in several important areas.

It must be helping the Moodys, or they wouldn't want it so badly. The city's obligation is to help the taxpayers.

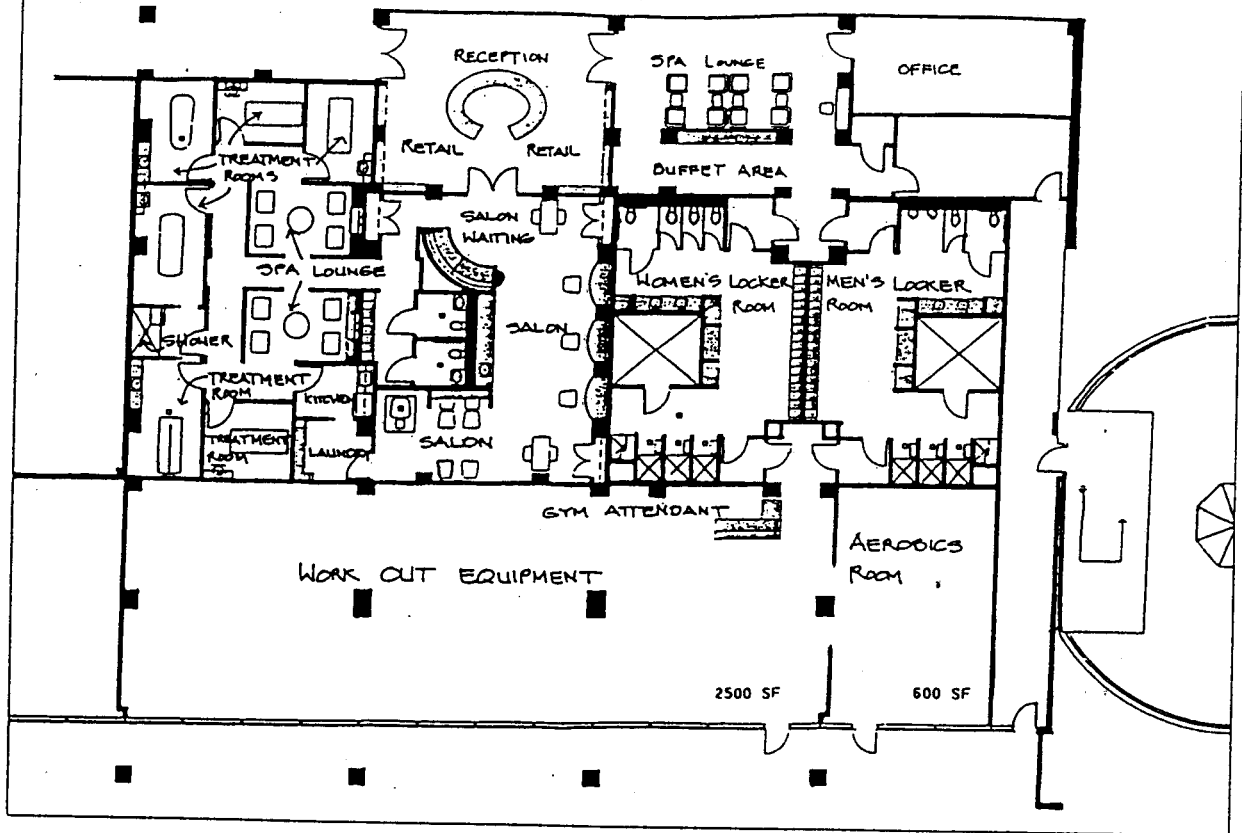
The Moodys have a wealthy charity with plenty of money to help themselves and everyone else.

**Vito Sabatelli  
Galveston**

July 27, 1970

# MOODY GARDENS SALON AND SPA

TOTAL SQUARE FOOTAGE 10,000 SF



▲ The Moody Gardens salon and spa will feature treatment rooms for massages and facials, two hair-styling stations, manicure and pedicure rooms, an equipment room of 2,400 square feet, showers and a locker room with a sauna.

## Fertitta: Hotel spa will hurt isle businesses

**GALVESTON**

By CAROL CHRISTIAN  
The Daily News

Tilman Fertitta claims the hotel's spa and fitness center is too big and will give the tax-exempt hotel an unfair advantage over Galveston health clubs.

GALVESTON — Tilman Fertitta's claim that the spa and fitness center at Moody Gardens' new hotel will harm island businesses is overblown, Moody Gardens officials said.

Now under construction, the 300-room hotel is scheduled to open Dec. 1.

Fertitta, who owns the San Luis Hotel and Convention Center at 5222 Seawall Blvd., says the hotel's proposed salon-and-spa area is too big.

"This facility is in excess of 10,000 square feet, which is larger than any salon or spa you will find in a Las Vegas-caliber hotel," Fertitta said in a letter he sent July 14 to the Galveston



Fertitta

Park Board of Trustees. He sent a copy of the letter to The Daily News.

Fertitta is not asking that Moody Gardens decrease the size of the spa, said Steven Scheinthal, general counsel for Landry's Seafood Restaurants, of which Fertitta is chairman, president and chief executive officer. Fertitta was unavailable for comment.

"Mr. Fertitta has no ability to control what Moody Gardens does," Scheinthal said.

"He's pointing out to the park

board the error of their ways and that they need to be careful when they approve spending of money at Moody Gardens. Would we like to see the spa decrease? Absolutely. Will they? No. Did we ask them? No."

Fertitta's letter will be in packets for park board members when the board meets at 8:30 a.m. Tuesday at Beach Central, 2100 Seawall Blvd. But it won't be on the agenda for action, said Park Board Chairman Raymond Lewis Jr.

"I don't think we would be doing anything any different in the board meeting, with or without the letter," Lewis said Friday.

● See HOTEL/Page A12

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Continued from Page A1

Lewis said the board already was working, as Fertitta urged in his letter, to make sure that "Moody Gardens remains an asset and not a detriment or deterrent to other existing and future businesses."

In a suit Fertitta filed in state district court in November 1996, he claimed a tax-subsidized hotel had an unfair advantage over other operations on the island.

He dropped that suit in June 1997 and filed an antitrust suit in federal court the following month. In January, Fertitta asked the court to let him drop that suit. U.S. District Judge Samuel Kent granted the motion with prejudice, meaning it cannot be filed again.

The park board technically owns Moody Gardens, which has an agreement with the park board signed in September 1990. No property taxes are paid on the land, which is leased to the Moody Gardens operation through 2026.

Douglas McLeod, chairman of the board of Moody Gardens and director of development for the Moody Foundation, said Fertitta's complaint was a red herring.

"It will be a nice spa for a hotel but certainly not grandiose," McLeod said. "It will have equipment you will normally find in a good hotel."

McLeod said Fertitta had come up with the figure of 10,000 square feet by adding together the spa, fitness center, child care area, office area and hallways.

Carol Willhite of Design Trends Inc. in Houston, the interior designer for the Moody Gardens hotel, said the spa and salon area, including an office, was 4,570 square feet.

The spa and salon area includes treatment rooms for massages and facials, two hair-styling stations and manicure and pedicure rooms.

The fitness area is 4,681 square feet, including an equipment room of 2,400 square feet, showers and a locker room with a sauna. The child care area is 565 square feet with a play room and quiet room.

Those three areas — the spa and salon, the fitness area and the child care area — add up to 9,816 square feet.

"All the new hotels are going in with new things more elaborate than this is," Willhite said.

McLeod said the hotel must have a spa and fitness area to compete with convention-center hotels across the country.

"We've got to have, like every first-class hotel, a good fitness center and a good spa, albeit both of these will be modest by many first-class hotel standards," McLeod said. "If people would see the big picture — Galveston has to worry about competing with other cities."

Fertitta's letter, McLeod said, is part of an orchestrated effort by Fertitta, Galveston Realtor Steve Greenberg and Tom Cook, owner of Galveston Health and Racquet Club at 83rd and Airport streets, to raise public sentiment against Moody Gardens.

McLeod noted that within a few days of Fertitta's letter, Cook and Greenberg both wrote guest columns in The Daily News about perceived conflicts of interest among park board members stemming from relationships, either direct or through employers, to Moody family businesses.

"It's ironic that all three of these letters appeared within the same week," McLeod said. "It's the same old deal from this group of people that does not want to compete with entities at Moody Gardens."

Cook and Greenberg said there was no orchestrated effort among them and Fertitta to write letters at the same time.

Cook said he simply was trying to survive as a business owner. He said that 10 years ago, when Moody Gardens opened its Palm Beach, he lost 200 of 250 members at his swim club.

"It's David and Goliath," Cook said of his competition with Moody Gardens, which is supported by the Moody Foundation.

The foundation, federally recognized as a nonprofit entity, has guaranteed it will underwrite any operating losses at the hotel.

"I don't want to be put out of

7-

business by a charity," Cook said. "I think a charity means giving and being benevolent. If you're a charity, give your money away with no strings attached. If you want to operate a commercial business, pay taxes. Join the crowd and be like us."

McLeod said Cook didn't need to worry about competition from the hotel fitness center because it will be only for hotel guests and will not sell memberships to the public.

Cook said he wished he could believe that.

"It would be a major coup if you could get them to agree in writing not to sell memberships to the public," Cook said. "I'd shut up."

Greenberg, a former park board member, said McLeod was avoiding the issue when he suggested that Cook, Greenberg and Fertitta coordinated their written pieces.

"The issue is how big the spa is going to be," Greenberg said. "It's kind of like shooting the messenger. They shouldn't try to refocus the issue on the people asking the questions."

Greenberg noted that he had met with Moody Gardens representatives early in the planning of the hotel and has asked about how many small shops it would have.

McLeod conceded that the hotel's salon, with its hair styling and manicure facilities, could compete directly with island beauty shops and nail salons.

"If we operate it, the hair and nail services will not be advertised," McLeod said. "But if we lease out a space to a private operator, they would advertise and they would be subject to taxes."

The hotel appears to be off to a good start. Mike Riley, Moody Gardens director, said that for the hotel's first year starting in December, 30 groups of various sizes have booked rooms.

The reservations range from 100 room-nights to several hundred room-nights, Riley said. About 25 percent of the groups are large enough to fill the Moody Gardens hotel and spill over to others, he said.

Five groups have booked for 2001 and three have made reservations for 2003. The hotel

is not yet accepting individual reservations.

"I think it's a great start," Riley said. "Apparently, there is a lot of interest that has been built up across the state among groups that didn't feel they had all the set-up they needed. I think everyone will be pleasantly surprised that it brings new things to Galveston."

McLeod noted that Moody Gardens was creating jobs and also would provide job training through the Moody Hospitality Institute, to be operated in conjunction with the Moody Foundation, Moody Gardens, Gal-Tex Corp. (which has the management contract to operate Moody Gardens), Galveston College and University Partners (the University of Houston and Texas Tech).

According to a June proposal, the institute will provide opportunities to earn associate's degrees in various aspects of the hospitality industry. Training will be offered in such subjects as lodging and hotel management, restaurant and food service management, culinary arts, and meetings and conventions.

ALL ELIMINATED!  
GONE!

No Charity at all!

7/27/98

GUEST COLUMN



● TOM COOK

## Board competing with taxpayers

**T**he Galveston Park Board of Trustees voted Tuesday to enter into direct competition with the Galveston Health and Racquet Club, and the trustees' vote certainly will force the club to go bankrupt and force yet another taxpayer off the Galveston tax rolls.

We spent more than a year of begging the park board not to go into competition with the club. Yet park board members succumbed to wishes of the Moody Foundation and agreed to put the Racquet Club under tremendous competitive and financial pressures.

I am very disappointed that the park board would not stand up and support taxpayers and the interests of the public.

The park board appears to be very comfortable in its new role of aggressively competing against our own taxpayers.

Armed with Moody money and power, the park board is now almost invincible.

Due to its tax-exempt status, the Moody Foundation could not own and operate a fitness club which sells memberships to the public.

However, with the park board out in front, in essence acting as a straw man for the foundation, the foundation can now do almost anything a taxpayer can do, except pay taxes.

I think it is a horrible situation and very unfair to taxpayers.

The foundation has simply lost its way, forgetting much of its original charitable purpose.

The foundation appears primarily interested in operating commercial business enterprises without the burden of paying taxes.

I never dreamed I would be put out of business by a charity, much less a charity that hides behind the skirts of the park board and entices the park board to compete against and cause financial harm to innocent and defenseless taxpayers.

The city council has the power to ensure the Racquet Club's survival by preventing the park board from selling fitness memberships to the public. Instead, the park board only would allow overnight guests of the new park board hotel to use the facilities of their fitness center.

This act would ensure the Racquet Club would stay in business and remain a viable taxpayer in Galveston.

The city council has both the right and the duty to require that this action be taken.

The city's lease with the racquet club contains a no-compete clause which prohibits the city from selling fitness memberships on airport property.

Certainly, the park board's decision to sell fitness memberships on airport property is against the spirit and intent of the city of Galveston's lease with the Racquet Club.

The honorable thing would be for the city to honor its commitment and not compete with the Racquet Club. I hope the city council will act to restrict the park board from selling fitness memberships to the public.

● Tom Cook, a Galveston businessman, is an owner of Galveston Health and Racquet Club.

Sunday  
July 19, 1998

## New park board members face conflicts

**T**he city council appointed two employees of the University of Texas Medical Branch to the park board of trustees.

Both are fine people, but both face an enormous conflict of interest when voting on matters related to the Moody Foundation.

UTMB desires to receive grants from the Moody Foundation. Rightly, all Galvestonians hope UTMB receives such grants.

However, if UTMB employees who serve on the park board were to vote against the wishes of Moody interests, would such a vote diminish UTMB's chances to receive Moody grants?

In all probability the answer is "yes."

We already have seen how the foundation withholds its grants to threaten certain groups into letting the foundation have its way.

UTMB employees would naturally be uncomfortable voting against Moody demands.

And, if there weren't

### GUEST COLUMN



● TOM COOK

enough pressure already, the president of UTMB is a member of the board of directors of Moody National Bank.

He sits along side of, and serves at the pleasure of, Moody Foundation Trustee Robert Moody, who also happens to be board chairman and president of the bank.

The bank's trust department controls Gal-Tex Hotels, which manages Moody Gardens. So, in reality, the president of UTMB is one of the people who controls how Gal-Tex manages Moody Gardens.

The president of UTMB would no doubt be embarrassed if two of his employees

voted on the park board against the wishes of Robert Moody.

How could the UTMB president explain that to Mr. Moody? "My employees were wrong?" Or, "You were wrong, Mr. Moody?"

Neither is a likely scenario, I think.

The pressures are too great; the conflicts too big; the potential grants lost are too much.

UTMB employees who vote on park board matters relating to Moody interests would feel enormous pressure to vote to support Moody wishes, in most instances.

The citizens of Galveston recently overwhelmingly voted their approval of charter amendments that were designed to acknowledge just such conflicts of interest.

It is hoped that these park board members will acknowledge their conflicts and act accordingly.

● Tom Cook is a Galveston businessman.

5/10/49  
Ward

# Fair competition should be guaranteed

## The Issue:

The Galveston Park Board of Trustees has voted to eliminate a key provision from its management contract that covers Moody Gardens. In return, the board has proposed some rules it says should guarantee fair treatment for all.

## We suggest:

The operation of a major hotel in a tourist town by a tax-exempt foundation is unusual. And before it signs off on the changes, the city council should be able to convince the public that the rules offer guarantees that private businesses will be protected from unfair competition.

The Galveston City Council is planning to review the park board's recent decision to remove a controversial clause from its contract with the Moody Foundation.

We have contended that eliminating the give-back clause — the right to return Moody Gardens to the foundation for any reason — would be a mistake.

The operation of a major hotel in a tourist town by a tax-exempt foundation is unusual. Moody Gardens is tax-exempt because the foundation gave the property to the city, and the city has the responsibility to ensure that Moody Gardens does not compete unfairly with private businesses.

While we have contended that the clause guaranteeing Moody Gardens' tax-exempt status is the only real guarantee of fair competition, the park board has been trying to trade the clause for some specific rules it says would guarantee fairness for all.

It's hard to fault that attempt.

In reviewing the changes proposed by the park board, we were impressed by their thoughtfulness. But we're still not sure the proposed rules would provide guarantees of fair competition.

Before the council signs off on the changes, it should be able to look the public in the eye and say that the rules guarantee fairness.

We also hope the council will keep these points in mind:

- First, there's no reason to apologize for keeping the clause in the contract. The city owns Moody Gardens, and Galveston shouldn't apologize for wanting to retain some control over its property.
  - Second, giving up a favorable clause in a contract isn't something you generally do in private business. It's up to the council and the park board to tell the public why giving up the clause is a good idea.
  - Third, the clause is not a threat to Moody Gardens or to the Moody Foundation. As long as the foundation is not competing unfairly against private business, it has nothing to worry about.
  - Fourth, arbitration — the proposed substitute for the clause — might not be enough to ensure an even playing field for all. The park board and Moody Gardens would be represented at the table. But what about the small businesses that are being unfairly harmed by competition?
  - Finally, it's not unreasonable to ask Moody Gardens to bear the burden of public accountability. The foundation should be accountable to the public because it gave Moody Gardens to a public body so that the property would be exempt from taxes. It's not too much to ask the foundation to put solid, specific guarantees in writing.
- If this burden is unreasonable, the foundation is not without recourse. It could take back what most people would count as the profit-making parts of Moody Gardens — the hotel and perhaps some of the attractions — and pay taxes on them.

● This editorial was written by Heber Taylor, editor of The



# Moody reps call halt to negotiations

FRIDAY  
3/20/98

## Negotiations

Continued from Page A1

### Impasse reached in talks on funding for convention center

By WES SWIFT  
The Daily News

#### GALVESTON

GALVESTON — Moody representatives on Thursday broke off negotiations with the Galveston park board to expand the Moody Gardens convention center.

The move stunned several trustees, who thought the two sides were near an agreement.

In a letter to City Manager Steve LeBlanc, Moody representative Irwin "Buddy" Herz said the lack of cooperation between entities that share in hotel occupancy tax revenues led to the decision to halt negotiations.

Herz declined to comment on the letter or the negotiations late Thursday.

LeBlanc was tight-lipped about the situation.

"I'll just say that we need a chance to decide how we're going to respond," he said. "I don't think it's very appropriate for me to comment at this time.

"I really need to talk to all of the players involved before I comment."

According to Herz's letter, Moody Gardens offered several concessions, including:

- That it would carry the construction costs until September 1999 without any cost to the park board.

- That it would pick up about 60 percent of the construction costs of the expanded convention center.

- That it would reduce the amount of the hotel occupancy tax given to Moody Gardens for operation of the convention center by

Moody representative Irwin "Buddy" Herz said in a letter the lack of cooperation between the entities that share in hotel occupancy tax revenues led to the decision.



Herz



LeBlanc

one-quarter of a cent.

The letter stated that to build the convention center, other entities receiving hotel tax revenue needed to make sacrifices.

"Every recipient of the hotel tax needs to contribute in order for an expanded convention center to be a reality," the letter said. "Unfortunately, as is normally the case in Galveston, local groups do not work together, and the city suffers."

The main sticking point seems to be how much of the hotel tax Moody Gardens will receive to operate the convention center.

Moody Gardens wants three-fourths of one cent of the tax. The facility currently receives a full cent.

LeBlanc reportedly told Moody representatives he could provide only five-eighths of a cent to the facility.

However, the park board voted Thursday to negotiate with Moody Gardens for three-eighths of a cent to the center, plus an additional percentage of hotel tax revenue for debt service.

Representatives from the park board, the city and Moody Gardens had been negotiating since Jan. 15 on financing for a \$20-million expansion to the convention center, which would roughly double the size of the existing facility.

Trustee Steve Greenberg said the news came as a surprise to him and other board members.

"I hope it was just a misunderstanding on their part, and it can be resolved, he said. "I think the staff has worked too hard, especially Steve LeBlanc."

Greenberg said if the negotiations did not resume the park board might need to look at alternative sites and operators for the convention center.

Trustee Vic Fertitta echoed those sentiments.

"To get this kind of reaction, it's just unbelievable," he said.

# City, Moody Foundation renew fight

## Property ownership, taxes at source of new dispute

By **MARTY SCHLADEN**  
The Daily News

**GALVESTON** — Just as city officials and representatives appeared to be reaching an agreement on who would pay what for a \$20-million expansion to the convention center at Moody Gardens, the foundation is proposing a condition that could further stall the deal.

Critics of the new proposal said it would remove any leverage the city had to get the mammoth, not-for-profit foundation to comply with its wishes. They fear Moody Gardens, which already is building a hotel on its premises, will use its tax-free status to gain a competitive advantage over its tax-paying counterparts.

After calling off negotiations with the city last week, Moody Foundation attorney Irwin "Buddy" Herz appeared before the park board Friday morning to say the climate for making a deal had improved.

"It's good to be back among friends," Herz said.

While the argument between the foundation and the city last week hinged on what portion of the hotel tax would go to fund convention center activities (Herz wanted three-fourths of a cent, and the city wanted to give the

### **GALVESTON**

Under the present arrangement, the city owns the facility, while a company employed by the foundation runs it. This allows the facility to be exempted from property taxes.

A14

**THE DAILY NEWS**

1998  
SATURDAY, MARCH 28, 1998

## Moody

Continued from Page A1

foundation five-eighths), officials on both sides appeared to agree Friday there wasn't much difference in their positions.

"We're really down to two and a quarter, or two and an eighth, the way I see it," City Manager Steve LeBlanc said, referring to the total percentage of the hotel tax that would go to retire the city's debt on the convention center and what it would pay to operate it.

But among the contractual requests by the foundation is that the city be required to give a reason for giving Moody Gardens back to the Moody Foundation. Under the current arrangement, the city owns the facility, while a company employed by the foundation runs it. This allows the facility to be exempted from property taxes.

Under the current arrangement, if facilities sprung up at Moody Gardens that city officials thought posed an unfair threat to other city businesses, it could simply hand ownership back to the foundation, forcing it to pay taxes on a facility that is expected to be worth \$200 million after it is improved.

Under the Moody proposal, the city would have to battle the foundation in court.

"You never want 'with cause' to go into that document," Tilman Fertitta, a major Galves-

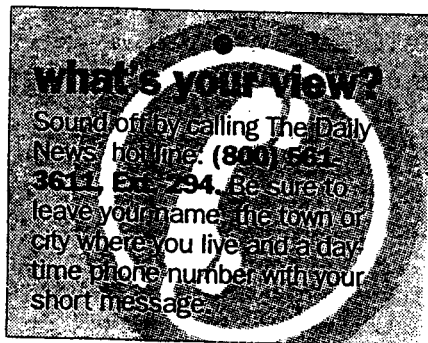
tion hotelier and restaurateur, said of the most recent proposal. "You don't have a hammer any more if you do."

A similar provision in the past stalled agreements between the city and the Moody Foundation.

Fertitta's father, park board member Vic Fertitta, asked whether Moody interests planned to expand the hotel at Moody Gardens along with the convention center. Park board member Gene Lucas, who runs the management company in charge of Moody Gardens, said the hotel would not be expanded for at least 20 years.

Tilman Fertitta said he wanted that promise in writing.

The park board will consider the Moody proposal during its regular meeting at 9:30 a.m. Tuesday.



# OUR COMMUNITY

Saturday

September 5, 1998

FEEDBACK: Call City Editor Michael A. Smith at 1-800-561-3611, Ext. 312 — or send email to michael.smith@galnews.com

## Moody employees plan demonstration to show clout

### GALVESTON

Doug McLeod plans to lead a rally this month of employees of Moody-owned companies in a place where the city council can see them: the parking lot across the street from city hall.

By MARTY SCHLADEN  
The Daily News

GALVESTON — Doug McLeod says the Moody interests don't get the respect they deserve.

So, as a private citizen, McLeod plans to lead a demonstration this month of employees of Moody-owned companies in a place where city council can see them: in the parking lot across the street from city hall just before the city council is set to meet.

"We want to say to council 'Listen, to us, we have something to say. Don't kick us around,'" said McLeod, executive-director of the Moody Foundation and a member

of the board of directors at American National Life Insurance.

The announcement comes after the Moody interests took a number of lumps from the new city council and the boards to which it appoints trustees.

First, the park board last month cut off talks on a deal that would have led to a \$20-million expansion of the convention center at Moody Gardens. Half the money would have been put up by the Moody Foundation, half by the taxpayers.

Then, just as the park board and the Moody Foundation were to agree to a reworked contract concerning Moody Gardens that elim-

inated a clause the foundation had been trying to get rid of for years, the park board tried to impose five conditions. Moody representatives said they were unacceptable.

Finally, the city council last week discussed cutting off in 2000 the \$500,000 in revenue from hotel-occupancy tax it currently sends to Moody Gardens each year.

"We do not feel very welcome by the city of Galveston," McLeod said. City Councilman David Bowers has been at the forefront in the council's battle with the Moody interests.

McLeod said he might become active again in politics and teach

Bowers a lesson.

"I have forgotten more than Mr Bowers will ever know about politics," he said.

Bowers said he wasn't trying to bully the Moody interests, he was just trying to engage in a public debate over how Moody Gardens is run.

"It seems like they want to talk personalities instead of talking the issues," Bowers said. "It could get fairly nasty."

McLeod said Irwin "Buddy" Herz, general counsel for the Moody Foundation, John Dundee of the railroad museum and Stefan Stamoulis, a wharves trustee, would speak at the rally.

# Tax-exempt organizations shouldn't compete

*EDITOR'S NOTE: Tom Cook, the owner of Galveston Health and Racquet Club, has long maintained that Moody Gardens unfairly competes with his business. He is organizing a campaign to convince Congress to further restrict what nonprofit companies can do.*

*JAN. 17, 1998*

**I** wish to respond to a comment directed at me in your Dec. 29 edition.

Moody Foundation representative Doug McLeod stated "it's Cook who wants to stifle competition."

Nothing could be farther from the truth.

Every small businessman or woman expects to face competition every day, but they have an absolute right to expect that competition to come from taxpaying businesses, not a charitable tax-exempt foundation.

It's absurd to think that a private tax-exempt charity would even desire to compete

## GUEST COLUMN



### ● TOM COOK

with a small, taxpaying business. The taxpayer has no chance, and the foundation knows it.

Genuine, sincere, tax-exempt organizations bent on charity would never consider competing unfairly with a small business.

Congress, in making our tax laws, never intended for this to happen. In fact, it would not have happened except for the Galveston Park Board of Trustees' decision to join forces with the foundation.

A charitable foundation's

sole purpose is to give its money away for charitable and educational purposes. This raises an interesting question. What is charitable about a private charity competing with and financially harming a small business?

Is this charity? The very word "charity" implies goodness, kindness, benevolence, helping someone else and not yourself.

McLeod implies that every foundation will oppose closing tax loopholes which allow tax-exempt charities to compete against small businesses. McLeod assumes that all charitable foundations compete with small businesses.

Not so! It is more likely that the Moody Foundation is the only, or one of a few, private foundations engaging in this activity. Most foundations are perfectly happy just being charitable, with no strings attached

● Tom Cook lives in Galveston.

**Saturday**

January 24, 1998

**THE DAILY NEWS**

# OPINION

**FEEDBACK:** Call Managing Editor Heber Taylor at 1-800-561-3611, Ext. 245 — or send email to [heber.taylor](mailto:heber.taylor)

## LETTERS TO THE EDITOR

### **City and park board were never supposed to fund Moody Gardens**

The park board is looking for funding for the Moody Convention Center?

I thought the Moody Foundation was the charity giving to the park board. Now the Moody Foundation wants the park board to fund the expansion of the convention center to benefit the foundation's development at Moody Gardens.

The city and the park board were never supposed to pay one penny for the developments at Moody Gardens. The city has no money and cannot afford to borrow the money.

Next the city will raise our property taxes and for what — to pay for the convention center expansion to help fill up the rooms at the tax-exempt Moody hotel.

Results published in our newspaper prove that Moody Gardens has made little impact in several important areas.

It must be helping the Moodys, or they wouldn't want it so badly. The city's obligation is to help the taxpayers.

The Moodys have a wealthy charity with plenty of money to help themselves and everyone else.

**Vito Sabatelli  
Galveston**

Sat  
1-17-98



## Tax-exempt organizations shouldn't compete

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### LETTER TO THE EDITOR

GUEST COLUMN



● TOM COOK

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The city council has both the right and the duty to require that this action be taken.

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● Tom Cook, a Galveston businessman, is an owner of Galveston Health and Racquet Club.

# Convention expansion talks are off

## Park board rejects broad outlines of \$20-million deal

By **MARTY SCHLADEN**  
The Daily News

**GALVESTON**

**GALVESTON** — In a move that stunned many, the new park board of trustees rendered almost a year's worth of negotiations moot Friday when it passed a resolution killing talks on a deal for a \$20-million expansion to the convention center at Moody Gardens.

The board left the door open to restarting talks, but the resolution made it clear that the general outline of the deal would have to be far different than it had been.

Raymond Lewis Jr., the chairman of the board, said he believed Galveston needed a first-rate convention facility, but how much of it should be paid for with public dollars, the terms of a possible deal with the Moody Foundation — and even whether the facility would be at Moody Gardens — were all back on the table.

Before starting negotiations to expand the convention facility at Moody Gardens in collaboration with the Moody Foundation, the park board had discussed building a convention

The board left the door open to restarting talks, but the resolution made it clear that the general outline of the deal would have to be far different than it had been.

### Attorney, board member step out of session

**GALVESTON** — Both the regular attorney for the park board of trustees and a board member who heads the company that manages Moody Gardens excused themselves from a closed session in which the board discussed a deal for a \$20-million expansion to the convention center there.

Gene Lucas, the park board trustee who runs Gal-Tex Hotel Corp., and park board attorney W. Daniel Vaughn excused themselves from the closed session.

Before the meeting, The

See SESSION/Page A11

GALVESTON COUNTY, TEXAS

## Deal off

Continued from Page A1

center downtown or along the seawall.

Lewis said both were again possible locations for a meeting facility.

"This resolution allows the park board to move in a new direction," Lewis said Friday afternoon.

Tilman Fertitta, owner of the San Luis Hotel and other Galveston hotels and restaurants, has argued that the Moody interests were trying to use the tax-exempt status of Moody Gardens to gain a competitive advantage over island hotels by building a hotel on the site to go with the convention center.

Fertitta said a new day had dawned in Galveston politics Friday.

"I hope Moody Gardens realizes they can't steamroll the people of Galveston any more," he said. "I congratulate the park board for negotiating from a position of strength because they own Moody Gardens."

Irwin "Buddy" Herz, general council for the Moody Foundation, said the board's decision to cut off negotiations "caught us by surprise."

Herz said he looked forward to beginning the talks again.

Friday's special session of the park board was called so that Roland Bassett, special attorney for the park board, could brief



Sat. Aug. 1, 1998

**The park board on Friday passed the following resolution:**

Resolved that the park board of trustees of the city of Galveston withdraws further consideration of participation on the construction or operation of an expansion to the convention center on the terms presented. The park board is still willing to consider amendments to the existing agreement and has given (special attorney Roland) Bassett instructions for presenting amendments to the contract. We are still willing to consider future proposals for the expansion or operation of the convention center under other terms.



Trustees Lyda Ann Thomas, Joe Jaworski, Melvin Williams and Raymond Lewis Jr. voted for the resolution. Trustees Allen Flores and James McCloy abstained. Trustees Gene Lucas and Sheila Lidstone were absent. Lucas was absent because of a conflict of interest; he is president of the company that operates Moody Gardens. Flores and McCloy abstained under terms of a charter amendment requiring board members who have contracts with the park board, or whose employers have contracts with the park board, to abstain from voting on matters in which other board members have similar conflicts. Flores owns a company that operates a city park, and McCloy is a professor at Texas A&M University at Galveston, which has a contract to monitor the park board's beach replenishment program.

the new board on the status of the deal.

The last park board seemed close to striking a deal that would require it to pay for half of the \$20-million expansion at Moody Gardens, with 25-year bonds to be paid with a part of the city's hotel-occupancy tax.

In March, the Moody Foundation proposed that the park board buy the bonds from American National Life Insurance Co., of which Robert "Bobby"

Moody is chief executive officer, at 6-percent interest.

In addition, it asked that the contract between the foundation and the board be changed to eliminate a provision that would allow the park board to transfer ownership of Moody Gardens back to the foundation. The clause was intended to give the park board a measure of control over Moody Gardens by allowing it to jeopardize part of the facility's tax-exempt status.

Lewis said the board told Bassett its position on the issue, but the chairman declined to say what that was.

The foundation also proposed that, even though the park board owned Moody Gardens, the board be restricted from making rules affecting the operation, maintenance and management of the facility.

After a three-hour closed session with Bassett, the park board came to the conclusion that the deal on the table was one it couldn't make.

"We got an awful lot accomplished," Lewis said of the session.

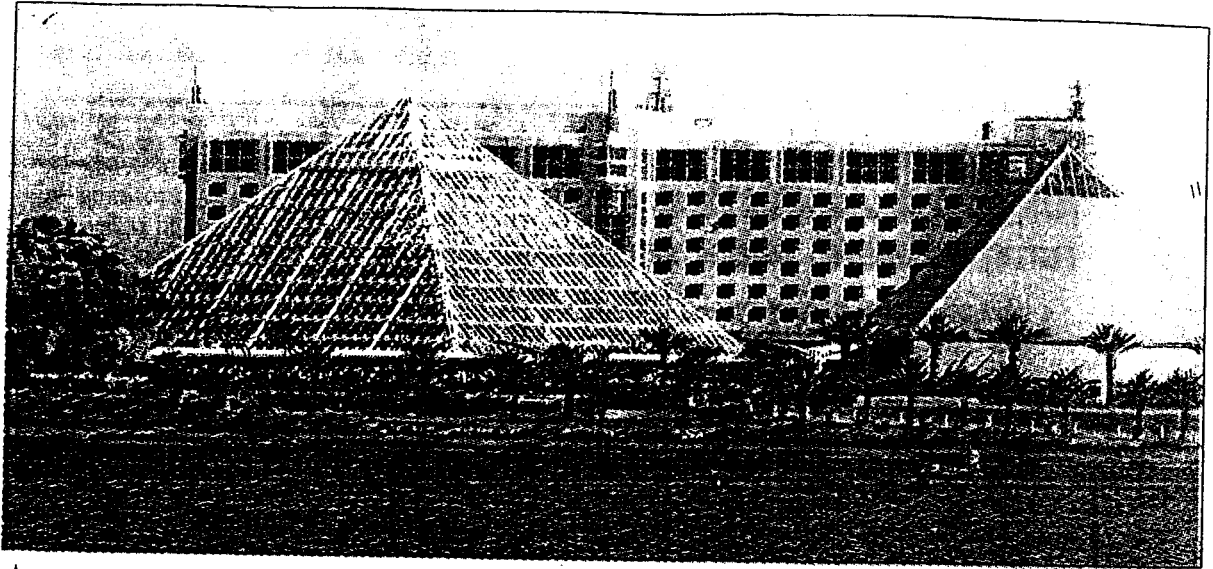
In explaining the board's reason for calling off the talks, Bassett said it questioned "whether, in effect, the park board can afford it."

The board runs some facilities that lose money, and it derives some of its income from the hotel-occupancy tax. To repay the bonds under the proposed deal for the convention center expansion, negotiators wanted to squeeze revenues that are going to fund some expenditures by the park board for the arts and for other purposes.

"It just seemed that it was strapping several entities, including the park board, a bit," Lewis said of the proposed use of the revenue.

8-29-98

# Still under talks



▲ The new hotel at Moody Gardens rises between the two pyramids on Friday. The park board of trustees was set to vote on contract changes, but a bid by park board members to change conditions led to a delay. (Photo by David Doemland)

## New conditions stall Moody Gardens deal

By **MARTY SCHLADEN**  
The Daily News

### **GALVESTON**

One of the major issues at stake in the contract change is the so-called "give-back" clause.

**GALVESTON** — Agreement to changes in a contract regulating the relationship between the park board of trustees and the Moody Foundation has again been delayed.

The park board was to meet on Friday to approve changes that had been proposed to the contract, which spells out the conditions of the park board's ownership of Moody Gardens. But the meeting was canceled after Irwin "Buddy" Herz, general counsel for the Moody Foundation, learned of new conditions that had been set forth by the park board before it would ratify the deal.

Herz said the Moody interests were surprised Thursday afternoon when, after six weeks of negotiations, the city put forth several new conditions.

"We felt like we were blind-sided," Herz said, "and we didn't know what we did to deserve it."

Park Board Chairman Raymond Lewis Jr. said he had hoped to have completed a deal by Friday, but he stopped short of saying he was disappointed by the developments.

The rules that ended up being proposed would prohibit:

- The sale of memberships to the health spa at Moody Gardens.
- Require that any discounts enjoyed by guests at the hotel at Moody Gardens be made available to all hotel guests on the island.
- Mandate an annual contribution to a transportation system between hotels and attractions.
- Require that a share of revenue from a parking garage be sent to the park board if a garage were built at Moody Gardens.

"I would say 'disappointed' is a bit strong," he said. "I would have liked to see us proceed a bit further."

Lewis pointed out that the negotiations were continuing, with talks taking place as recently as 1:30 p.m. Friday.

One of the major issues at stake in the contract change is the so-called "give-back" clause.

When it was written into the Moody Gardens contract, it was intended to give the park board power to bend the Moody Foundation to its will by threatening to give Moody Gardens

## Moody deal

Continued from Page A1

back, thereby threatening its tax-exempt status.

The proposed changes to the contract the park board was to have voted on Friday would have replaced the give-back clause with a process of mediation and binding arbitration in disputes.

During the park board meeting on Tuesday, Herz and Roland Bassett, the park board's attorney in the matter, both said the park board always had been able to make "reasonable" rules for Moody Gardens.

The only such rule that had been made during the park board's nine-year ownership of the facility was to set a policy of giving all hotels a crack at the business created by having conventions at Moody Gardens. Other hoteliers had complained that Moody Gardens was using the dual advantages of a tax-subsidized convention center and a tax-exempt hotel to compete unfairly with them.

When trustee Ed Russell suggested making some rules before ending the give-back clause, Herz objected, saying it would open a Pandora's box of proposed rules.

The rules that ended up being proposed would prohibit the sale of memberships to the health spa at Moody Gardens; require that any discounts enjoyed by guests at the hotel at Moody Gardens be made available to all hotel guests on the island; mandate an annual contribution to a transportation system between hotels and attractions;

and require that a share of revenue from a parking garage be sent to the park board if a garage were built at Moody Gardens.

Herz credited the proposed changes to City Councilman David Bowers and park board members Joe Jaworski and Lyda Ann Thomas, but Bowers denied involvement. Jaworski declined to comment, and Thomas couldn't be reached.

"I was really pleased last night when I heard that a list was developing," Bowers said. "These issues need to get addressed."

Even if Russell, Jaworski and

Thomas were the only park board members who wanted the concessions, the rest of the board had to heed their wishes. Charter amendments regarding conflicts of interest made three board members ineligible to cast votes, while another charter measure required that a simple majority of the entire board was necessary for a measure to pass.

That means five votes would be needed to pass changes to the contract. If Russell, Jaworski and Thomas were the only members to vote against the changes, the vote would be three to three.



# GALVESTON HEALTH & RACQUET CLUB

Dear Joe,

Thanks so much for acting responsibly as a Park Board Member, and for standing up for the right thing. You are protecting the public interests, in this instance for years to come, really ~~continue to care~~ <sup>centuries</sup> ~~care~~ <sup>some</sup>. This latest amendment proposed by the Moodys would literally give the Moodys a strangle hold on the city. In essence the Moody could do anything the could get away with, anything they are big enough to do and they are big and powerful: \$2 BILLION strong, probably much more. I don't believe, if the Park Board had signed off on that last deal, that it would have been very long before the Moodys would have been in Austin, lobbying on legislature to greatly expand the acts of the Park Board, so the Moodys, by controlling the Park Board, could do anything they desire at Moody Gardens. Then they will lobby for gambling so Moody Gardens could have gambling. Both Bassett and Herz know that the Park Board will be inept at making even reasonable rules stick. The Park Board will pass rules and the Moodys will simply ignore them unless told to obey them by an arbiter.

Joe, please test the waters before signing the Moody agreement. It's easy. The Park Board has said that it does not want to put the Racquet Club out of business. Moody representatives have said the same thing in public. So that would be a very reasonable rule. Try to get Moody agreement to that rule as well as a few other reasonable rules and you will see what it will be like to try and get the Moodys to agree with reasonable rules. The Moodys are merely using the Park Board as a straw man. The Moodys have already achieved the unthinkable: They have actually gotten the Park Board to join with the Moodys in a scheme to enable the Moodys to avoid sales taxes, property taxes, and income taxes, something they could not do alone without the Park Board.

Now, they want to go further. The Moodys are asking the Park Board to enter into a scheme with the Moodys that will increase the Moody powers greatly to run small businesses out of business. This is wrong. The Park Board must protect the public and say no. The Moody Foundation has no conscience. It is a *private tax exempt charity* that has lost its way. It is supposed to be charitable but unfortunately charity has become incidental to their overall scheme to use their money and power to develop and operate commercial business enterprises against defenseless tax payers. The Park Board wouldn't do this. But the Moodys, using the Park Board as a straw man, are doing it and very successfully.

Please don't give up and capitulate to Moody greed and selfishness. If the Park Board agrees to "for cause only" on the give back clause, that is all the Park Board should do. *Also*, most important the Park Board must state, *unequivocally*, that the Park Board will make reasonable rules over the next 200-300 years regarding operation at Moody



## **GALVESTON HEALTH & RACQUET CLUB**

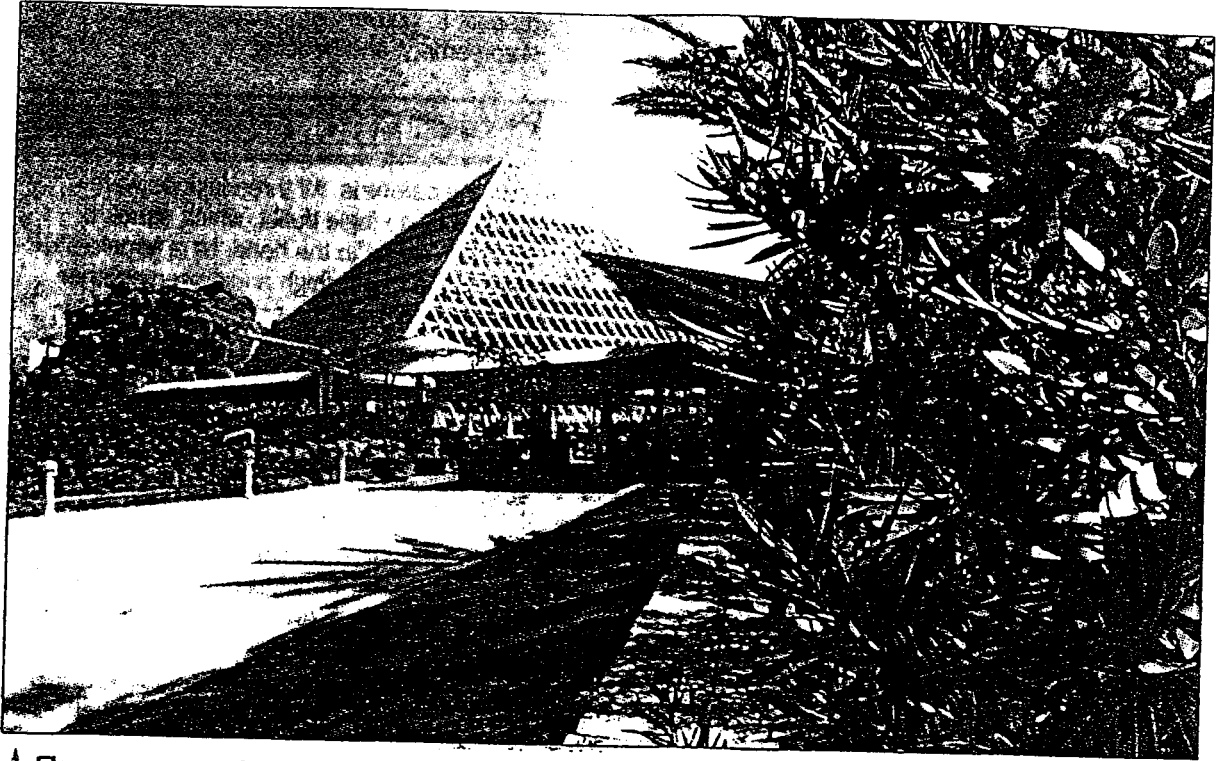
Gardens. There will be *no* arbitration by Moody to stop rules. That is ridiculous! Galveston should say thank you very much for the gifts which the Moodys are legally required to give away to someone with no strings attached. But we should never agree to submit to the rule of King Moody as they want and demand.

Moody Foundation is supposed to be DONATIVE not DICTORIAL. Joe, thanks for being a board member for the people. The Moodys will cause incredible pressure to be put upon the board members to get their way. But if a few members don't crack, the Moodys will have to do what is right - i.e. be charitable like the law really requires them to do. The Park Board has allowed them to avoid the law *but please* don't let them go any further.

Best regards,

Tom Cook  
Galveston Racquet Club  
Fax 409-744-0080 (Tom's)

# On one condition



▲ Flowers surround the pyramids at Moody Gardens on Tuesday. (Photo by Kevin Bartram)

## Park board votes to end give-back clause

**GALVESTON**

By **MARTY SCHLADEN**  
The Daily News

● A competing businessman comments.  
Page A8

### what's your view?

Sound off by calling The Daily News' hot line: (800) 561-3611, Ext. 294. Leave your name, the city where you live and a phone number with your short message.

**GALVESTON** — A controversial clause in the contract between the park board of trustees and the Moody Foundation regulating the management of Moody Gardens might have been voted out of existence Tuesday.

While some of the harshest critics of the removal of the so-called "give-back" clause said the move signaled the board's capitulation to the powerful Moody Foundation, others said the clause would be replaced by a workable alternative.

Before the removal of the clause becomes official, the Moody Foundation must go along with four conditions the park board attached to its removal.

Buddy Herz, general counsel for the foundation, said the foundation had agreed in principle with three of the conditions. The fourth, one which would require Moody Gardens to pay the city a portion of its revenue if it started charging for parking at its garage, would be the subject of negotiations,

### Board waits to act on Flores contract

**GALVESTON** — Allen Flores and some members of the park board of trustees had hoped that Tuesday would be the day that Flores' company and the board could either settle a dispute or "agree to disagree."

But the park board ended up voting to defer the matter, saying that it needed the Texas General Land Office to weigh in first.

Since April, Flores' company, the park board and the land office have

☛ See FLORES/Page A10

Herz said.

The city council also will have to approve at least parts of the changes to the management contract before they become official.

The give-back clause gives the park

☛ See BOARD/Page A10

## Board

Continued from Page A1

board, which owns Moody Gardens, the right to give the facility back to the Moody Foundation without going to court and justifying the move.

Some critics of the foundation have said it would use the tax-exempt status of Moody Gardens to gain an unfair advantage over private businesses. It would go into competition with them by building such facilities as a health spa and a hotel at Moody Gardens.

The give-back clause was necessary, the critics said, to prevent such unfair competition. The clause provided the park board with a hammer by giving it the ability to jeopardize Moody Gardens' tax-exempt status, they said.

But others said the clause originated out of concerns early in the development of Moody Gardens that the Moody Foundation wouldn't follow through on its promise to complete facilities there. With the facility mostly complete, the clause is no longer needed, Herz and Don Schattel, former executive director of the park board, have said.

In addition, the clause puts the Moody Foundation at the mercy of a potentially capricious park board, they said.

Joe Jaworski, a new member

of the park board who also is an attorney, suggested this summer that the give-back clause be replaced by a process of mediation and binding arbitration.

Under the plan approved Tuesday, the park board could give Moody Gardens back in 60 days — if a panel of arbiters sided with the park board in a dispute and the Moody Foundation chose not to abide by the ruling.

Tilman Fertitta, a hotelier who has been highly critical of the park board's ability to act independently of the Moody Foundation, said the new arrangement seemed to be acceptable.

"I don't think the park board is losing anything as long as it's a panel," he said of the arbiters.

He was concerned that a single arbiter could come under the sway of the Moody Foundation. However, the new management contract calls for a panel of three arbiters.

Not everybody was as mild about the change in the contract.

Tom Cook, owner of the Galveston Health and Racquet Club, said his business already had been harmed by the swimming pool at Moody Gardens. If the facility is able to sell memberships to islanders for the spa there, it would further damage the racquet club, Cook said.

"It's a big loss to us," Cook said.

Even though one of the four

conditions the park board attached to the new management deal required Moody Gardens to charge 25-percent more for its memberships than for the most expensive private membership on the island, Cook predicted the Moody attorneys would find a loophole.

Another of the conditions, the one that would require Moody Gardens to give the city \$1 for each car if it ever charged for parking in its garage, could be a sticking point on the Moody Foundation side of the negotiations.

Herz said the foundation already lost millions each year on the facility and any parking revenues should go to cover those losses.

The city council still will have to pass on at least part of the changes to the management contract.

While Lyda Ann Thomas, the council's appointee to the park board, said it was her understanding the council would have to approve the entire agreement, Herz said it would have to rule on only two parts of it.

One clause Herz said the council would have to approve provides that if the park board terminates its ownership of Moody Gardens, the lease on the property would revert to the Moody Foundation.

The other has to do with the extension of the lease to 40 years.

**COMMENTARY**

# THE WEEK IN REVIEW

Our readers speak out on some  
of the week's hottest issues



*A consultant held a public hearing last week concerning options to improve mobility on and off of the island. Among them was a proposed Offatts Bayou crossing.*

## **Bridge over Offatts Bayou would help only the Moodys**

On page A10 of your June 23 edition, there was an editorial written by Heber Taylor, titled, "Community input important tonight."

He stated that the meeting would give the public a say on the wisdom of building a bridge over Offatts Bayou. Evidently, he wasn't in Galveston a few years ago when the citizens of Galveston voted this proposal down.

Did the Moodys offer him any kind of deal? Money, etc., to write this? It doesn't take a rocket scientist to figure out who would benefit the most from this crossing, namely Moody Gardens and their new hotel.

I, for one, am tired of this family pushing things down the throats of the citizens.

**Johnny Meyer  
Galveston**



# CONVENTION deal sought by April's end

## Park board members oppose Moody Foundation demands

4/4/98  
By MARTY SCHLADEN  
The Daily News

### GALVESTON

GALVESTON — The Moody Foundation is pushing to complete by April 30 a deal with the city to build a \$20-million expansion to the convention center at Moody Gardens.

But some members of the park board of trustees say they're opposed to conditions the foundation is demanding from a future contract. They say the deal will sap the city's leverage to keep the tax-free foundation from building facilities with a competitive advantage over private businesses.

Others refused to state a position until they heard more about the matter, which has been intermittently discussed for several years.

"Most people are afraid of the Moodys," said Tom Cook, who owns a racquet club and fitness center next door to Moody Gardens.

The park board will have a special meeting at noon Monday to consider the matter.

"There's two sides in this story," board member Theresa Elliott said this week. "One is the money, and the other is the deal. We've got to do the money before we do the deal."

Negotiators are only about an eighth-cent of the city's hotel tax — about \$62,000 this year — away from reaching agreement on the amount the city will pay to build and operate the expanded center. But the two sides appear far apart on whether the city should retain its ability to return ownership of

Negotiators are only about an eighth-cent of the city's hotel tax — about \$62,000 this year — away from reaching agreement on the amount the city will pay to build and operate the expanded center.

## Moody

Continued from Page A1

Moody Gardens to the foundation, thus endangering the gardens' tax-exempt status.

The Moody interests want the issue taken to court before ownership can be handed over.

"I don't think it will be an issue," Irwin "Buddy" Herz, representative of Robert Moody, said after this week's park board meeting.

But he conceded that his group was unlikely to back away from its demand that the park board could dump ownership of the facility only after going to court and justifying its position.

"That's a very strong part of our position," he said.

To Herz and those he represents, it's an unacceptable risk to contemplate a city council having the power to capriciously hand back ownership of a \$300-million facility, jeopardizing its tax exemption. Herz referred to the prospect as a "bad dream."

But to board members Vic Fertitta and Steve Greenberg, the city needs to maintain its leverage over the Moody Foundation.

Board members Don Mafrige, John Knust and Ed Russell this week declined to take a position on the matter.

Fertitta and his son, Tilman, own Galveston hotels they fear will be put at a disadvantage if a tax-free hotel at Moody Gardens is expanded while taxpayers help pay to expand the convention center there.

The Fertittas, along with city councilman David Bowers, say they also want guarantees that facilities that compete with existing Galveston businesses won't start popping up at Moody Gardens.

Cook agrees.

The number of swim-only memberships at his club dropped from 275 to about 60 in a six-month period, said Cook, a former employee of Robert Moody.

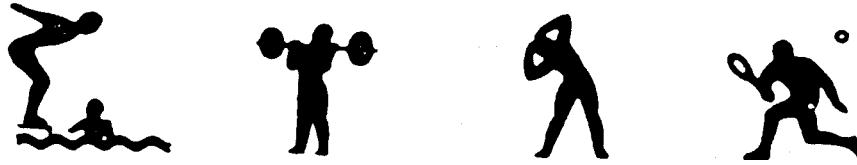
That was the same period the Palm Beach swimming facility opened at Moody Gardens. Cook said Palm Beach memberships were \$25 per person per season, while he has to charge a \$199 initiation, plus \$29 a month, plus tax, if he wants to stay in business.

Now he's worried about a fitness center that's being built for hotel guests only. If it's ever opened to the general public, Cook fears his fitness customers will disappear the same way his swimming customers did.

"It's the park board that's doing all this because the park board owns it," he said.

Herz said the park board would have to pass on the contract for the civic center and the finance package, while city council would have to pass on the finance package as well.

While Bowers said he wanted tough non-compete conditions in the contract, councilmen Mafrige, Rudy Gonzales and Bill Fullen, as well as Mayor Henry Freudenberg, have taken no position.



# **GALVESTON HEALTH & RACQUET CLUB**

October 3, 1998

Mr. James B. Thomas  
1122 55th Street  
Galveston, TX 77551

Dear Mr. Thomas:

Moody Gardens and the Moody Foundation have been pressuring the Park Board to permit them to sell fitness memberships to the public. Such sale of memberships would place the Park Board in direct competition with the Racquet Club. This is wrong, and it violates the terms of the Racquet Club's lease with the City. The City agreed, in our lease, not to compete with the Racquet Club. If you permit this to happen, you and the other Park Board members will be personally responsible for driving the Racquet Club out of business. Besides being wrong, it will ruin us financially. My wife and I, along with other shareholders, have invested over \$1.5 million dollars into the Racquet Club. It is the basis of our retirement plan and the source of our retirement income.

***Please! Don't take lightly any decision that puts the Racquet Club out of business, and costs Sandra and me our jobs and our life savings!***

It may seem like an insignificant issue to sell fitness memberships to the public, but it is certainly not. Your vote to compete with us and destroy our business has a very deep meaning to my wife and me. It is frightening to me that nine people, representing our city government, can come together and vote to wipe out our life's savings and our retirement.

You should not ridicule, or treat lightly, a decision which could result in our going out of business. This is a very dire situation, and it is your responsibility to do what is right. And it is not right for the Park Board and the City to compete with us.

Two Park Board members told me that they hesitated to protect the Racquet Club because Buddy Herz would yell and scream and make a scene if they did not do what he wanted. If you vote to cause us to lose our jobs and retirement because you are afraid to hear Buddy Herz scream and make a scene, you are not fulfilling your responsibilities as a public official. There is no logical reason or justification for such an action.

It is obvious that Buddy Herz and the Moody Foundation want the Racquet Club to go out of business. Why? None of us know the real purpose; but we know that it cannot be for a good reason. Ask yourself this question: Does selling fitness memberships to the Galveston public promote or increase tourism? The answer is unequivocally, "no!" A resident of Galveston is not a tourist and selling him/her a fitness membership does not promote tourism. I can think of only one reason that Herz and the Moody Foundation would want to coerce the Park Board into putting the Racquet Club out of business. The Racquet Club's 6.5 acres lie almost adjacent to the Moody Gardens property. If the Racquet Club can be forced out of business, then its property and improvements could be then offered to the Moody Foundation or Moody Gardens by the City, for free, without any compensation to the shareholders of the Racquet Club.

Letting the Racquet Club continue in business is the only path a rational mind would follow. You should not harbor any ill will against the Racquet Club. We have been a stable and valuable business taxpayer in Galveston for twenty-five years. Galveston needs small business, especially ones that can establish themselves and survive

for twenty-five years, paying rent and taxes to the City and School District each and every year. Putting us out of business will cost over 40 people their jobs and, the City and School District will lose over \$50,000.00, annually, in lease payments and taxes paid by the Racquet Club. We have been consistent and loyal. Our City needs this type of business. Why would you and the City even consider turning on us and ruining us financially? You know that our position is right and just. Decisions based upon principal are without regrets. You never have to say, "I wish I had done the right thing!" Money and its influence do not justify doing what is wrong. Please, stand tall and strong against what you know to be wrong and unjustifiable. Don't sacrifice our jobs and our life savings by voting to sell memberships to the public. Vote to restrict the use of the fitness facilities at the Moody Gardens hotel to its overnight guests.

Please give me the opportunity to discuss this matter with you if you are either unsure or unconvinced that the Park Board should not sell memberships in its fitness center to the public.

Yours very truly,



Tom Cook

Sandra Cook



Charles Killebrew

Sunday  
January 10, 1999

## THE DAILY NEWS

# Judgment and fairness rule in the end

I broke a New Year's resolution (1996) and stayed out past midnight New Year's Eve.

My wife and I and 1,200 of our closest friends jammed together on the dance floor of the new Moody Gardens Hotel.

The clock struck midnight. We kissed. Balloons fell from huge nets over our heads. People did a mad dance, stomping the balloons that sounded like gang warfare as they popped.

It was a wonderful evening. You have to give the Moody folks credit — when they throw a party, they really throw a party.

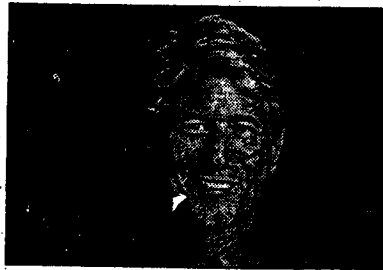
I cannot imagine it was accidental that a grand old Moody hotel (the Buccaneer) was dynamited into oblivion the day after the newest — and now grandest — Moody hotel made its debut.

Planners of the New Year's Eve blast essentially commandeered the whole hotel. Tables of food were laid out in every nook and cranny, bars were open upstairs and downstairs.

Throughout the evening, small groups wandered through the place, taking informal tours. Here are some impressions of what they saw:

- Marble floors with beautiful inlaid tile.
- A wide-open, spacious

### DOLPH TILLOTSON



lobby.

- Views from upper floors, especially in the ninth-floor bar area, that are nothing less than spectacular. It truly is startling to see our old town in this new way.

- Conference rooms for huge meetings and small ones. The board room on the ninth floor is fabulous, and the view from that room is another stunner.

- A health facility that is bigger and better than any I've seen at a Texas hotel, or anywhere, for that matter. I ran into Gene Lucas, and he says there are a few nicer ones, but I haven't seen them.

- Elegant restaurants, several of them. I know Urs Schmid, the chef, and I know the food will match the ambience.

For just one evening, the controversy surrounding Moody Gardens and its new hotel paled, but the controversy still exists.

Moody Gardens worries people who own and run businesses that offer services similar to the hotel. They believe the facility — funded through a tax-exempt foundation and owned (tax free) by the parks board of Galveston — could compete against them unfairly.

Some argue the park board can and will control that. I don't think so. I think some competition already exists and is, in fact, inherent in the peculiar foundation-municipal ownership arrangement of Moody Gardens.

I think the only safeguard against unfair competition, ultimately, will be the manner in which Bobby Moody and the Moody Foundation choose to operate the place. Time will tell that story.

Their judgment, their sense of fairness, will rule in the long run.

Moody Gardens and the hotel already are wonderful assets for Galveston — no doubt about it. On the other hand, Moody Gardens definitely has the potential to do great damage to some local, tax-paying businesses.

Judgment. Fair play. Vague and old-fashioned terms, but important just the same.

- Dolph Tillotson is president and publisher of The Daily News.

Senator Gramm - IRS loopholes must be closed. Bobby Moody should not even have the right to decide to compete unfairly against our taxpayers!! The tax laws should limit him to charity only OR he must pay taxes like the rest of us! Jan Cos.

**Sunday**

January 3, 1999

# Hotel has stormy past with local hoteliers

By WES SWIFT  
Correspondent

**GALVESTON** — Rome wasn't built in a day and neither was the Moody Gardens Hotel. The hotel took two stormy years to build.

The hotel went up amid a controversy involving the island's top three hoteliers that put the future of the island's tourism industry in the balance.

After announcing its plans in 1996 to build the hotel, Moody Gardens found itself in the middle of tempest after hotelier Tilman Fertitta, owner of the San Luis Hotel, claimed the hotel and its tax-exempt status would give the Gardens an unfair advantage over other hotels.

Furthermore, Fertitta said, the island's only convention center, located at Moody Gardens, was big enough to draw conventions that would fill up only the Moody Gardens hotel and no others.

Fertitta filed a lawsuit in state court, then withdrew it and filed in federal court. He has since dropped the federal lawsuit, as well.

Fuel was added to the fire later when a consultant recommended the convention center be expanded to draw larger conventions.

Afterward, the city council and the

For more in-depth coverage of the Moody Gardens Hotel controversy, visit The Daily News Website at [www.galnews.com](http://www.galnews.com).

park board of trustees began brokering a deal with Moody Gardens officials to expand the convention center.

The deal would have used a combination of Moody and public funds to expand the center to 100,000 square feet and give control to a booking manager who reported to the park board.

However, the deal stalled when attorneys for both sides found that a recently passed charter amendment wouldn't allow the city or Moody Gardens to float the necessary bonds required for construction.

Officials are waiting for state legislators to amend state law to allow the deal to go through.

Meanwhile, Tom Cook, owner of the Galveston Health & Racquet Club, crusaded against the hotel, saying its fitness center would unfairly compete against his business and other fitness centers on the island.

Cook has tried to enlist the support of powerful congressmen from Texas to tighten the tax code to eliminate the exemption for Moody Gardens.

**GALVESTON**

# Moodys want new deal on Moody Gardens operations

*To Harry York*

One of the changes, which would allow the Moody Foundation to sell memberships in the hotel's health club, has one of the facility's neighbors crying foul.



By CARTER THOMPSON  
The Daily News

GALVESTON — The Moodys want to renegotiate some of the terms of their contract with the park board regarding the operation of Moody Gardens.

One of the changes, which would allow the Moody Foundation to sell memberships in the hotel's health club, has one of the facility's neighbors crying foul.

Irwin "Buddy" Herz, an attorney for the Moody Foundation, on Tuesday briefed the park board's tourism development committee on the requested changes.

"What we want to do is give Galvestonians the opportunity to use a first-class health center," he said.

The foundation is prohibited

from selling memberships to the health club. The foundation made that concession in the October 1998 operations contract in exchange for the changes in the "give-back" clause, with which the board could kill Moody Gardens' tax-exempt status by returning it to the foundation.

Members of the park board's tourism development committee seemed cool to the idea of putting the board-owned facility in competition with the private sector.

"It was only eight months ago we had a contract that would go on for a long period of time," said

Trustee James McCloy.

Committee member Theresa Elliott said she was shocked when she saw the request from the Moodys on the agenda.

"I think we have heard opposition citywide against competing with the private sector," she said.

Herz tied the contract renegotiation to the development of a city convention center at Moody Gardens. After the meeting, Herz said the foundation could play hardball if the park board so chose.

He said the foundation

● See MOODYS/Page A7

## Moodys

Continued from Page A6

discovered about two weeks ago the project could cost \$30 million, or \$10 million more than previously estimated. The park board is able to pay \$10 million, with the foundation funding the rest, Herz said.

"Are a few health club memberships going to pay for the convention center?" said Gerry De Prete, general manager of the Galveston Health and Racquet Club.

Herz said a contract could be revisited whenever the two parties were so inclined. He said he brought up the convention center only to show the expense the foundation was planning to bear.

"If that's the way the park board wants to negotiate, we, too, can negotiate from leverage," he said after the meeting.

Herz said the University of Texas Medical Branch had allowed politicians and others to use its athletic facilities, and until recently a person could use the facilities at Galveston College for the paltry, and state-subsidized, fee for one class.

Wednesday

June 23, 1999

PAGE A6

"Only we have been the brunt of everyone's attacks on this issue," he said.

No action was taken on Tuesday. Herz asked that the board consider holding in-depth talks about the request and other convention-center issues in August.

Herz said the foundation also sought to change a section of

the agreement that would go into effect if Moody Gardens began charging for parking. The current deal would send \$1 per car to the city. The foundation proposes that money instead be pledged toward bonds issued to develop the convention center.

The foundation also proposes a change in the contract's arbitration clause. The foundation now has to break a rule to challenge it in arbitration, Herz said. The new arrangement would allow arbitrators to hear a dispute over a rule without the foundation having to break it.

# COMMENTARY

## OUR VIEWS

### New aquarium a visionary gift

**T**he Aquarium at Moody Gardens, which officially opened Friday, is a wonderful attraction. The aquarium features four marine habitats under the roof of one pyramid. Judging by the crowds, it was an instant hit with visitors.

During the opening ceremonies Friday, Doug McLeod, president of Moody Gardens Foundation, paid tribute to Robert L. Moody, patriarch of the Moody family. McLeod said that Moody had shown remarkable vision and foresight in suggesting the aquarium.

There is some real justice in those remarks.

Any way you look at it, the \$50-million aquarium was a generous and visionary gift to Galveston.

Moody proposed the aquarium, saying that Galveston needed to become a year-round tourist attraction.

This development, combined with the planned arrival next year of Carnival Cruise Lines, gives us great hope that Galveston will become precisely the kind of year-round tourist destination Moody envisioned.

At the same time, it's important to note that this must be a shared vision — a vision that many people and many businesses can participate in on equal and fair terms.

Ironically, the Moody Foundation itself provided the city a reminder of that last week when representatives of the foundation asked to revise some terms of the contract for operating Moody Gardens.

One proposed change was to allow the hotel at Moody Gardens to sell memberships to its health club. That change would have allowed the large, tax-exempt foundation to compete with local businesses in a way that has been prohibited.

If there is a lesson here, it's that extraordinary gifts to a community demand extraordinary stewardship from the community to ensure that the gifts are managed fairly and benefit all. And this is an extraordinary gift.

● This editorial was written by Heber Taylor, editor of The Daily News. His email address is [heber.taylor@galvnews.com](mailto:heber.taylor@galvnews.com).

*Moody reneges on deal!*



# COMMENTARY

*The Moody interests have proposed changes in their agreement with the park board concerning Moody Gardens. Among them would be the removal of a provision barring the Moody Gardens Hotel from selling health-club memberships.*

## Park board brought outcome on itself

I hate to say I told you so, but I told you so. When the park board gave up the "give-back" clause in its contract with the Moodys, it threw away its last ace.

Now the Moodys' pet shark — Buddy Herz — has been turned loose from the aquarium, and he's hungry.

Ralph A. LaPaugh  
Galveston

## Moodys just trying to get more money from people

It's interesting how the Moodys always want something. They're always wanting and wanting. What is that they're



giving back?

Are they going to be tax exempt or is that going to change? What are they giving to us?

As far as wanting to give Galvestonians the opportunity to use a first-class health center, I don't think that's the whole true reason. I think they're just trying to get some money out of us Galvestonians.

Kevin Regini  
Galveston



Larry York

SUNDAY, JUNE 27, 1999

THE DAILY NEWS

A13

# COMMENTARY

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giving back?

Are they going to be tax exempt or is that going to change? What are they giving to us?

As far as wanting to give Galvestonians the opportunity to use a first-class health center, I don't think that's the whole true reason. I think they're just trying to get some money out of us Galvestonians.

Kevin Regini  
Galveston



Larry York

# COMMENTARY

.....  
*Moody Foundation attorney  
Irwin "Buddy" Herz recently made  
a pitch to the park board for a  
change in the rules governing  
Moody Gardens. The presentation  
prompted a letter writer to compare  
Herz to a shark.*

## **Someone owes the sharks an apology**

It's not fair to compare Irwin  
"Buddy" Herz to a shark. Whoever  
did that should immediately apolo-  
gize — to the sharks.

**Charley Killebrew  
Galveston**

.....

# Local businessman files suit, says Moody misled IRS

By KEVIN MORAN  
Houston Chronicle

GALVESTON — Millionaire Robert L. "Bobby" Moody misled the Internal Revenue Service in a bid to build a tax-exempt hotel financed by grants from his family foundation, Houston businessman Tilman Fertitta alleges in a lawsuit.

The Moody Foundation also has conditioned charitable grant awards

on recipients' patronage of private businesses owned directly or indirectly by the Moody family, Fertitta maintains in the antitrust action filed Friday in U.S. District Judge Sam Kent's court.

The lawsuit represents a total breakdown in months of negotiations among Moody, Fertitta and developer George Mitchell over future convention bookings in this resort city and management of the city's official convention center.

Officials with Moody Gardens and the Moody Foundation could not be reached for comment Friday.

Fertitta, who has invested \$30 million in purchasing and renovating the San Luis Resort and Conference Center on Galveston's seawall in the past two years, reiterates in the lawsuit his earlier claims that Bobby Moody and Moody interests are trying to monopolize island convention business at Moody Gardens.

With an IMAX theater, rain forest

pyramid, space museum and other attractions, Moody Gardens has become one of Galveston's most popular tourist destinations in recent years.

For several years now, Moody Gardens also has served as the city's convention center, subsidized by about \$400,000 a year in municipal hotel occupancy tax revenues. Fertitta has demanded that the city stop the payments, particularly since

See LAWSUIT on Page 36A.

Sat, July 19, 1999

## Lawsuit

Continued from Page 29A.

Moody Gardens began construction of a 300-room, tax-exempt convention hotel on its grounds.

The Moody Foundation, which has financed Moody Gardens, won a 1994 ruling from the IRS allowing it to build the income tax-exempt hotel. Fertitta maintains in his lawsuit that the San Luis cannot successfully compete with the Moody hotel because of its "unfair and illegal monopolistic advantages."

He asks the court to enjoin the Moody interests from operating the hotel, which is scheduled to open next year. The lawsuit also seeks unspecified damages.

The lawsuit follows last week's issuance of a consultant's feasibility study that concluded Moody Gardens should remain the site of the city's official convention center but that control of convention bookings

The lawsuit represents a breakdown in negotiations over future convention bookings in Galveston and management of the city's official convention center.

should be handled by an independent bureau.

Moody representatives rejected that idea, which Fertitta has favored all along. They also rejected the consultant's call for construction of a huge new convention center to be managed independent of Moody Gardens.

Profits from Moody Gardens are

used to finance a highly successful therapy program and a facility called the Transitional Learning Community for brain-injured people.

Fertitta maintains that the Moody Foundation mischaracterized the nature of Moody Gardens in its statements to the revenue service and now is acting inconsistently with terms of the favorable IRS ruling.

"For example," Fertitta stated in the suit, "despite having explicitly portrayed the Gardens' primary purpose as educational in its presentation to the IRS, the defendants now actively and predominantly market the luxury hotel and conference center, in tandem with the Gardens, for commercial and tourist business."

Named as defendants in the suit along with Moody are Moody Gardens Inc. and Gal-Tex Management Company Inc., which operates Moody Gardens under a management contract. Gal-Tex is owned by the Libbie Shearn Moody Trust, which is controlled by Moody National Bank. Moody is chairman of the bank's board.

.....  
*District Attorney Mike Guarino advised the park board of trustees that it could not spend public money on advertisements to support the tax increase.*

**City should change name of island to Moodyville**

Once again the park board, the lackey of the Moody Federation, mishandled public funds with no accountability to the citizens of Galveston.

I suggest we change the name of the town to Moodyville and take 10 percent out of everyone's paycheck to go to the Moodys and be done with it.

**George Osborn**  
Galveston

# Park board's job is to say no to bad deals for city

**W**hen's a deal not a deal? Well, if you live in Galveston, a deal isn't a deal when Buddy Herz makes it for the Moody Foundation.

That's a shame, because the foundation and Moody Gardens, its most spectacular project, have so much to offer the community.

The partnership between the city of Galveston and the foundation is unusual and extraordinarily complex. More problematic, it keeps changing.

The island gains from that agreement a world-class tourist attraction. The foundation, whose chief negotiator is attorney Herz, won a favorable land lease and tax-exempt status.

The big problem is one for other private Galveston businesses forced to compete against Moody Gardens and the foundation, possessor of hundreds of millions of untaxed dollars.

Because Moody Gardens features attractions, a dress shop, a health club, a gift shop, several restaurants, bars, a hotel and convention facilities, already it competes directly with many tax-paying businesses. It's not a fair fight.

To make this unusual relationship work, those who do pay taxes must believe in the long-term good intentions of the untaxed colossus in their midst.

Buddy Herz probably would say he's just doing his job, chipping away continually at the original agreement with the city, making one deal after another and then reneging.

However, the pattern is so clear now that the essential ingredient in all this — trust — has been fractured, maybe irreparably.

A clear example came up recently when Herz and the foundation went back to the Galveston Park Board of Trustees to ask for another change. This one would allow the foundation to sell memberships in its health club.

Not even a year ago, the foundation agreed not to do that. That was part of yet another renegotiation. Moody Gardens did not like the right the city then had to give the complex back to the foundation, making it liable to pay property taxes.

Some urged the park board not to do that, arguing that the so-called give-back clause was the only real

leverage the city had. Herz made a wounded speech, nearly weeping that anyone would question his organization's trustworthiness.

Folks, we hate to say we told you so, but we told you so.

There's an old maxim in business: There's no point negotiating with someone you don't trust.

Watching all this, an old story comes to mind. Driving one day, a woman runs over a snake but doesn't kill it. She takes the wounded reptile in and nurses it back to health. Then one day it bites her, and as she dies, she gasps, "I don't understand — I treated you so well."

"Hey," said the snake, hissing slyly, "you knew I was a snake when you took me in."

Herz is just doing what he's always done. The city and the park board

should keep that in mind. The board's job is to just say no.

● Dolph Tillotson is president and publisher of The Daily News.

**DOLPH TILLOTSON**



**Wednesday**

July 7, 1999

# Moody Foundation has vendetta to put racquet club out of business

**T**he Moody Foundation is not being even the least bit charitable when it demands that the Galveston Park Board of Trustees force the Galveston Racquet Club into bankruptcy.

It is crystal clear that the sole priority of the foundation is to cause financial harm to the racquet club.

The foundation's charity has fallen by the wayside as Buddy Herz demands that the park board openly compete with the racquet club.

Herz has threatened that the foundation will not expand the convention



**Tom  
Cook**

Guest column

promote Moody Gardens.

center at Moody Gardens unless the park board agrees to the sale of memberships to local residents.

That issue does nothing at all. That issue:

- Is not a requirement for operation of the Moody hotel.
- Does not promote the hotel.
- Does not pro-

● Does not promote the convention center.

● Does not promote tourism.  
● Does not promote any legitimate purpose of the park board or its facilities.

● Only promotes the foundation's vendetta against the racquet club and the foundation's vendetta to put the racquet club out of business.

The park board was not created, nor does it have as its purpose, to put the racquet club out of business.

The issue of membership sales to residents is not an issue at all. It is

not even on the table, just like the give-back clause is not on the table.

If the Moody Foundation wants to make it a condition, then it's a condition that cannot be met.

If the Moody Foundation wants to kill the expanded convention center for its own personal purposes, then, the deal is killed.

The park board must stand firm to uphold all mutual covenants agreed to in the negotiated settlement over the give-back clause.

● Tom Cook is president of the Galveston Health and Racquet Club.

# Health club a weighty issue for Moodys

9-19-99

Success of convention center at Moody Gardens linked to hotel's health club

## GALVESTON

■ Nonprofit foundation wants health club turned over to ANICO-owned health and fitness company.

By CARTER THOMPSON  
The Daily News

GALVESTON — The Moody Foundation wants to lease the exercise facilities in the Moody Gardens Hotel to one of the family's for-profit entities.

The ability to lease and sell memberships to the fitness center is one of several issues the foundation has linked to the expansion of the convention center and parking garage at Moody Gardens.

City and park board officials are striving to have a deal signed before the Nov. 2 election to finance the public's share of the expansion through an increase in the hotel-occupancy tax.

Supporters say the expansion will propel Galveston into a position as one of the state's top convention destinations.

Opponents contend the increase would allow the Moody Foundation to gorge itself on public funds to build a convention center isolated from other hotels and businesses.

The foundation in 1998 conceded the right to sell memberships to the hotel's fitness facilities in exchange for the city and park board trading the so-called "give-back" clause for



Irwin "Buddy" Herz:

"The law requires that this lease be fair and at arm's length, and it will."

Irwin "Buddy" Herz, attorney for the foundation, said the leased facility would be put on the tax rolls. He also said tax laws prohibit the foundation from charging a token amount to a company affiliated with the Moodys.

The foundation is led by three members of the Moody Family, including Robert Moody, who is chairman of the board of ANICO. The foundation also owns stock in the insurance company.

"The law requires that this lease be fair and at arm's length, and it will," Herz said.

But one of Moody Gardens' neighbors says it will still be a bad deal for the city and its businesses.

"If I take my right hand and shake hands with my left hand, I guess I have a deal," said Tom Cook, president of the Galveston Health and Racquet Club.

a plan to arbitrate disputes.

The foundation wants to turn over the health facilities to the South Shore Harbour Fitness Center, owned by American National Insurance Co.

Irwin

acted, would violate the non-competing clause in his contract. "I feel that the city and park board are basically just capitulating to what the Moodys want," he said. "I think the Moodys are intent on putting the health and racquet club out of business and are enlisting the city and park board to do it. I wish the city and park board were strong enough to say no."

Moody representatives previously have floated the possibility of changing their lease to allow for memberships at the health club, each time drawing public criticism that the foundation was going back on an agreement it made less than a year ago.

Councilwoman Lyda Ann Thomas said the negotiating team for the city and park board expressed to the Moodys its concern that linking the expansion to the health club could jeopardize a successful election.

She said Robert Moody accepted that risk.

"He wants the voters to know these amendments are on the table and important," she said.

The public's negotiators accepted the proposal because, unlike its previous incarnations, it would put part of Moody Gardens on the tax rolls, Thomas said.

"Nothing is in concrete," she stressed. "The negotiating team has been positive in its approach. We have been open-minded and so have the Moodys."

The negotiations so far have taken place behind closed doors. The park board and city council met together last week to discuss the convention center in executive session.

The city, however, did comply with a request made by The Daily News under the Texas Open Records Act for a list of the foundation's negotiating points. A few days later, the city also provided its responses.

The public can see the plans for the convention center when the park board meets on Tuesday.

The new center would exceed 250,000 square feet, and contain 75,000 square feet of meeting space.



What the 3 pennies might be worth:

Rate of growth	Value after 25 years
3 percent	\$66.7
4 percent	\$77.4
5 percent	\$90.1

Note: money total in millions

"This convention center will be as top-notch as the aquarium and all the other amenities at Moody Gardens," Herz said. "It will be one the city can truly be proud of. It will be the finest of any Gulf Coast city and only be smaller than the convention centers in the state's largest five cities."

Some contend the citywide convention center will be in the wrong place.

Councilman David Bowers said the consultant's study that recommended the Moody Gardens site anticipated a level of public transportation to the rest of the city that has not become reality. That means the larger center won't carry the same benefit to the hotels and businesses clustered downtown and on the seawall as it does for Moody Gardens.

Steve Greenberg, a former park board trustee who now represents Tilman Fertitta, said

Moody Gardens puts the city at a competitive disadvantage. Voters, he said, should instead be able to choose from other proposals.

The Moody Gardens site was endorsed by the park board's tourism development committee, which includes representatives of hotels and restaurants.

But nobody else offered the financing that the Moodys did. The park board is being asked for \$10 million of what is now estimated to be a \$56-million project, Herz said.

The board's share will come from an increase of 2 cents on the tax paid by visitors to city hotels, a financing option sought by park board leaders who shunned taking existing tax proceeds from beach-related services.

The negotiators are in apparent agreement that whatever money the tax generates beyond paying off the bonds will be used for maintenance and operations of the convention center.

Greenberg said the total tax revenues should be capped at current levels. He figures the

two pennies plus the 1 penny the city already pays to Moody Gardens to maintain and operate the convention center would be worth more than \$90 million if growth of the hotel tax continues as it has the past few years.

Herz points to the former Moody Center, now called Beach Central, which up until a few years ago was owned by the city.

"The trustees are concerned that without such a guarantee, future politicians on the city council or park board would permit the convention center and parking garage to deteriorate like past politicians on both boards permitted the Moody Center to deteriorate," he said.

It now costs \$800,000 a year to run the existing convention center, which is about half the size of the proposed expansion, Herz said.

Bowers said no share of the hotel tax should go to maintain or operate the convention center.

"They have exclusive operation of the facility," he said. "There is a premium to that. I think they're doing just fine."

## Moody hotel health center is not only issue on the table

**GALVESTON** — The fate of the Moody Gardens Hotel health club is not the only issue under negotiation by the city, park board, Moody Foundation and Moody Gardens.

The city has agreed to some of the terms, but not with others, according to a memorandum issued by City Attorney Barbara Roberts in response to the foundation's most recent wish list.

Highlights include the foundation's request to guarantee it will continue to get revenues generated by 3 cents of the city's hotel-occupancy tax, plus an indeterminate fraction of another penny to pay for security and traffic control at conventions.

Contingent on a successful election in November, the city agrees to issue \$11.2 million in 25-year bonds, which will be bought by Moody designees at a discount of 2 percent for placement, underwriting and other associated costs.

The bonds would be paid off with the proceeds of a proposed 2-penny increase in the hotel occupancy tax.

But the city and park board did not accept the proposal for security. The public entities also contend legal issues might prohibit them from guaranteeing the penny now earmarked for Moody Gardens for maintenance and operation of the convention center would stay there for 25

years.

The city is obligated to send those revenues to the convention center only until 2000 under an agreement made when Moody Gardens paid for replacing the Jones Road bridge.

The city also said no to a Moody request that it be bound by all obligations and agreements of the park board.

The city also added some language, including a prohibition against any new hotel rooms. Irwin "Buddy" Herz, attorney for the foundation, said the Moodys had no intention of adding rooms and had signed off on that restriction in previous agreements.

CARTER THOMPSON/  
The Daily News

# Battle lines forming for convention center plan

## GALVESTON

Galveston is considering helping finance a convention center at Moody Gardens. The Nov. 2 election looms as a deadline for a working agreement.

By CARTER THOMPSON  
The Daily News

GALVESTON — The city, park board and Moody Foundation are racing to get an agreement in place before the Nov. 2 election on the public financing of an expansion of the Galveston Island Convention Center at Moody Gardens.

But with the negotiations rehashing issues that most believed were settled last year, the question is: How long will the terms of this agreement last?



Irwin "Buddy" Herz: "Moody Gardens ... is a unique experience in private-public partnership."

Foundation officials have asked for the right to sell memberships to the Moody Gardens Hotel, something prohibited by an operating agreement they signed less than a year ago.

The new wrinkle is the health club would be leased to a for-profit operation of the Moody family and placed on the tax rolls.

Moody representatives say that things change, especially given the unique aspects of the city's tax-exempt tourism mecca.

"Moody Gardens is not a project that every city in the United States has done for 50

years," said Irwin "Buddy" Herz, attorney for the foundation. "It is a unique experience in private-public partnership. It has been very successful in that it has turned worthless land that was never on the tax rolls into a major tourist attraction

Please see MOODY/A11

that employs 1,100."

But not everyone believes the rules governing the operation of Moody Gardens should be flexible.

The owners of the Galveston Health and Racquet Club are fighting the membership proposal, and hoteliers George Mitchell and Tilman Fertitta have demanded the deal contain a long-term prohibition against adding more rooms to the tax-exempt hotel.

Councilman David Bowers said renegotiating the health club memberships should be a two-way street. He proposes putting back on the table the give-back clause — a hammer for the city that could have obliterated Moody Gardens' tax-exemption. In fact, he suggests the give-back clause would automatically rise again if memberships were allowed.

The clause, which would have allowed the city to return ownership of Moody Gardens to the Moody Foundation for any reason with 20 days' notice, was considered by many to be the only lever the city possessed in dealing with the deep-pocketed foundation.

Bowers goes so far as to suggest that since the clause was a valuable negotiating tool the city would be violating state law not to reinstate it if the Moody interests were allowed to sell memberships.

"If no value was received, then a governing body can't give anything away," Bowers said.

However, City Attorney Barbara Roberts said there is no automatic mechanism to reinstate the give-back clause if the agreement for which it were exchanged were amended.

She said that reinstating it would have to come through new negotiations.

As for the new deal, Bowers and city leaders, including those less wary of the Moodys, have suggested the new deal be written into the covenants of the \$11.2 million in park board bonds in hopes the terms would be carved in stone for up to the 25-year life of the debt.

Roberts on Wednesday said the city's bond counsel a Vinson and Elkins would have to answer whether the deal could be placed in the covenants.

She did say that the sides could agree not to revisit any terms for a specified period.

But the city must keep in mind what the Moodys are bringing to the table, said Mayor Roger "Bo" Quiroga.

The public bonds will cover only \$10 million of the construction most recently estimated at \$55.5 million.

Quiroga said he trusted the deal over the expansion would be long-term.

"I have all the faith in the world that it will be honored," he said. "It's hard to argue with an entity that's putting in three to four more times than you are."

While Moody officials vigorously defend their right to ask at any time to renegotiate, Herz

said they haven't often exercised it.

"If you look at the history, we have only had one amendment in the first nine years of this contract," Herz said.

But Bowers says the city not only should look at restoring the give-back clause, it also should hang on to another hammer it soon will have. The deal that sent to the convention center each year revenues from 1 cent of the hotel occupancy tax dies in 2000.

Bowers said the city should not go along with the Moody proposal to guarantee that revenue for the life of the bonds. Instead, he said, city leaders of the next quarter century should reserve the right to reallocate the penny to the convention center each year provided Moody Gardens runs the center to their satisfaction.

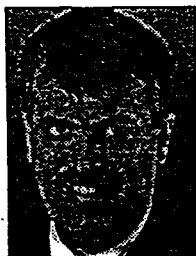
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cilwoman and park board trustee who has sat across the table from Robert Moody, Herz and other Moody representatives, says she believes whatever deal is made will be honored.

"I cannot speak for all voters on this island, but I believe that Mr. Moody and the trustees of the Moody Foundation will honor the agreement or agreements that are made regarding the expansion of the convention center," she said.

Thomas said the negotiators informed Moody of their concern that the request to sell health-club memberships could sour voters. But he accepted the risk because he wanted the voters to know the health club was an important issue, she said.

Thomas and other negotiators also said putting the health club on the tax rolls eliminated the unfair advantage it would have held over its tax-paying competitors in the island's fitness industry.



**David Bowers:**  
"If no value was received, then a governing body can't give anything away."



**Roger "Bo" Qulroga:**  
"I have all the faith in the world that it will be honored."



**Lyda Ann Thomas:**  
"I believe Mr. Moody ... will honor the agreement."



**Barbara Roberts:**  
She says there is no mechanism to reinstate the clause.

## Ballot language

On Nov. 2, residents will be asked to vote for or against the following proposition:

"Authorizing the city of Galveston to designate the Galveston Island Convention Center at Moody Gardens as a venue project and to impose a hotel occupancy tax at a rate not exceeding 2 percent of the price paid for a room in a hotel located in the city.

## The proposal

Moody Gardens officials are proposing to expand and renovate the Galveston Island Convention Center at Moody Gardens. The center would cover 254,000 square feet, including 70,000 square feet of exhibit space.

## The cost

Gilbane Construction, the contractor, estimates the cost at \$55.5 million.

The city's park board of trustees would pay for \$10 million. Funding would come from bonds, backed by a segment of the city's hotel-occupancy tax.

## The hotel tax

The convention center is supported by 1 cent of the city's hotel occupancy tax, which is currently at 13 percent.

A proposal on the Nov. 2 ballot would increase the tax to 15 percent.

While the single cent devoted to the convention center is set to expire in 2000, the proposal to expand the convention center anticipates that 3 cents of the tax would be devoted to the convention center.

Moody Gardens officials have asked that 3 cents of the tax rate be devoted to the convention center for 25 years. The 3 cents of the rate could generate more than \$90 million during that period.

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# UN-CONVENTIONAL WAYS

## City needs to take a second look at plans for convention center

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The city of Galveston might ask voters on Nov. 2 to consider a proposal to hand the Moody empire public funds totaling \$50 million to \$100 million, maybe more, over the next 25 years.

The city ought to take a deep breath and slow the stampede, at least long enough to consider all its angles.

The money — however large a sum it turns out to be — would come from an increase in Galveston's hotel room tax, and it would, at least initially, pay for expansion of convention facilities at Moody Gardens.

Regrettably, with the stakes astronomically high, voters do not know enough about the proposal to vote on it intelligently; they are not likely to know much more by Nov. 2.

A committee representing the park board and Moody Gardens is trying to work out details of an agreement, mostly in closed meetings. There's no guarantee at this writing that there will be an agreement before the vote, and some major questions apparently are not even on the table.

To name just a few:

**Is Moody Gardens truly the best site for the city's only convention facility?**

A study several years ago concluded somewhat reluctantly that it is, based primarily on economic considerations. After all, the city already had cooperated in spending huge sums at the Moody facility.

However, that conclusion did not anticipate a new source of revenue of perhaps more than \$100 million. The study also acknowledged problems with Moody Gardens, principally that it is too distant from the beach and other attractions.

**Is the proposal offered by the Moody Foundation the best deal for the future of Galveston?**

As of today, it's the only offer on the table and the only one the city has considered seriously.

However, if the city is serious about asking voters to create a new tax fund of up to \$100 million, other developers (Tilman Fertitta, George Mitchell and national hotel chains come to mind) might want to make proposals, too.

**How much money truly is needed, and how much would the proposed new tax produce?**

The current proposal is a 2-cent increase in the current hotel room tax. The tax would make Galveston less competitive with other tourism destinations, and the amount of money generated by such a tax is anyone's guess.

If hotel room revenues continue growing at a rate similar to today's, the new tax over 25 years would yield about \$100 million. Moreover, one would assume a new convention facility surely would produce more tourism income. Otherwise, why build it? The tax could produce even more than \$100 million.

So far, the highest cost estimate we have seen on the expanded facility is roughly \$56 million. If the tax provides significantly more money than needed for building the convention center, the money still would go to Moody Gardens for undefined "maintenance" — potentially a very, very good deal for Moody Gardens.

Finally, there is a question we see as the overriding issue. It is: **Whom do you trust and how much do you trust them?**

Stated another way, what makes anyone think an agreement made by Moody spokesmen today will be honored in six months or a year, much less 25 years?

So far, Moody Gardens, through its lawyer and chief negotiator, Buddy Herz, frequently has changed its agreements, depending on its best financial interests.

It has amended the original deal several times,

What the 3 pennies might be worth:

Rate of growth	Value after 25 years
3 percent	\$66.7
4 percent	\$77.4
5 percent	\$90.1

Note: money total in millions

changing its terms, its price tag, even the give-back clause that allowed taxpayers a safe escape route. Now the foundation wants to change its position on selling memberships to the Moody Gardens

health club in spite of a commitment only months ago not to do so.

As an example of why this issue is critical, others in the hotel industry believe Moody Gardens should, in return for new tax support, agree to build no more hotel rooms. Herz says that's fine, at least for today, and for other hotel owners this issue is paramount.

However, Doug McLeod, chairman of Moody Gardens Inc., has said any suggestion that his entity should not come back later and fight to reverse its earlier commitments is "ludicrous." Legally, he said, all issues can be renegotiated "every three months if the park board wants to."

That assumes an impartial arms-length relationship between Moody and the park board. That relationship does not exist.

Galveston is a small town, and powerful entities like the owners of Moody Gardens (who control one of the state's largest tax-exempt foundations, the city's largest locally owned bank, one of Texas' largest insurance companies and so on) can and often do influence

the makeup of the park board itself.

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Legally, of course, McLeod is right. Still his is a remarkably candid assessment of how lightly Moody Gardens views its promises. While it is legal for Moody Gardens to vacillate to suit its own interests, is it wise for the city to put its faith in long-term agreements with an entity so prone to change?

The city of Galveston should back away from the November election date.

It should then define what it wants in a convention facility as well as how much money it might spend for one.

Next, it should invite proposals from any interested developer. The people's \$50 million to \$100 million (or more) might buy quite a bit more than the city seems to be getting. In addition, with that much money on the table, the city might retain full rights to manage and operate the convention center as it sees fit.

As it exists today, the tax-and-spend proposal from Moody Gardens would, very simply, turn over the future of tourism in Galveston to one family, the Moodys. In the end, the community might elect to do that. Moody Gardens is unquestionably a valuable asset for Galveston, as we have noted many times.

Still, the city should stop and think through its options and all the ramifications of the proposed tax. It has not done so yet.

● This editorial was written by Dolph Tillotson, president and publisher of The Daily News. His email address is [d.tillotson@galvnews.com](mailto:d.tillotson@galvnews.com), and his phone number is (409) 683-5219.

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# Negotiations on center stumble over memberships

10-5-99  
Galveston  
Daily News

## GALVESTON

■ A final deal isn't expected until after the Nov. 2 election.

By CARTER THOMPSON  
The Daily News

GALVESTON — A deal regarding expansion of the Galveston Island Convention Center at Moody Gardens might come down to whether the city allows memberships at the Moody Gardens hotel health club, park board Chairwoman Sheila Lidstone said Friday.

The idea of allowing Moody Gardens to sell club memberships has drawn opposition from hoteliers and the nearby Galveston Health and Racquet Club. Lidstone, however, said she is optimistic an agreement would happen despite the sticking point. But a final deal probably won't come until after the Nov. 2 election, she said.

"If we don't have a deal, we don't have a deal, and we won't sell the bonds," Lidstone said.

Other members of the city's negotiating team last week set a Thursday deadline for an agreement in principle.

"We are better than we were, but we're not there yet," Lidstone said.

Irwin "Buddy" Herz, attorney for the Moody Foundation, could not be reached for comment.

The board and the city council have slated a joint meeting for Thursday to discuss the negotiations.

What voters might see before the election is a list of the points on which the city and the Moodys agree and a list of sticking points, Lidstone said.

The health club at the Moody Gardens Hotel is the largest point of contention.

The foundation wants to lease it to a for-profit Moody enterprise that could sell memberships. It only was a year ago that the foundation agreed not to have memberships at the health club.

The racquet club fears unfair competition, something Lidstone said she thought had been addressed by the Moody's plan to lease out the health club to a for-profit enterprise that would have to pay taxes.

"I thought I was doing something that was going to be accepted," she said.

She learned otherwise when racquet club officials spoke out against memberships at a park board meeting two weeks ago.

Club attorney J. Michael Fieglein on Wednesday registered his opposition in a letter to Barbara Roberts, attorney for the city and the park board.

He said the memberships violated the park board's enabling statute and a non-compete clause in the city's contract with his client.

Fieglein also argued Moody Gardens Inc. can't lease out the health club because it neither owns nor leases the hotel.

"Moody Gardens has nothing to lease," he said. "Only the park board does, and the park board cannot lease its property for purposes outside the authority prescribed by the enabling act."

Hoteliers — adamant that new rooms not be added to the tax-exempt Moody Gardens

Hotel — are watching the negotiations with interest.

"I was pretty surprised to see it come up in the forefront and wonder what's next," said Christa Buggey, president of the Galveston Hotel-Motel Association. "I think if you make an agreement, you stick to it."

But the health club is not the only lingering issue.

Buggey, also general manager of the Tremont House and Harbour House, said she was concerned by the Moodys' request to raise from \$1 million to \$5 million the threshold for expenditures at Moody Gardens for which they need park board approval. The city's team has offered a compromise of \$3 million.

She said also that some are worried that the Moodys want to enlarge the hotel's ballroom to be larger than the one at the convention center.

"We feel the ballroom in the convention center should be the largest in the city. Conventioners will not break up and go all over town for a meal," she said.

Lidstone said the ballroom issue was on the negotiating table.

She repeated the Moodys have committed to paying about \$46 million for an expansion that will cost the city \$10 million, and the public bonds would be paid by visitors to local hotels.

# Racquet club says it will sue if hotel sells memberships

Wednesday, October 6, 1999

## GALVESTON

■ State Rep. Craig Eiland and former state Sen. A.R. "Babe" Schwartz have spoken out against the sale of memberships.

By CARTER THOMPSON  
The Daily News

GALVESTON — The attorney for the Galveston Health and Racquet Club says his clients will sue the city if it allows the sale of memberships at the Moody Gardens Hotel.

The memberships are a hotly contested point of negotiation in the proposed expansion of the Galveston Island Convention Center at Moody Gardens.

The Moodys want to lease the club to one of the family's for-profit businesses, which then would sell memberships.

J. Michael Fieglein, attorney for the racquet club, said the lawsuit could come before the agreement was signed on the expansion of the convention center.

Park board Chairwoman Sheila Lidstone said she had been advised the membership proposal was legal.

Fieglein outlined his opposition to the memberships in a letter to the city and park board.

He argued selling memberships to island residents would go beyond the bounds placed on the park board, which actually owns the facilities at Moody Gardens, by state law because health-club memberships were not related to tourism.

Both state Rep. Craig Eiland and former state Sen. A.R. "Babe" Schwartz, the author of the state law that created the board, have spoken against the sale of memberships.

Fieglein also said the hotel's health club wasn't Moody Gardens' to lease.

"This is a lease of park board property to a person designated by third party, with terms set by a third party," Fieglein said. "Why isn't the park board getting the benefit of its own lease? Why isn't the park board dictating the terms?"

He said the city shouldn't risk being sued over an unpopular proposal so Robert Moody can turn a profit at the health club.

"If this is his personal wish he should be responsible," said Fieglein, suggesting Moody cover the city in the case of a lawsuit.

He said memberships at the Moody Hotel health club would violate a clause in his client's lease that says the city will "exert its best efforts to avoid leasing to or operating any business which competes with or detracts from" the Galveston Health and Racquet Club.

City Attorney Barbara Roberts, who represents the park board, could not be reached for comment Tuesday.

Lidstone, the park board chairwoman, said the board's attorney had advised that memberships were legal.

"Barbara Roberts does not believe there is a problem," Lidstone said.

"She says that having memberships is not a conflict for the park board."

Lidstone said she would meet with Fieglein and other racquet club representatives today to discuss the memberships. She said she was uncertain whether allowing memberships was a deal-killer for her.

"I need to hear for myself," Lidstone said. "I've heard what

the Moody interests say, but I need to hear from the racquet club."

Lidstone said she believed the proposal had met the concerns previously raised by the racquet club in that the Moody health club would be put on the tax rolls.

Fieglein said that addressed only part of the problem.

"The statement that was made was we don't have a problem with a third-party, tax-paying entity coming to town and building and operating health club that would have to show a profit," he said.

"They can afford to operate at a loss," he said of the Moody for-profit health club in a tax-exempt hotel. "That's not level

Irwin "Buddy" Herz, attorney for the Moodys, declined comment.

# Negotiators take stance on convention center

By CARTER THOMPSON  
The Daily News

**GALVESTON** — The city has pitched a proposed deal on the expansion of the convention center that addresses several controversial points in recent negotiations.

Mayor Roger "Bo" Quiroga on Wednesday read the proposal before a luncheon of the Rotary Club of Galveston.

The proposal would prohibit new restaurants and retail shops at Moody Gardens,

## **GALVESTON**

■ Details on the city's position/A10

and it would bar the sale of memberships in the fitness center at the hotel. The terms were crafted by the city's negotiating team during a meeting that took most of the day Tuesday.

The new proposal likely will be the final indication of the team's position before Tuesday's election on the funding source for the

public's share of the project.

The team — which includes Tilman Ferritta and George Mitchell's top man, Bill Ross — presented the proposal as a framework for the negotiations.

The proposal takes other tough stances against Moody Gardens' competition with the private sector.

Any new hotel rooms at Moody Gardens would end the hotel's tax-exempt status and

Please see **CONVENTION CENTER/A14**

## **THURSDAY**

October 28, 1999

50 cents



NICOLE FRUGÉ/The Daily News

Shella Lidstone, chairwoman of the Galveston park board, introduces Mayor Roger "Bo" Quiroga during a Rotary Club meeting at the Wentletrap on Wednesday afternoon.



Continued from Page A1

could be built only if citywide occupancy rates rose to 75 percent and stayed there for two years. That would be a jump of more than 25 percentage points. The proposal also gives the park board a say in the center's operating and marketing budgets.

Irwin "Buddy" Herz, an attorney representing Moody interests, had no comment on the proposed terms other than to say he had passed them along to the trustees of the Moody Foundation who would decide their future course.

Moody representatives have said they would negotiate no further until after the election.

Park board Chairwoman Sheila Lidstone, also a team member, said there might be some room to alter the terms, but not substantially.

"I think the group thinks that document contains the spirit of what they want the deal to be," she said.

Mayor Roger "Bo" Quiroga also on the team, said the terms were negotiable.

"We are willing to do whatever we have to," he said.

The team set a Nov. 17 deadline for an agreement with the Moodys.

Lidstone told the lunch crowd the expansion would make

Galveston a year-round, rather than six-month, tourist destination.

She said both Wal-Mart and the Kroger store being built on the seawall dwarfed the exhibit space at the existing convention center.

"We have a chance to do something good for Galveston," Lidstone said. "If Galveston wants to turn its back on the Nov. 2 election, we tried."

Much of Quiroga's presentation to the luncheon was aimed at The Daily News and what he said was its divisive bent that showed up in editorials against the tax proposal.

He said the newspaper's love for controversy was one of the top three disasters ever to hit the city, along with the 1900 Storm and the tax cap.

"I am mad as hell," he said. "I feel like I'm the mayor of the 'Jerry Springer Show.'"

Councilman David Bowers, who has run advertisements urging no votes on Nov. 2 unless a written agreement is ready, said he liked the proposed deal but more was needed.

"This doesn't substitute for a written agreement," he said, setting a deadline of noon Monday for the Moodys to agree to the terms. "If they don't do it by then, then they are clearly not going to do it ever."

Bowers and others have pro-

posed the proceeds of the tax hike not needed for the bonds should be used the pay off the bonds early.

The proposal allocates the excess to maintaining and operating the center and seeking out conventions to fill it, addressing the tourism industry's concerns that a more robust marketing effort would be needed for the larger space.

The attorney for the Galveston Health and Racquet Club said the proposal was a step in the right direction. The racquet club has opposed any deal that allows memberships at the Moody Gardens Hotel health center.

"I'm very pleased," said J. Michael Fleglein. "The positions set forth by us are set forth here. If they deviate from this, I'll be disappointed since we now have indication that this is the absolute position the city will take."

The team also has taken the position the terms of the agreement should be included in the covenants of the bonds.

Bob Randolph, the city's bond counsel, said that was possible. The covenants are a contract between the issuer and purchaser of the bonds, and it's up to the purchaser to take the issuer to court if the terms are not being met, he said.

But that could leave the en-

forcement of the terms to the Moodys.

The Moodys plan to buy all the bonds, and both Herz and Bowers have questioned the wisdom of putting the agreement in the covenants.

Quiroga singled out a guest column published in The Daily News in which a local attorney claimed the Moodys owned the construction company that would build the project.

The newspaper printed a correction the next day, but Quiroga contended the newspaper aimed to keep the controversy going, so it printed that correction inconspicuously.

The mayor also said the newspaper had run erroneous figures.

He didn't elaborate, but in the past he has complained The Daily News erred by suggesting the revenues devoted to the convention center over 25 years could be as high as \$150 million.

If it dedicated the revenues from 3 cents of the tax to the convention center and those revenues continued to rise as they have during the past five years, the city would send more than \$150 million to Moody Gardens in that time period.

A more modest annual growth rate of 5 percent would reap about \$87 million.

# voters beware: Wish list is not an agreement

10-29-99

**I**t's a wish list, folks, not an agreement. Please don't be misled. On Wednesday of this week, Galveston Mayor Roger Quiroga and park board chairman Sheila Lidstone presented to Galveston Rotarians a list of items they hope will be part of an agreement with the Moody interests.

The list of items offered by Lidstone and Quiroga would, if enacted, help provide a community-friendly structure to control operations of the convention center at Moody Gardens. The list came from a group of citizens who will negotiate convention center issues after the Nov. 2 hotel tax election.

City officials clearly hope the list will persuade confused Galveston voters to approve a 2-cent increase in the hotel-motel tax. The funds would help fund the Moody development.

Voter confusion is understandable. The city council, park board and Moody officials have urged citizens to vote for the new tax, which could produce anywhere between about \$50 million and \$150 million over 25 years.

However, those same officials have withheld further information about crucial elements in the convention center's operations.

Those crucial elements include, for example, funds to promote Galveston, the number of hotel rooms at Moody Gardens and protections for other private, tax-paying, for-profit businesses on the island.

However — and this is important — the list is no more than a wish list. Voters must understand it is not an agreement — far from it.

In fact, representatives of the Moody interests (spokesman and attorney Irwin M. "Buddy" Herz) deliberately did not participate in preparing the list.

Moody interests have not agreed to it, and it is known that Herz and others on the Moody team disagree with several points on the list.

Mayor Quiroga further muddied the water Wednesday with this strange quote, when asked if the list is negotiable: "We'll do whatever we have to do." Sounds to us like the mayor wants \$495 for his used car, or he'll take less, depending on what Buddy Herz wants to offer for it.

As wish lists go, the one presented Wednesday isn't bad. However, with only five days to go before the vote on Tuesday, it's too late, and it offers far too little reassurance — none at all, as a matter of fact.

This newspaper does not oppose building a bigger, better convention center for Galveston. However, the least voters should expect before approving a new tax to pay for it is a clear, dependable and fully negotiated plan for its operation.

The list presented Wednesday is far from that. We still urge voters to vote against the hotel-motel tax come Tuesday.

● This editorial was written by Dolph Tillotson, president and publisher of The Daily News. His email address is [d.tillotson@galvnews.com](mailto:d.tillotson@galvnews.com).

## “NOT A CHARITABLE BONE...”

The Moody Foundation is not being even the least bit charitable, when it demands that the Galveston Park Board of Trustees force the Galveston Racquet Club into bankruptcy. It is crystal clear that the sole priority of the Foundation is to cause financial harm to the Racquet Club. The Foundation's charity has fallen by the wayside as Buddy Herz demands that the Park Board openly compete with the Racquet Club. Herz has threatened that the Foundation will not expand the convention center at Moody Gardens unless the Park Board agrees to the sale of memberships to local residents.

That issue does nothing at all. That issue:

- ❖ Is not a requirement for operation of the Moody Hotel
- ❖ Does not promote the hotel
- ❖ Does not promote Moody Gardens
- ❖ Does not promote the Convention Center
- ❖ Does not promote tourism
- ❖ Does not promote any legitimate purpose of the Park Board or its facilities
- ❖ Only promotes the Foundation's vendetta against the Racquet Club and the Foundation's vendetta to put the Racquet Club out of business.

The Park Board was not created, nor does it have as its purpose, to put the Racquet Club out of business.

The issue, of membership sales to residents is not an issue at all. It is not even on the table, just like the give-back clause is not on the table. If the Moody Foundation wants to make it a condition, then it's a condition that cannot be met. If the Moody Foundation wants to kill the expanded convention center for their own personal purposes, then, the deal is killed. The Park Board must stand firm and uphold all mutual covenants agree to in the negotiated settlement over the give-back clause.

# THE WEEK IN RE

## *Daily News* readers speak out on some of the w

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*Readers continued to debate recent remarks by developer Tilman Fertitta, who claims tax advantages available to a hotel the Moody Foundation plans to build at Moody Gardens would give it an unfair competitive edge. Fertitta made the comments at a Chamber of Commerce luncheon, and the chamber later apologized to Robert L. Moody. The Daily News published an editorial saying the chamber shouldn't have apologized and should conduct open forums to publicly air disagreements on issues that are vital to Galveston's development.*

### **A number of folks are missing the point**

It seems *The Galveston County Daily News* and a number of folks around the county missed the point in the chamber's apology to the Moodys following the comments made by Tilman Fertitta during a recent luncheon held at the Moody Gardens.

The issue, plain and simple, is where Fertitta chose to make his remarks.

There is no disagreement (on my part, anyway) that Fertitta has the right to speak to those issues he feels will protect his interest.

Had the chamber luncheon been held in the San Luis hotel with a Moody representative as the speaker, and similar remarks were made about Fertitta, the chamber should, likewise, have issued an apology.

The chamber leadership was correct. And for that they owe no one an



▲ Readers continued to debate recent remarks by developer Tilman Fertitta, who claims tax advantages give Moody Gardens' planned hotel an unfair competitive edge. (File photo by David Doemland)

they have proven once again that money and power do not buy class.

**George Maida**  
Galveston

### **Just genuflect when invoking the Moody name**

I think the Galveston Chamber of Commerce should pass a resolution that you must genuflect after you say the word "Moody."

That way King Bobby and the court jesters won't feel so threatened when someone has an opinion different from one of theirs.

**George Shead**  
Galveston

### **Moodys should pay taxes on their hotel project**

### **Why are the Moodys' toes any more tender?**

With all the fuss and talk and being low for the Moodys, why are their toes more tender than the rest of ours?

I'm wondering: Is anyone remembering the Moody who was the most generous, loving and honest? Who alone set up scholarships, created a fantastic trust, renovated and renewed Galveston as best she could, and did us all services we seem to be taking for granted?

That was "Aunt" Mary Moody Northern.

She built the wagon all the others were riding on.

**Norma Jean Ne**  
Galve

and the chamber later apologized to Robert L. Moody. The Daily News published an editorial saying the chamber shouldn't have apologized and should conduct open forums to publicly air disagreements on issues that are vital to Galveston's development.

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The chamber leadership was correct. And for that they owe no one an apology.

**Raymond Lewis Jr.**  
Galveston

### **Fertitta said publicly what many say in private**

I am a member of the Chamber of Commerce in Galveston, and I was present at the recent luncheon when Tilman Fertitta made his comments.

As a former high school government teacher, I consider it a sad state of affairs when the rich and powerful wish to control our most treasured amendment, freedom of speech.

The chamber was not speaking for me when they felt it necessary to "kiss the ring" and apologize to the Moodys.

The standing ovation which Fertitta received is testimony to the accuracy of his remarks as felt by those in attendance.

Fertitta said publicly what many Galvestonians say in private.

As for the Moodys, they do many wonderful things for Galveston, but



▲ Readers continued to debate recent remarks by developer Tilman Fertitta, who claims tax advantages give Moody Gardens' planned hotel an unfair competitive edge. (File photo by David Doemland)

they have proven once again that money and power do not buy class.

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That way King Bobby and the court jesters won't feel so threatened when someone has an opinion different from one of theirs.

**George Shead**  
Galveston

### **Moodys should pay taxes on their hotel project**

I think that Tilman Fertitta is certainly right.

The Moodys should pay taxes. For too long now they have run Galveston, and look at it. Just look at it.

**Dolores Boatman**  
Bayou Vista

### **It's about time someone stood up to the Moodys**

In response to Tilman Fertitta's comments at the chamber luncheon, I tend to agree with him.

I think he's probably right. I think someone needs to stand up to the Moodys.

**Gonzalo Gonzalez**  
Galveston

### **Galveston could be the richest city in Texas**

If we had half of the tax abatement that the city of Galveston has given away over the years, we would be the richest city for its size in the state of Texas.

**Bill Ary**  
Galveston

being the Moody who was the generous, loving and honest? alone set up scholarships, created a fantastic trust, renovated and renewed Galveston as best she could, and did us all services that seem to be taking for granted.

That was "Aunt" Mary Moody Northern.

She built the wagon all the time riding on.

**Norma Jean**  
Galveston

# METROPOLITAN

News & Features

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## Suspicion clouds vote on Isle hotel bonds

*Houston Chronicle*

*10-31-99*

Sinister motives seen in Moody Foundation's offer of \$46 million for expansion

By KEVIN MORAN  
Houston Chronicle

GALVESTON — Here's the offer: If the city of Galveston puts up \$10 million, the charitable Moody Foundation will chip in an additional \$46 million to expand this island resort town's convention center at Moody Gardens and turn it into one of the state's premiere meeting sites.

It may look like an attractive deal, but in this city, even a \$46 million windfall is looked upon by some with suspicion — if it's coming from the powerful, local Moody Foundation.

On Tuesday, voters will decide whether to accept the offer, which calls for raising the local hotel tax rate from 13 cents to 15 cents per dollar.

Approval would allow the city to issue more than \$10 million in bonds to finance its share of the proposed \$56 million convention center expansion. The extra tax revenue would pay off the bonds over 25 years and cover operat-

took over operation of the convention center to cover any operating losses. In the fiscal year ended Sept. 30, the foundation says, it covered \$205,000 in convention center losses.

Moody Gardens also includes a rain forest, space museum and aquarium — all under large pyramids — as well as a 300-room hotel, IMAX movie theater and restaurants.

The foundation uses revenues from Moody Gardens to operate Hope Therapy, an equestrian rehabilitation program for brain-injured people. The money also pays for research into medicinal uses of rain forest plants and developing public education programs.

So, why would voters consider rejecting the foundation's \$46 million offer?

If they do, it probably will be because of sentiments, such as those of George Osborn.

"If the Moodys want to build a convention center out there at Moody Gardens, they can do it with their own money and not with public funds," said Osborn, a Galveston resident who works as a Texas City firefighter. "Any

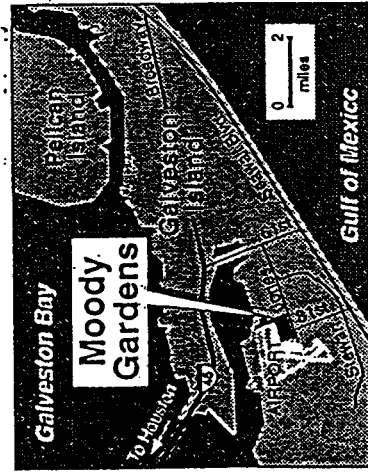
time the Moodys come around asking for public funds, or their attorney, Buddy Herz, cries about how the Moodys are mistreated a red flag goes up."

He was referring to a recent appearance by Moody Foundation attorney Irwin "Buddy" Herz at a meeting where the Galveston Chamber of Commerce's executive committee voted to support the hotel tax increase.

Herz took offense at questions in recent weeks from residents and the local newspaper about the foundation's integrity and its motives for seeking the tax rate increase. Complaints say that businesses the Moody family owns or controls profit from Moody Gardens, and a rumor is circulating that a Moody-owned construction firm will get the convention center expansion contract.

Herz turned to sarcasm as he addressed public concerns about the wisdom of committing perhaps \$50 million to \$90 million in

See TAX on Page 36A.



ing costs. Moody Gardens already receives the proceeds from 1 cent of the hotel tax each year — now about \$78,000 — to operate the city's official convention center at the sprawling tourist attraction.

The Moody Foundation agreed when it

P. 1 of 3

# Tax

Continued from Page 35A.

future hotel tax revenues solely to paying for and maintaining a convention center at Moody Gardens.

"By the way, I'd like to apologize to you for the embarrassment we've caused the city with the construction of Moody Gardens," he told chamber members. "It must be an embarrassment to everyone here to have Moody Gardens here as part of the tourist attraction for the city."

He was indignant that people might resent the foundation after it spent \$300 million to create Moody Gardens and offered \$46 million to expand the convention center.

Galveston uses only 11 percent of its annual hotel tax revenues for debt service, operations and maintenance on the present convention center, Herz said. The figure would rise to 27 percent if voters approve the proposed tax rate increase, he said.

Houston uses 38 percent of its annual hotel tax revenues for debt service, operations and maintenance of the George R. Brown Convention Center, and other Texas cities use as much as 62 percent for such purposes each year, Herz said.

"If other cities require 62 percent, and Houston requires 38 percent, but Galveston only uses 11 percent now and possibly 27 percent, where does the rest come from?" he asked. "From the bad guys. You know us — the Moody Foundation."

While they may not consider the foundation literally "the bad guys," a considerable number of Galvestonians are uncomfortable with the local influence that the foundation, chairman Robert L. "Bobby" Moody Sr. and his family have and the ways in which they wield their power. Moody also developed South Shore Harbour in League City and is chairman of both Moody National Bank and Galveston's American National Insurance Co.

Osborn said Moody and the foundation wield so much influence in local affairs that Galveston should change its name to Moodyville.

"It reminds me of the old movie, *It's a Wonderful Life*," Osborn said. "The mean old man in it was Mr. Potter, and he had to control everything in town. It's a question of power and control on this little, bitty island."

BOB MOODY

While many Galvestonians want a first-class convention center to compete with Corpus Christi, South Padre Island and other cities, disputes over the proposed expansion have revived long-simmering ill will toward the Moodys and the foundation.

In 1983, the foundation leased hundreds of acres of municipal airport property from the city for a token annual sum so it could create Moody Gardens. A convention center opened there in 1986, a white-sand artificial beach in 1988 and the rain forest pyramid and IMAX theater complex in 1993.

'If the Moodys want to build a convention center out there at Moody Gardens, they can do it with their own money and not with public funds.'

George Osborn, a Galveston resident who works as a Texas City firefighter

In 1994, an Internal Revenue Service ruling forced the foundation to deed all Moody Gardens buildings to the Galveston Park Board of Trustees to maintain the facility's nonprofit status. Instead of a lease, the foundation and park board now have a management agreement.

Many people have criticized the park board for letting Moody Gardens hire Gal-Tex Hotel Corp., partly owned by the foundation and controlled by Bobby Moody, to manage Moody Gardens.

For years, Galveston hotelier and The Woodlands developer George Mitchell fought the foundation's plans to build a tax-exempt luxury hotel at Moody Gardens, but the IRS ruling cleared the way for construction.

After Mitchell sold the beachfront San Luis Resort and Conference Center to Landry's Seafood Restaurants president Tilman Fertitta, Fertitta joined Mitchell in claims that a Moody Gardens hotel would unfairly compete with taxpaying private hotels, restaurants and other busi-

See MOODY on Page 37A.

# Moody

Continued from Page 36A.

nesses.

Nonetheless, the hotel, also now owned by the city's park board, opened in late 1998.

Before the opening, Bobby Moody's efforts to persuade the park board to let the Moody Gardens hotel sell memberships to its fitness center provoked bitter opposition from the owner of the neighboring Galveston Health and Racquet Club.

Park board trustees, City Council members and many residents complained that this would result in unfair competition with the private sector, so the foundation dropped the plan. It also agreed to share parking fees with the city and provide conventioners transportation from Moody Gardens to the city's beachfront and downtown Strand Historical District.

In return, however, the park board reluctantly made concessions, including bowing to Moody's demand that a "give-back" clause in the Moody Gardens operating agreement be eliminated. The clause allowed the board to return ownership of the Moody Gardens buildings to the foundation without cause on 20 days' notice and was considered the board's most potent tool in dealing with the powerful foundation.

As Tuesday's election looms, many locals are outraged that Moody, less than a year after he agreed not to, has pressed the park board to let the hotel sell health club memberships.

To sidestep the competition issue, Moody suggested putting the hotel spa on the tax rolls by making it part of the South Shore Harbour Fitness Center, a Moody-controlled, for-profit business. Racquet Club owner Tom Cook says, however, that the foundation can't lease the fitness center to anyone because, among other reasons, it doesn't own the property.

The issue is one of many that critics say should have been settled before voters were asked to approve a hotel tax rate increase.

Officials have privately expressed fears that resentment over Moody's fitness-center bid could kill the tax increase. Publicly, they asked voters to rely on a committee to strike a post-election deal for convention center expansion and operation that will protect private businesses and the public interest and keep the Moodys from profiting from public money.

Despite reservations, Fertitta, Mitchell, the Chamber of Commerce, the Galveston Hotel-Motel Association, the Galveston Restaurant Association — even Racquet Club owner Cook — have expressed support for Tuesday's proposed rate increase.

In a move that may reassure some voters, the committee chosen to negotiate with Moody announced last

week that it will ask him to drop efforts to sell fitness-center memberships and agree not to add rooms to the Moody Gardens Hotel until city-wide hotel occupancy has averaged 75 percent for two years running. The average hovers near 50 percent now.

The committee said it will ask Moody not to add restaurants or retail businesses at Moody Gardens.

In addition, the committee said it will try to get Moody to agree to submit a proposed operating budget for the convention center before City Council sells the expansion bonds, and agree to give the city revenues from the proposed 1,000-car parking garage and other Moody Gardens parking areas for use in the city transportation budget.

Addressing widespread criticism that the foundation plans no competitive bidding from contractors for the expansion, the committee also said it will ask Moody for assurance from an independent source that the building contract is a good deal.

If he and the foundation do not sign an agreement with the park board by Nov. 17, the board can negotiate with other parties for construction of a convention center at another location, the committee said.

Moody attorney Herz declined comment on that long list of bargaining points until after the election. But he said the rumor that the Moodys own or could profit from Gilbane Construction Co., the huge firm already pegged for the expansion, is "an outright lie."

Park board chairwoman and negotiating committee member Sheila Lidstone expects the committee to stand firm on the spa-membership issue if the hotel tax increase is approved. Other items may be more negotiable, but the committee doesn't want to stray far from its unanimous decisions, she said.

"It's possible for there to be minor alterations, minor negotiating points, but I don't think anything is going to be really significant," Lidstone said. "It's going to take a lot of skill and a lot of patience, but I think we can get this done."

Mayor Roger Quiroga, also a committee member, calls the bargaining points "just a framework for negotiations."

"They're not demands," he said.

Like Lidstone, however, he said the committee wants no commercial health club at the Moody Gardens Hotel.

Plans for the convention center expansion call for nearly doubling exhibit space to 75,000 square feet. Backers say it will bring 85,000 more visitors to the island each year, boost hotel occupancy by 50,000 room nights and pump about \$27.6 million through the local economy. They also say it should have a direct impact of about \$10.4 million per year on the local economy.



# Our readers speak out



*Galveston voters last week rejected a proposed tax increase that would have gone toward expansion of the convention center at Moody Gardens.*

## **Voters are not confused — it's the city's officials**

With the defeat of the hotel-occupancy tax increase by a margin of almost 2-to-1, I felt confident that the voters of Galveston had sent a clear message to city council and the park board that they had not done their job well in negotiating the expansion of the Moody Garden convention center.

Imagine my surprise when I read, according to Mayor Roger "Bo" Quiroga, that I and the majority of other voters were "confused and didn't understand what we were voting on," as the reason why this proposal was defeated.

In my opinion, it is our elected officials who are confused and don't understand that you cannot bring a half-baked, loophole-ridden blank check before the voters and expect for it to pass.

What arrogance to think that the people who were smart enough to put you into office now can't think for themselves.

Try again, mayor, and next time present the voters with all the facts and a well-thought-out proposal. Providing, of course, you and the park board think we can understand it.

**W. Patrick Collins**  
Galveston

## **Why do politicians give little credit to voters?**

A politician in the city of Galveston attributed the result of the convention-center vote to the voters not knowing what they were voting about.

The politician thinks that the voters thought they were voting on an increase in property taxes. Wow.

It would be difficult to come up with a statement that more graphically displays just how out of touch with public sentiment that a politician might be.

Could the politician have given the voters any less credit for perhaps having the ability to read and listen and make a decision?

I hope that a few more "ignorant" election results inspire all city politicians to actually get to know the voters in our fine city.

Please allow me the honor of opening up the dialogue right now.

The majority of voters think that Galveston needs a state-of-the-art convention center that is well-planned in every aspect. Proper fiduciary guardianship and the maintenance of long-term city fiscal health are planning aspects that need further development and definition.

The convention center will be an enormous asset for years to come when completed, and I look forward to many first-class business meetings and social functions proudly hosted in the new facility.

**E. Kent Creager**  
Galveston

## **Voters don't like the way things are run**

Everybody wants the convention center. Voters just don't like the way things are run, from Bettah Beach to the health club. Now let's talk about parking on the seawall.

**Steve Banyai**  
Galveston

1999

Dear (Park Board Member),

Moody Gardens and the Moody Foundation have been pressuring the Park Board to permit them to sell fitness memberships to the public. Such sale of memberships would be in direct competition with the Racquet Club and we cannot compete with a joint venture between the Park Board and the Moody Foundation. If you permit this to happen, you and the other Park Board members will be personally responsible for driving the Racquet Club out of business.

***Please! Don't take lightly any decision that puts the Racquet Club out of business, and costs Sandra and me our life savings!***

It may seem like an insignificant issue to sell fitness memberships to the public, but it is certainly not. Your vote to compete with us and destroy our business has a very deep meaning to my wife and me.

It is frightening to me that nine people can come together and vote to wipe out our life's savings and our retirement. My wife and I, along with other shareholders, have invested over \$1.5 million dollars into the Racquet Club. It is the basis of our retirement plan and the source of our retirement income.

You should not laugh at, or treat lightly, a decision which could result in our going out of business. This is a very dire situation, it's your responsibility to do what is right. And it is not right for the Park Board to compete with us.

Two Park Board members told me that they were unwilling to protect the Racquet Club because Buddy Herz would yell and scream and make a scene if they did not do what he wanted. If you vote to destroy our lifetime savings because you are afraid to hear Buddy Herz scream and make a scene, you are not fulfilling your responsibilities as a public official. There is no logical reason or justification for such an action.

It is obvious that Buddy Herz and the Moody Foundation only want the Racquet Club to go out of business. Why? None of us know the real purpose; but we know that it cannot be for a good reason. Ask yourself this question: Does selling fitness memberships to the Galveston public promote or increase tourism? The answer is unequivocally, "no!" A resident of Galveston is not a tourist and selling him/her a fitness membership does not promote tourism. I can think of only one reason that Herz and the Moody Foundation would want to coerce the Park Board into putting the Racquet Club out of business. The Racquet Club's 6.5 acres lie almost adjacent to the Moody Gardens property. If the Racquet Club can be forced out of business, then its property and improvements could be then offered to the Moody Foundation or Moody Gardens by the City, for free, without any compensation to the shareholders of the Racquet Club.

Letting the Racquet Club continue in business is the only path a rational mind would follow. You should not harbor any ill will against the Racquet Club. We have been a small business taxpayer in Galveston for twenty-five years. Galveston needs small business, especially ones that can establish themselves and survive for twenty-five years, paying rent and taxes to the City and School District each and every year. That is what our City needs to maintain and promote, not the extermination of taxpayers for the benefit of a tax exempt.

You know that our position is right and just. Money and its influence do not justify doing what is contrary to reason. Please, stand tall and strong against what you know to be wrong and unjustifiable. Don't sacrifice our life savings by voting to sell memberships to the public. Vote to restrict the use of the fitness facilities at the Moody Gardens hotel to its overnight guests.

Please give me the opportunity to discuss this matter with you if you either unsure or are unconvinced that the Park Board should not sell memberships in its fitness center to the public.

Yours very truly,

Tom Cook

(11-3-99)

# Island voters shoot down convention center expansion

## **GALVESTON**

■ The measure failed with nearly 61 percent of the vote against the tax increase.

By **CARTER THOMPSON**  
The Daily News

**GALVESTON** — A proposal to raise hotel-occupancy taxes to fund the expansion of the convention center at Moody Gardens went down in flames Tuesday.

Park board and city officials left city hall in disgust after it became apparent the tax increase would lose. Opponents of the issue said the defeat should send a clear message that the public opposed deals involving public money that were not adequately scrutinized.

The measure failed decidedly, with nearly 61 percent of the vote against the increase in taxes charged on hotel rooms.

Nearly 4,000 voters cast votes, a turnout city officials said was nearly double that of the city's last sewer-bond election.

What was it that killed the deal the park board and the majority of the city council thought was such a good one?

## **Houston port money likely to help island**

Galveston port officials hope to feel some beneficial ripples from the wake of a \$387-million port-bond issue that Harris County voters on Tuesday sent cruising to an easy victory.

The bonds will be used to fund construction of the Port of Houston Authority's Bayport facility on the ship channel.

Proponents of the bond issue, which included such local entities as the Clear Lake Area Economic Development Foundation, longshoremen's union locals and the Port of Galveston,

Please see **PORT/A5**

Was it the unrelated issues like health-club memberships the Moodys tried to link to the project? Or was it the result of "Moody bashing," a term Moody attorney Irwin "Buddy" Herz used during the campaign?

Councilman David Bowers,

Please see **ISLE VOTE/A12**

## Isle vote

Continued from Page A1

who lobbied against the proposal, said the reason was there was no deal, and The Daily News and opponents who exercised the scrutiny that public officials should have were the subject of personal attacks.

"That railroad train was stopped in its tracks tonight," he said.

The issue obviously was an emotional one for supporters of the expansion.

When the last hope of victory disappeared, Robert Warren, director of the convention and visitors bureau, told Bowers and other opponents from across the room that the vote was a defeat for the island's economy.

"Outstanding, that the citizens of Galveston would take a position like this," he told reporters. "The negative press we

got from The Galveston County Daily News and David Bowers is incredible. I'm absolutely upset."

The negotiating team appointed by the park board last week took a hard-line stance against the so-called side issues pressed by the Moodys, but one prominent member said he believed the Moodys never would have agreed to the terms.

"I think the citizens of Galveston are smarter than anyone gave them credit for," said Tiltman Fertitta. "You have to realize people are not going to be played hardball with."

Park Board Chairwoman Sheila Lidstone said it would be up to the board's tourism development committee whether to keep a larger convention center as its top priority.

"The city and park board can't afford it," she said of the estimated \$46 million the Moodys had offered to put into the \$56-

million project.

Fertitta said it was possible the city could get a larger facility if officials offered the same public financing.

"Of course I would like to take a look at it," he said. "The George Mitchells would like to take a look at it. The Westins would like to take a look at it. The Marriotts would like to take

a look at it."

A representative of the Moody interests said he was not sure whether they would take another look at it.

"Probably we will regroup," said Doug McLeod, chairman of Moody Gardens Inc. "The voters have spoken. I congratulate the opposition. They ran a good campaign."

# Back to the drawing board for Galveston

Developers say they have their own ideas about a beachfront convention center

By KEVIN MORAN  
Houston Chronicle

11-7-99

## Galveston

Continued from Page 37A.

**GALVESTON** - Dreams of making Galveston a mecca for resort-island meetings aren't dead yet, even after voters rejected a charitable foundation's \$46 million offer to help expand the city's convention center.

Indeed, hoteliers George Mitchell and Tilman Fertitta said last week that the city remains poised for eventual expansion not only of its convention business, but of the tourism industry as well.

And Mayor Roger Quiroga said oil-and-gas exploration in the western Gulf of Mexico offers economic opportunities as the city jockey for position in the offshore supply and service sector.

The mayor's renewed talk of diversifying the local economy came after he and other leaders lost a battle to get voters to bump the island's hotel occupancy tax from 13 cents to 15 cents on the dollar. The added revenue would have enabled the city to issue bonds to finance \$10 million of the proposed \$56 million convention center expansion and pay most, if not all, of the center's future operation and maintenance expenses.

Mitchell and Fertitta called for local officials to seek new proposals for additional convention facilities, but not necessarily for expansion of the city's official convention center, located at and operated by Moody Gardens.

Since 1983, the charitable Moody Foundation has spent \$300 million to build the non-profit Moody Gardens on city-owned property. In 1990, the city designated a facility there as its official convention center and gave Moody Gardens a portion of hotel tax revenues to operate the center.

The foundation agreed to cover any losses at the center without reimbursement.

See GALVESTON on Page 38A.



Mitchell



Fertitta

To preserve Moody Gardens' non-profit status, the foundation, with Internal Revenue Service approval, has deeded its rain forest pyramid, IMAX theater, aquarium and other facilities to the Galveston Park Board of Trustees. The property includes a new tax-exempt, 300-room luxury hotel that has been at the center of a controversy over a tax-free entity competing with taxpaying local hotels and other businesses.



Moody

That controversy - coupled with suspicion among many residents that the Moody Foundation, chairman Robert L. "Bobby" Moody Sr. and other Moody family interests have somehow enriched themselves through

Moody Gardens - helped spur voters last week to reject the foundation's offer to put up \$46 million to expand the convention facilities.

Voters also complained that city officials had no firm agreement with the Moody interests for building and operating an expanded convention center, and that the Moody proposal was the only choice they had.

Now that the election is over, Fertitta, Mitchell and others are calling for a fresh start.

"I honestly think the park board should go back and ask for requests for proposals from multiple people - including myself and Fertitta and Moody - to see if what they had planned is what people want," Mitchell said Thursday. "I would bid on it. Fertitta would bid on it. Moody would bid on it. Let's see what happens."

Fertitta, president of Houston-based Landry's Seafood Restaurants Inc. and, like Mitchell and Moody, a Galveston native, agreed.

A 1997 study that Mitchell, Fertitta and the Moody Foundation paid for concluded that a beachfront convention center was most desirable. But because the foundation was willing to pay most construction costs and cover convention center losses, consultants pegged Moody Gardens as the most feasible site for the facility.

Moody Gardens is well off the beach but overlooks expansive Offatts Bayou.

Now that the city and park board are talking about committing revenues from 3 cents of the hotel tax - more than \$1.7 million a year - to building, operating and maintaining a convention center, Mitchell and Fertitta say they or others might be able to compete with a Moody proposal and develop a beachfront convention center.

Fertitta owns some land behind his beachfront San Luis Resort & Conference Center, and some speculate that he could buy some adjacent Galveston College property to make space for a convention center.

Mitchell owns Beach Central, formerly known as the Moody Civic Center and the city's official convention center until 1990. He has disclosed elaborate plans for remodeling the 1957 building into a convention center.

Market research indicates that a beachfront location is a prime selling point for meeting sites, and that a remodeled Beach Central would meet many groups' requirements, Mitchell said.

"The city doesn't need a \$40 million project," he said. "The convention and visitors bureau doesn't have the staff to make it work."

In recent days, a 6-acre tract of surplus federal property has been scheduled for a second round of bidding by potential buyers. The former

Coast Guard and U.S. Army Corps of Engineers housing area runs between 41st and 45th streets on Seawall Boulevard.

"I think that would be a great place," Fertitta said. "You could make it work. There's space all over the seawall. If someone wants to put together a good package, it could happen."

Because of Tuesday's election, the field may be more level and clear than ever.

Through foundation attorney Irwin "Buddy" Herz, Bobby Moody said the millions offered for expanding the Moody Gardens convention space no longer are on the table.

"I just don't think the Moody family and the Moody Foundation want to be put through the same type of Moody-bashing that went on in this election," Herz said.

11-7-99 SUNDAY

# Our readers speak out

Galveston voters last week rejected a proposed tax increase that would have gone toward expansion of the convention center at Moody Gardens.

## Voters are not confused — it's the city's officials

With the defeat of the hotel-occupancy tax increase by a margin of almost 2-to-1, I felt confident that the voters of Galveston had sent a clear message to city council and the park board that they had not done their job well in negotiating the expansion of the Moody Garden convention center.

Imagine my surprise when I read, according to Mayor Roger "Bo" Quiroga, that I and the majority of other voters were "confused and didn't understand what we were voting on," as the reason why this proposal was defeated.

In my opinion, it is our elected officials who are confused and don't understand that you cannot bring a half-baked, loophole-ridden blank check before the voters and expect for it to pass.

What arrogance to think that the people who were smart enough to put you into office now can't think for themselves.

Try again, mayor, and next time present the voters with all the facts and a well-thought-out proposal. Providing, of course, you and the park board think we can understand it.

W. Patrick Collins  
Galveston

## Why do politicians give little credit to voters?

A politician in the city of Galveston attributed the result of the convention-center vote to the voters not knowing what they were voting about.

The politician thinks that the voters thought they were voting on an increase in property taxes. Wow.

It would be difficult to come up with a statement that more graphically displays just how out of touch with public sentiment that a politician might be.

Could the politician have given the voters any less credit for perhaps having the ability to read and listen and make a decision?

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Please allow me the honor of opening up the dialogue right now.

The majority of voters think that Galveston needs a state-of-the-art convention center that is well-planned in every aspect. Proper fiduciary guardianship and the maintenance of long-term city fiscal health are planning aspects that need further development and definition.

The convention center will be an enormous asset for years to come when completed, and I look forward to many first-class business meetings and social functions proudly hosted in the new facility.

E. Kent Creager  
Galveston

## Voters don't like the way things are run

Everybody wants the convention center. Voters just don't like the way things are run, from Bettah Beach to the health club. Now let's talk about parking on the seawall.

Steve Banyai  
Galveston

## LETTERS TO THE EDITOR

11.9.99

*Galveston voters last week rejected a proposed tax increase that would have gone toward expansion of the convention center at Moody Gardens.*

### **Voters aren't stupid just because vote failed**

In the Nov. 4 article about the failure of the increase in the hotel occupancy tax, Mayor Quiroga is quoted as saying "people were confused and didn't understand what they were voting on."

Come on, Mayor. Don't call the voters stupid just because they did not do what you wanted.

The voters understood exactly what they were voting on. You wanted them to sign a blank check, and they said no.

Gary Scales  
Galveston

### **Editorials had no effect on most of population**

Before you gloat over the hotel tax refusal by roughly 2,400 voters — give or take a few — remember roughly 90 percent of the registered voters didn't care one way or the

other.

So your editorials — again anti-Galveston, evidently because more and more of us are refusing to subscribe — had little effect.

Dan Cote  
Galveston

### **Voters knew exactly what was going on**

I resent the article that was written in the paper saying that the city officials claim that we didn't understand the vote.

The voters are not stupid. We are not stupid people. We knew exactly what we voted for.

We voted it down, and the city officials are going to do what they want to do.

Just like the parking meters. Just like the trolley. Just like everything else.

It doesn't matter what we want.

When I first moved to Galveston I was looking for a job, and Moody Gardens offered me a volunteer position. Even though they make millions of dollars a year, they couldn't

pay me to work. Why do we vote?

Pauline Broussard  
Galveston

### **No vote was because of too many blanks**

As one of the voters who voted against the increased hotel occupancy tax, I would like to clarify why I did it.

No, mayor, I was not confused. At least not confused about the issue I was voting on.

I was, and still am confused, that we were even asked to vote on this incomplete deal.

See, I am the type of person who reads all the fine print before I sign a contract. I'm also the type of person who refuses to sign anything that has blanks not filled in.

I guess I'm a little too cautious or untrusting. Therefore, as much as I'd like to see a convention center built on the island, I could not vote in favor of this proposal.

There were just too many blanks.

Dana Galbreath  
Galveston



# OPINION

*Galveston voters rejected a proposed tax increase that would have gone toward expansion of the convention center at Moody Gardens.*

## Island citizens won't sign a blank check

To Mayor Roger "Bo" Quiroga:

Bo, you still don't get it. I am offended by your remark that "the citizens of Galveston thought they were voting against a personal tax."

The citizens of Galveston aren't stupid, Bo. We read, we think, we listen, we discuss, we act. What we don't do is sign a blank check without a contract.

Katye Parsley  
Galveston

## Defeat of increase was a 'no' to Moody interests

There was a lot of gratification in the defeat of the hotel occupancy tax increase. It wasn't just about the issue on the ballot.

It was "no" to (Moody representatives) Irwin "Buddy" Herz and "no" to Doug McCleod. "No" to Bobby Moody who supports their tactics.

"No" to city and park board officials' negotiating skills and credibility. "No" to the rest of the special interest groups. "No" to the status quo.

I was pleased to see Galveston rally to the call. Maybe there's hope for the old girl yet.

F.R. Burdett  
Galveston

## Residents shouldn't have to pay more

In reference to letters to the editor from W. Patrick Collins, E. Kent Creager and Steve Banyai printed in the Nov. 7 paper: Right On!

With all this talk about taxes lately (an ongoing occurrence, of course) — why should we, the taxpaying people of Galveston, be charged to walk down our own streets during the tourist attractions of Dickens' Evening and Mardi Gras or to park on our own tourist beaches?

We should be able to show our driver's license or some kind of ID cards showing that we live here!

I realize, as others do, that Galveston is a tourist town. I was born here. But what about us? Fix our streets, our traffic lights, etc. etc. etc. Just where are our taxpaying dollars going?

As far as the proposal for the convention center goes — what we as taxpaying voters clearly showed at the polls was that we were not "confused" but "concerned" citizens!

If the mayor of our town truly thinks we were "confused" and didn't "understand" the proposal of the convention center, maybe we should be "confused" when the re-election of city officials comes around again!

Believe me, we know what's going on.

Rauline Vanda  
Galveston



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November 1, 1999

MEMORANDUM TO:  
All Employees who reside in Galveston

Subject: City of Galveston Election on November 2<sup>nd</sup>

As many of you are aware, there has been a lot of controversy in the Galveston newspaper regarding the referendum this Tuesday. Tomorrow, Galveston residents will be asked to approve a proposition to increase hotel occupancy taxes by 2 cents to finance a portion of the expansion of the Galveston Island Convention Center at Moody Gardens.

As a result of the unfair reporting of a number of issues surrounding this election, I wanted to give my view of some of the issues.

Clearly, an improved, expanded "state of the art" convention center would be good for the entire community. The 2 cent increase in the hotel tax would be used, among other things, to finance the City's \$10 million share of the estimated \$56 million cost of such improved and expanded facilities. The funds for the remainder of the costs would be provided by the Moody Foundation.

There will be no increase in any taxes to Galveston residents.

While there are a number of side issues being reported as important issues in the election, the vote is only on whether to increase the hotel occupancy tax by 2 cents. I believe a vote for this proposition is unquestionably for the good of the community.

Attached are copies of two recent articles written by Raymond Lewis, former Chairman of the Park Board of Trustees. I believe Mr. Lewis' articles clearly and accurately state the situation.

I hope that you will vote YES tomorrow. It is important to American National and this City.

Sincerely,

G. Richard Ferdinandtsen  
Senior Executive Vice President, Chief Operating Officer

11-12-99

*Galveston voters rejected a proposed tax increase that would have gone toward expansion of the convention center at Moody Gardens.*

### **Island citizens won't sign a blank check**

To Mayor Roger "Bo" Quiroga:

Bo, you still don't get it. I am offended by your remark that "the citizens of Galveston thought they were voting against a personal tax."

The citizens of Galveston aren't stupid, Bo. We read, we think, we listen, we discuss, we act. What we don't do is sign a blank check without a contract.

**Katy Parsley  
Galveston**

### **Defeat of increase was a 'no' to Moody interests**

There was a lot of gratification in the defeat of the hotel occupancy tax increase. It wasn't just about the issue on the ballot.

It was "no" to (Moody representatives) Irwin "Buddy" Herz and "no" to Doug McCleod. "No" to Bobby Moody who supports their tactics.

"No" to city and park board officials' negotiating skills and credibility. "No" to the rest of the special interest groups. "No" to the status quo.

I was pleased to see Galveston rally to the call. Maybe there's hope for the old girl yet.

**F.R. Burdett  
Galveston**

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parks board, the Moody Foundation will be able to create a health facility on its property.

Some 23 years ago, local citizens built a taxpaying business, the Galveston Health and Racquet Club, for approximately \$1.5 million. Their life dream will come to an end if the parks board passes this amendment.

It doesn't make any sense to destroy the livelihood of dedicated loyal citizens and then turn around and duplicate the same facility just a quarter of a mile away.

Eddie Marx  
Galveston

### Does city care whether businesses live or die?

Dolph Tillotson's editorial on May 4, was absolutely correct. Galveston's economy is in terrible shape and it will only get worse unless our city leaders discard the failed theories and practices of the past.

Galveston needs to nourish and protect our taxpaying businesses. A city cannot punish and frighten its taxpaying businesses and hope others will come here to take the place of those businesses who go broke or just give up.

A good example of this is happening now. A large charitable, tax-exempt foundation is asking the city and the Park Board to give the foundation incredible powers to develop tax-free businesses at Moody Gardens which can compete unfairly with local taxpaying businesses.

What message does that send to our taxpayers? A simple, truthful one: the city does not care if you live or die, financially speaking.

The City and the Park Board must refuse the foundation's request.

Tom Cook  
Galveston

.....  
*The Moody Foundation has asked the Galveston Parks Board of Trustees to amend its contract for operating Moody Gardens. Moody Gardens representatives say they need added protection to protect the huge investment in the gardens from Galveston's politics. Some Parks Board members have opposed the amendment, saying the city needs to retain some leverage over the foundation to keep it from competing against private businesses. The following letters are from the manager and owner of the Galveston Health and Racquet Club.*

### Amendment One would threaten a private business

On behalf of the Galveston Health and Racquet Club, its owners and its 45 employees, I would like to express my concern about Amendment One, a contract between the Moody Foundation and the Galveston Parks Board.

If Amendment One is passed by the

.....  
*A poll released just Day showed 56 per cent of the city's own residents believe*



# Bids for center to be taken

Requests for proposals to be issued for convention center

By CARTER THOMPSON  
The Daily News 3/29/00

GALVESTON — The park board on Tuesday finally agreed to issue a request for proposals for a new convention center.

**GALVESTON** It's possible — preferable to some trustees — that the new center will be an expansion of the current facility at Moody Gardens.

Trustees last month decided not to issue the request out of concern that taking board funding from the Galveston Island Convention Center at Moody Gardens would doom it to the same fate as the old Moody Civic Center.

Industry representatives on the tourism development committee last week urged trustees to issue the invitation for developers to make their pitch to build a convention center. Issuing the request does not tie the park board into accepting any proposal, they argued.

The city in 1993 agreed to allocate a penny of the hotel-occupancy rate to the Moody Gardens facility in exchange for the Moody Foundation forgiving a \$400,000 loan to rebuild the Jones Road Bridge. Revenues from the penny have grown to nearly \$600,000 and are used to finance the operation of the convention center.

Trustee Melvin Williams began the discussion by saying he would not vote to issue the request until he saw further information on why the city began funding the convention center at Moody Gardens. He ultimately did vote to issue the request. Steve Greenberg, then a city councilman, said the bridge was the only reason for the agreement, which expired last year.

Doug McLeod, chairman of Moody Gardens Inc., said that was not the only reason. In addition to the bridge consideration, the city also recognized the Moody Gardens facility as its official convention center, he said.

Greenberg reiterated what tourism representatives have said for months. The Moody Foundation has the resources available to make the winning pitch.

"I can assure you if Mr. (Robert) Moody wants the convention center out there, he can put together a proposal nobody can compete with," he said.

Citizens last year voted down a proposal for public funding of an expansion of the convention center at Moody Gardens.

George Mitchell so far is the only person who has said he will make a pitch for the new convention center. Mitchell owns Beach Center — formerly the Moody Civic Center — and plans to renovate the facility.

# Intrigue enveloping Galveston city races

SUNDAY  
4/23/2000

By KEVIN MORAN  
Houston Chronicle

**GALVESTON** — This year's Galveston City Council election season is like a good novel — laced with entertaining subplots and brimming with intrigue likely to keep everyone guessing until the last vote is counted.

In one district race, the challenger contends that the incumbent's operatives got at the computer he used in a former job and found a politically embarrassing letter.

In another race, the incumbent maintains that her male challenger practiced subtle sexism by handing out yellow, Nerf-style balls bearing his name.

With three council members inclined to fire him, City Manager Steve LeBlanc put up one of Mayor

Roger Quiroga's campaign signs in his yard and asked a storekeeper to display a sign as well. That has LeBlanc's critics maintaining that he is taking sides in the mayor's race.

LeBlanc says the situation has been distorted, but the May 6 election may bear heavily on his future.

Quiroga's challenger is three-term District 2 Councilman David Bowers, one of LeBlanc's critics.

Bowers, 46, who sells real estate, has run a strong race. It got stronger after Quiroga astounded many residents by trying to give a Houston firm a contract to promote next year's Beach Party Weekend before the city had seen how the firm had managed the huge gathering of college students this year.

Throw into the mix persistent rumors about Robert L. "Bobby" Moody Jr. — banker, developer and chairman of the powerful Moody Foundation — trying to manipulate the election for a council majority that will vote his way, and this election has it all.

"I think this election is set apart by the fact that the city manager has gotten involved in the election in a very overt way, and that's disturbing to me," said District 6 Councilwoman Dianna Puccetti.

"He's trying to use his influence, primarily in the mayor's race, and some in other races," said Puccetti, 50, director of the University of Texas Medical Branch department of rehabilitation services. "Mine was one where he applauded my opponent's announcement, which was done in City Hall."

LeBlanc said it was only common courtesy to applaud John Dundee when he announced his candidacy.

"I didn't cheer," he said. "I politely clapped."

LeBlanc acknowledges asking a merchant to display a Quiroga sign but says he did so for a friend who had brought a sign but didn't know anyone at the store. He said his wife placed the Quiroga sign in their yard.

"It's my wife's house, too," LeBlanc said, adding that he has the legal right to support a candidate.

Bowers, Puccetti and District 4 incumbent Lyda Ann Thomas are LeBlanc critics. Quiroga, 45, supports LeBlanc.

Quiroga denies being on a Moody-backed slate or crafting a slate of candidates so he can have his way. Other candidates deny entering the fray at Moody's behest.

Dundee said Moody tried to discourage his run for office, fearing that campaign mudslinging would hurt Dundee's mother, who has worked for Moody's Gal-Tex Hotel Corp. more than 50 years.

Moody did not respond to a request for an interview.

Dundee, 44, is director of the Galveston Railroad Museum, former manager of the Galveston Trolley and a former Moody Gardens employee.

The Moody Foundation established the railroad museum but no longer supports it financially.

"I was asked to run by my neighbors and by the people in this town whom I

grew up with and who want changes in government on this island," Dundee said. "They want a greater voice in what goes on."

The city's police and firefighters' unions have endorsed him.

District 6 includes west Galveston Island, where development has boomed and residents complain of being cheated of city services.

Many consider Puccetti the west end's most vocal advocate ever on the council.

"I've worked very hard to try to represent the district as a whole and to be a very loud and clear voice for the West End," she said. "Basic city services that other parts of the city enjoy just aren't available to those residents."

District 4 challenger Rudy Garza, 33, is another suspect among Moody conspiracy adherents. He faces incumbent Lyda Ann Thomas.

Thomas, 63, operates Galveston Harbour Tours Inc. She is a member of Galveston's wealthy Kempner family and a trustee of the charitable Harris and Eliza Kempner Fund.

From August 1996 to March 15 of this year, Garza ran the Galveston Community Development Corp., which uses federal and other grant money to rehabilitate properties for affordable housing for low-income people.

Garza said he quit the corporation to run for council because the Kempner Fund provided part of his salary.

He alleges that friends of Thomas had someone retrieve a letter he had deleted from a corporation computer. Thomas denies involvement.

Garza had written the letter to Galveston College President Bix Rathburn, seeking a job setting up a minority-student recruitment program.

Bowers said the letter's first sentence proves that Moody, with Quiroga's support, is covertly backing a slate favorable to his interests.

"Per Bobby, Buddy and Bo's request, I am sending you my resume for your review," Garza wrote to Rathburn.

Many believe "Bobby" is Moody, but Garza says the reference is to Robert Quintero, a friend and Hispanic community leader.

Garza admits that "Buddy" is Buddy Herz, the Moody Foundation's chief attorney. The other reference is to Quiroga.

"I dropped other names in other letters," Garza said.

Garza said neither Moody nor anyone connected with Moody asked him to run. He denies rumors that Moody has helped him get new work or arranged campaign financing.

"I've never in my life talked to Bobby Moody," Garza said.

The letter calls Thomas "bad for Galveston" and says she "is intent on using her political position to carry out a personal vendetta against certain citizens."

Garza said that, while unusual in a letter to a potential employer, his remarks were meant only to convey his plans to run for council "and to tell them how passionate I was about pursuing it."

Thomas declined comment on the letter.



Moody



Bowers

Garza opponents also have circulated letters written to him by Sterling Patrick, head of the city office that doles out federal money to the development corporation.

Patrick said he joined the city in early 1999 and found that the corporation did not comply with many federal accountability rules. He asked Garza for cancelled checks, reports and other spending documentation and had to repeat some requests, but said last week that Garza provided most of the documentation before he quit.

Garza said he didn't purposely delay answering Patrick. Patrick's predecessor had never required such records and providing them took time, he said.

Garza denies pervasive rumors that he left the corporation's records and finances in disarray. The corporation is low on grant money and experiencing serious cash-flow problems, however. A routine audit is in the works.

Thomas is the third District 4 council member since a federal court ordered districts drawn to assure minority representation. District 4 was dubbed a Hispanic impact district, with a population that was 39 percent Hispanic and 27 percent black.

So far, only one District 4 council member has been Hispanic.

Garza said he backed Thomas but now believes she failed to support projects that would produce jobs for working-class people. She helped delay construction of an Eckerd drugstore and a west island time-share condominium project, he said.

"I feel the concerns not only of the Hispanics in the district but those of working-class families that make up District 4 were not being met," Garza said.

Thomas said a compromise she crafted led to the Eckerd store's construction in a fashion that blends with nearby historic buildings. She said she supported the time-share project and has worked hard to improve neglected neighborhoods.



Quiroga

Real or not, the Moody factor will play a part in the election.

Patricia Bolton-Legg, 41, co-owner of electrical contracting and rental businesses and a newcomer to politics, is running against lawyer Joe Jaworski, 38, for Bowers' District 3 seat.

Bolton-Legg said several people have told her they've heard she's a "Moody girl."

"When I filed, I had people coming up to me and asking me who asked me to run," she said. "Well, I didn't know I had to be asked to run. I just decided to run."

Quiroga says he doesn't kowtow to Moody or other special interests. "I do what I think is best for Galveston," he said.

He said he twice opposed amendment of a contract between the Moody Foundation and a city board that called for allowing the tax-free Moody Gardens Hotel to sell spa memberships and compete with the Galveston Health & Racquet Club.

"Basically, Bowers is running on a platform of the city manager and the mayor conspiring to do things in secret all the time," Quiroga said. "This whole city is in a conspiracy, according to him."

Bowers has blasted Quiroga for, among other things, asking voters to raise the hotel tax to finance expansion of a city convention center at Moody Gardens without putting the deal in writing.

Voters, suspicious that Moody's private businesses would profit, rejected the plan in November.

The wild card in the mayoral race could be last week's Beach Party Weekend, a controversial annual gathering of tens of thousands of black college students.

Many residents want to kill the event. Quiroga insists the crowd will come, regardless, and he spearheaded an effort to welcome the students this year.

While the event went well, local opposition remains strong. Quiroga's premature move to sign a second-year contract with promoters may hurt him as well.

Mayoral candidate Robert A. Compean, 33, a Galveston College student campaigning to end Beach Party Weekend, may draw protest votes.

Also running for mayor is Eugene Birmingham Madison, 67, a disabled Korean War veteran.

Candidates for District 1 are Booker T. Price Sr., 67, a retired police officer, and Sharon B. Lewis, 44, a school teacher.

SUNDAY  
4/23/2000

# Unfair edge for Moody, some say

7-22-2000

## Mitchell, Fertitta say committee for convention center is stacked

By LAURA ELDER  
The Daily News

**GALVESTON** — A committee formed to review bids by developers to build a city convention center is unfairly stacked with members that have an interest in seeing the Moody Gardens Inc. win the contract, say two competitors for the project.

Tilman Fertitta and Todd Mitchell, both heading companies in the three-way contest to build or expand the city's convention center, each sent letters to park board chairman Melvin Williams about the make-up of the proposal review committee.

Moody Gardens Inc., Fertitta Hospitality Inc. and George Mitchell's MBP Corp. are competing for the contract. The companies submitted bids last month.

Both Fertitta and Mitchell contend the committee is weighted with members that have strong ties to and incentives to recommend Moody Gardens Inc.

"By our count, six members of this committee might be perceived to have conflicts of interest because of the association with the Moody Foundation or with Moody business interests," said Todd Mitchell in a July 20 letter to Williams.

In the letter to Williams, Mitchell said that there are even members that can be perceived as having a conflict of interest because of business dealings with the Fertitta and Mitchell organizations.

Fertitta, in his July 21 letter, said the presence of Williams, Danny Allen, and Raymond Lewis on the committee compromises the selection process because all three members work for the University of Texas Medical Branch, which recently received a \$500,000 grant from a Moody entity.

"I think that's basically garbage," said Raymond Lewis, a committee member and associate

## Edge

Continued from Page A1

dean at UTMB. "Ten percent of UTMB's overall budget does not come from the Moody grant."

The committee, said Lewis, is only authorized to make recommendations, but the final decisions rests with the park board.

Allen, director of transportation for the university and a member of the park board of trustees, also said he did not believe his presence on the committee represented a conflict of interest.

"I can't control the amount of money given to the university," said Allen. "Ten percent of my income does not come from the Moody Foundation, and there's no conflict of interest."

Fertitta, in the letter, went on to name a number of people he believed represented a threat to a fair evaluation of the bids, including Louis Pauls, a committee member who sits on the board of directors of a life insurance company controlled by Robert L. Moody.

Fertitta, in the letter, said the park board was taking a "backwards, non-business approach" and should form a committee comprised of tourism professionals with business experience.

In June, the three developers submitted their bids to build a convention center.

The contention that the proposal review committee, appointed by the park board, was stacked for Moody Gardens Inc. is wrong, said Lewis.

"I'm a citizen, and I want what's best for the community and that's what everyone else on that committee wants," said Lewis.

● Laura Elder can be reached at (409) 683-5340 or [laura.elder@galvnews.com](mailto:laura.elder@galvnews.com).



# REVIEW panel loses members

By MICHAEL A. SMITH  
The Daily News

GALVESTON — Citing potential conflicts of interest, two more members have resigned from an ad hoc committee reviewing proposals from developers wanting to build a city convention center.

Betty Massey, who heads the Galveston Historical Foundation, resigned Wednesday from the Convention Center Review Committee.

Her resignation came a day after City Councilwoman Lyda Ann Thomas left the committee.

Their resignations bring to four the number of people who've resigned saying they wanted to avoid creating a perception that the committee might be influenced by the three bidders.

Fertitta Hospitality Corp., MBP Corp. and Moody Gardens Inc. have made bids for a contract to build or expand facilities and operate a city convention center.

The resignation-plagued review committee is charged with assessing the bids and making recommendations about their merits to the Park Board of Trustees, an appointed board that manages some aspects of the island's tourism industry.

Thomas said she had a conflict of interest because a tour boat she operated docked behind the Fisherman's Wharf restaurant, which was owned by developer Tilman Fertitta.

"People might think it's far-fetched," Thomas said. "But I have an association with Mr. Fertitta. It's not a monetary conflict of interest; it's a conflict by association."

Thomas is the city council's representative to the park board, which is expected to recommend one of the three convention center bids to the city council for approval.

She said she would abstain from voting on Fertitta's proposal if it were chosen for city-council action.

Massey said she stepped down because all three of the bidders have made contributions to the historical foundation, a non-profit group that

seeks to preserve the island's historical architecture.

"I didn't want to do anything that would create a perception of a conflict of interest," she said.

Potential conflicts on the committee became an issue last week when Fertitta and Todd Mitchell, who's heading MBP Corp. for his father, developer and oilman George P. Mitchell, sent letters to park board Chairman Melvin Williams.

Both contended that many committee members had apparent conflicts, some with their companies.

They argued also, however, that the committee was weighted with members whose ties to one or several entities

headed by island millionaire Robert L. Moody gave those members incentive to recommend Moody Gardens Inc.'s convention proposal.

Fertitta, in his July 21 letter, said the presence of Williams, Danny Allen and Raymond Lewis to the committee compromises the selection process because all three members work for the University of Texas Medical Branch, which recently received a \$500,000 grant from a Moody-controlled charitable organization.

Lewis, who is an associate dean in the university department that received the grant, dismissed the notion.

The letter was enough to inspire university President John Stobo to meet with Lewis and his boss, however.

On Wednesday, Stobo said he was convinced that Lewis could act in an objective manner.

"He has my complete support," Stobo said. "I am enthusiastic about the leadership role he has taken in the community."

If the committee began heavy with people connected to Robert L. Moody it was more so after the spate of resignations.

Three of the four people who left the committee cited conflicts with Mitchell or Fertitta and the fourth, Massey, said she had connections to all three.

The fact was not lost on Fertitta spokesman Steve Greenberg.

"The people that we were most concerned about having Moody connections are staying on the committee," he said.

July 27, 2000

## Park Board lawyer cites glitches in bid

GALVESTON — A bid submitted by Moody Gardens Inc. proposing to build and operate a city convention center conflicts with an existing contract between the bidder and the city, an attorney reported Wednesday.

Park Board attorney Carla Cotropia said the existing contract spelling out the legal arrangement between the city and Moody Gardens would have to be amended three ways if the Moody Gardens bid were accepted.

In a report submitted to an ad hoc committee reviewing three bids vying for the convention center contract, Cotropia wrote the Moody bid calls for 200 more hotel rooms to be built at the gardens "anytime during the next 10 years."

That conflicts with the current contract that forbade Moody Gardens from adding to its tax-exempt hotel until October 2003.

The bid also seeks permission for Moody Gardens to sell general-public memberships to the hotel's health club, which also is forbidden under the contract.

The bid also seeks to use any funds that might be collected in the future from people parking at the gardens to maintain and expand the tourist attraction, while the current contract calls for \$1 for each vehicle to go to the city.

MICHAEL SMITH/The Daily News

## Board should insist on comparable bids

**T**he Galveston park board's attorney has pointed out a detail that the board really ought to keep in mind as it considers competing convention center proposals.

Attorney Carla Cotropia noted that the bid submitted by Moody Gardens conflicted with an existing contract between the bidder and the city.

The bid proposes to add 200 rooms to the adjacent hotel, and it seeks permission to sell memberships to the hotel's health club.

What do either of those things have to do with a convention center?

Hoteliers George Mitchell and Tilman Fertitta for years have been fighting what they see as unfair competition from a tax-exempt hotel at Moody Gardens. The competing plans for a convention center have done nothing to change that.

It seems to us that the park board ought to insist on comparable bids. A bid that seeks to change the terms of a contract cannot be weighed on the same scale with a bid that does not.

If the park board wants to throw open the possibility of renegotiating its relationship with one bidder, it ought to invite such proposals from all three.

What if Mitchell were offered the chance to take the Hotel Galvez off the tax rolls? Would that change his proposal?

What about Fertitta and the San Luis Resort and Conference Center?

Frankly, we're really not sure what the park board's next step ought to be.

Should it simply toss out the offending bid? Should it ask Moody Gardens to modify it? Should it toss out all of the bids and start over?

One thing seems certain. The board should not agree to negotiate concessions with one bidder unless it's willing to negotiate concessions with all of them.

● This editorial was written by Kelly Hawes, associate editor of The Daily News. His email address is [kelly.hawes@galvnews.com](mailto:kelly.hawes@galvnews.com).

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**Highlights** **Today's Events, Tomorrow's Stories**

- Park Board Convention Center Committee
- Partnership for Better Living
- Downtown Galveston Business News
- Region H Water Planning Group
- Galveston Committee on Unity & Tolerance
- Linda Macdonald Speaks to Galveston Rotary

# Galveston Fax

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September 6, 2000

## Moody Offers \$12 Million In Lieu of Taxes Fertitta Calls Moody Foundation Proposal A "Bribe"

*Robert L. Moody, speaking on behalf of the other trustees of the Moody Foundation added a new offer in the competition for the location of the new Galveston Island Convention Center.*

To set up the new proposal, Moody attorney Buddy Herz announced that the foundation wants to address the the City of Galveston's budget crunch, as well as lack of hotel rooms, which has been blamed for the loss of the cheerleader convention.

"The Moody Foundation has heard your concerns," Herz said. "And they have heard the concerns of the citizens of Galveston."

Herz announced that the proposal known as "Moody Number 1" is now off the table and the foundation wants to add 200 new hotel rooms to his number 2 proposal.

In exchange, Moody offered \$12 million to the City of Galveston and the Park Board of Trustees "in lieu of taxes."

A grant to the City of Galveston "to assist the city in its financial problems" was offered. It will be payable in installments of \$500,000 per year for four years.

A \$10 million fund, earmarked for grants to the city or to the park board, "to attract tourists and visitors to

Galveston and/or to improve the quality of life for the citizens of Galveston." will be established for economic development over the next ten years.

Moody explained that the economic development projects should benefit the entire island, not Moody Gardens where development will continue.

Tilman Fertitta was not impressed, charging that the offer was a bribe and offering to better it.

"Tell me how much you want me to pay you," said Fertitta. "If y'all want to make that a condition of the convention center, I'll pay you a million a year. Just tell me right before you vote, because I can afford to do it if that's what it takes."

Fertitta said accepting the offer will give the city a bad image. "All you have got to do is bribe the city."

Fertitta said he was "insulted and shocked" by Moody's proposal.

He downplayed the significance of the foundation's offer. "They give the \$10 million away every year because they have to give away \$40 million a year. So it's nothing new; it's just the same \$10 million."

Mitchell representative Bill Ross said he will report to George and Todd that Moody is again seeking additional

hotel rooms "which we are totally against."

Ross stressed Mitchell's contention that the convention center belongs on the beach."

The next meeting will be on Monday, September 11 at 1:30 at the Island Community Center. Members of Galveston City Council and the general public will be invited to attend.

A recording of the entire meeting can be heard on the Front Page of the Guidry News Service Online News Station.

Visit [www.guidrynews.com](http://www.guidrynews.com).

### Downtown Business

Strand pioneer and entrepreneur Bill Fullen has sold the Old Strand Emponium to Kyle and Kathy Albright.

"I've been down there 27 years and am getting a little older," Fullen explained. "My wife Karen and I decided that if we are going to do some things we want to do before we get too old to do them, maybe now is the time to do it."

The Old Strand Emponium was the very first new retail business to open in the Strand restoration. Fullen, who still owns the building that houses the Emponium as well as the Waterwall Restaurant and other downtown

# Fertitta's site makes sense for Galveston

SVN 9-10-00

**A**n ad hoc Galveston park board committee is supposed to vote soon on where to locate a new convention center, and a lot of people



**Dolph Tillotson**

are watching and waiting anxiously.

This decision is controversial because the three groups who want to build the center are powerful, rich and well organized. It's a fight that all

three are waging vigorously.

The big three are the Moody family, George Mitchell and restaurateur Tilman Fertitta.

I've studied the proposals, and I think Fertitta's is best for several reasons. It is located just north of the San Luis Resort and Conference Center on Seawall Boulevard.

Awarding the location to Fertitta will require courage, because that act will seem to some not as saying yes to a good proposal but saying no to the Moodys. That doesn't happen often in Galveston.

Why is the Fertitta proposal best?

First, it's near the beach. This is important because when convention planners think of Galveston, the beach is what they think of. The beach also happens to be the location of most of our community's restaurants and other amenities.

Perhaps even more importantly, however, the Fertitta property is closest to more hotel rooms than either of the other two.

The problem in selling conventions at Moody Gardens is the lack of nearby hotel rooms. There aren't enough at Moody Gardens for many conventions, so many meeting planners go elsewhere. This is a critical point.

Next there is the important issue of economic development. It's clear from a study of all three proposals that more new development will occur around the site at the San Luis Hotel.

Fertitta himself has announced that if his site is selected, he'll launch a \$10 million expansion of his hotel. Developer Don Mafrige also has indicated he may build yet another hotel on the site of the Fort Crockett Apartment complex, which Mafrige owns. That development and others will be on the tax rolls, and it will help tax-poor Galveston, enormously.

Finally, Fertitta's proposal offers what also seems the best plan to promote the convention center and advertise Galveston elsewhere.

The most often cited criticisms of the proposal by Fertitta are its cost and its impact on the nearby neighborhoods.

Its cost would be paid from taxes on hotel and motel rooms. Besides, in the long run, the issue of whether the convention center works is far more important than its cost.

Concerns about the facility's impact on surrounding neighborhoods would be mirrored in all three proposals. Fertitta has been working with residential neighbors to change the design of his proposed facility to minimize its impact.

I'm not on the committee, and I don't have a vote. If I did, I'd vote for the Fertitta site.

It doesn't take a genius to figure out which site is best. However, it takes courage to put that knowledge into action.

● **Dolph Tillotson is president and publisher of The Daily News. His email address is d.tillotson@galvnews.com. His phone number is (409) 683-5219.**

# Moodys investigate expansion

■ The convention center at Moody Gardens might still be looking to expand with its own funding.

9-24-00

By CARTER THOMPSON  
The Daily News

**GALVESTON** — Though passed over in favor of a seawall location, the convention center at Moody Gardens still might be expanded.

Whether that expansion or a related expansion of the Moody Gardens Hotel hinges on an election on a new convention center to be built behind the San Luis Resort was unclear.

Doug McLeod, director of development for the Moody Foundation, said the Moodys were examining the options.

"Probably we can't do anything until we see what voters do on the Brimer Bill," he said, referring to the state legislation that authorizes such elections. "It in essence prevents us from planning."

If voters approve the increase in the city's hotel-occupancy tax, the facility at Moody Gardens almost certainly will lose the tax allotment it now receives for operation and maintenance expenses. That allotment is now worth \$600,000 a year.

The Moodys also would be on their own to finance the expansion, which McLeod said would be for the most part a new convention center tied into the current facility's west side that includes the Floral Ballroom.

During recent evaluation process of proposals submitted for the new center, Moody attorney Irwin "Buddy" Herz said the plans were to expand the center regardless of whether it was chosen and funded by the city.

Family patriarch Robert L. Moody also reportedly has expressed an interest in expanding both the center and adjoining hotel at Moody Gardens to city leaders.

Councilman Joe Jaworski and Moody met for lunch at Luigi's Ristorante Italiano on Monday. Jaworski said it was a frank and open discussion in which Moody indicated he was displeased with the evaluation process but did not suggest he was organizing opposition to the election, the date for which has not been set.

Moody asked about the possibility of adding 200 rooms to the hotel and perhaps paying property taxes on those new rooms. The hotel's current stock of 303 hotel rooms is owned by the city and is tax-exempt, an arrangement that irks some other island hoteliers.

"I appreciate him coming forward and wanting to discuss these kinds of things," said Jaworski. "I think it needs to be done with the park board, but I don't begrudge him for seeking out elected officials and feeling out their positions."

Moody did not return a phone call to his office on Thursday.

Asked about whether the Moodys would support or oppose the election, McLeod responded, "Officially our best bet is to stay out of it." But he went on to say, "I think our posture is to wait and see if Tilman keeps his word."

Tilman Fertitta heads the two companies that submitted the proposal recommended by the park board's ad hoc convention center evaluation committee.

McLeod was referring to whether commitments Fertitta made verbally to the committee on the proposal would end up in a written agreement.

Please see MOODYS/A7

## Moodys

Continued from Page A6

Fertitta said he welcomed an expansion of the convention center at Moody Gardens. But the new hotel rooms, even if taxable, would compete unfairly with the private sector, he said.

Fertitta, the head of Landry's Seafood Restaurants and owner of Fertitta Hospitality, said he always kept his word.

"Whatever was in my presentations is what I'm going to do," he said. "Whatever I say is going to happen."

The park board this week will decide whether to adopt the committee's recommendation. If it does so, negotiations on the written agreement will begin soon after.

Other council members contacted this week, including Mayor Roger "Bo" Quiroga, said

they had not met with Moody representatives. Quiroga said was "bothered" that other council members had met with Moody representatives.

The Moodys need park board approval for any major expansion. It's operating agreement states that park board trust must approve any projects that cost more than \$1 million, even completely financed by Moody Foundation or family members.

GALVESTON COUNTY DAILY NEWS

9/24/2000

## The convention center fight is all about money

**M**oody Gardens is asking the Galveston Park Board today for permission to begin construction on renovation and expansion of its convention facilities.

That's a bad idea, at least for now, and the park board should table it indefinitely.



**Dolph Tillotson**

The Moody proposal sounds innocuous enough. The project would provide 60,000 square feet of exhibit space and 30,000

square feet of meeting space. The project would be "wholly funded by Moody Gardens, Inc."

Who could lose on a sweet deal like that?

We all could lose.

Speedy approval of that request could set in motion events that would cost the city its one chance for a viable convention center.

The Moody interests would be the big winners, but those interested in the growth and prosperity of Galveston would lose.

Readers will recall the convention center was the subject of a detailed evaluation over the summer. The park board requested proposals and got three of them, including one from Moody Gardens.

A seven-person site selection committee held many hearings and spent months poring over those proposals. Eventually, the site committee, the park board and city council agreed - unanimously - the best proposal came from hotelier Tilman Fertitta.

Fertitta's proposal was deemed best because it is situated on Seawall Boulevard, it is closest to the greatest number of hotel rooms, and it brought to the community its greatest opportunity for new and taxable economic development.

However, before it is built, details have to be worked out with the park board.

The Moody interests are fighting against reallocation of hotel occupancy tax money now allocated to Moody Gardens, about \$600,000 a year.

Doug McLeod, chairman of Moody Gardens Inc., recently told the Galveston City Council if Moody interests don't get their way on the funding issue, they'll cut funding to charitable programs such as Hope Therapy for brain trauma victims.

It's a nasty fight, and it's all about money.

The Fertitta proposal also requires public approval of an increase in the hotel occupancy tax under provisions of the Brimer bill. Word on the street is that the Moody interests are gearing up to fight against that election. It's in their financial interest for the Fertitta project to fail.

The proposed Moody Gardens expansion project would be an effective political ploy. We can hear the argument now: Why approve a hotel tax when Moody Gardens already is building an expanded convention center? The answer, of course, is that the Moody Gardens project has been deemed inadequate. It's all right if it's in addition to the Seawall Boulevard project. It's not all right as a substitute for it.

If the park board sanctions a new convention center now at Moody Gardens, all the work up to this point could be scuttled.

Members of the park board should be wise enough to recognize the potential loss in the Moody request and say no, at least for now.

● Dolph Tillotson is publisher and president of The Daily News. His email address is [d.tillotson@galvnews.com](mailto:d.tillotson@galvnews.com). His phone number is (409) 683-5219.

## It's not a good time for any sideshows

**T**he Galveston park board did the right thing in setting aside consideration of a Moody Gardens proposal to expand the convention center there.

Sitting down with the Moody forces now to talk about plans for a convention center expansion would be counterproductive.

The park board set out a plan for selecting a convention center site. It invited proposals, and it set up a process for examining them. It established criteria.

It decided what it wanted in a convention center.

It talked to the competitors, and it made its choice. Moody Gardens submitted a proposal and lost. What the park board needs to do now is talk to its winning bidder, Tilman Fertitta, about the details of his plan. It needs to make sure its vision and Fertitta's vision match.

And then it needs to sell its plan to the voters.

There is no doubt that the park board's vision is not shared by the folks at Moody Gardens. It is almost certain that the forces there will continue to do what they can to derail the park board's train.

But if it really wants to pursue this vision, the park board must remain focused.

It cannot do justice to the plan it selected if it allows itself to be distracted by side issues.

The folks at Moody Gardens have said all along that they might pursue an expansion of their facility regardless of whether the park board selected their proposal. The problem, of course, is that they need the park board's approval to do that.

The park board should not grant that approval. At least not yet.

Our advice to the park board is that it carry through with the process it began several months ago. It should nail down its plan and set about selling it.

It should give the voters a detailed proposal on which they can make a decision.

After that, after the voters have made their choice, the park board should look at other options. If the Moodys want to make a pitch then for an expanded convention center at Moody Gardens, more power to them.

Until then, the park board must be like the marathon runner. It must keep its eyes fixed firmly on the goal.

It must not wander off on detours. It must not waste time with side shows.

● This editorial was written by Kelly Hawes, associate editor of The Daily News. His email address is [kelly.hawes@galvnews.com](mailto:kelly.hawes@galvnews.com).

\* GALVESTON COUNTY \*

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**OUR VIEW** 11/19/00

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## Moody Gardens belongs on sidelines of campaign

**M**oody Gardens should stay out of the election to decide whether the city will build a new convention center on the seawall.

The Moody family, which built Moody Gardens, has a huge financial interest in fighting the park board's plan to build a new convention center.

And it's in the family's interest that the voters turn down a proposal to build a convention center anywhere except Moody Gardens.

The family and Gal Tex, a family-owned company that manages Moody Gardens, have every right to lobby for whatever measures benefit their interests.

Hotelier Tilman Fertitta, who won the competition to take a proposed convention center to the voters, certainly will campaign for his plan.

But while the Moody interests have every right to get involved in this election, Moody Gardens does not.

It's an institution owned by the city. The Moody family gave it to the city so that it would be off the tax rolls. And since it belongs to the city, it should be scrupulous in staying out of the campaign.

Already, though, the lines between what's in the public interest and what's in the private interest are blurring.

Moody Gardens has hired Bill Miller, a public relations consultant, to promote an expansion of the Moody Gardens convention center.

Gal Tex, the private company owned by the Moody family, has hired the same consultant to run a campaign to defeat the seawall convention center in the election.

Whether that meets the strictest definition of a conflict of interest is beside the point. It doesn't pass the smell test.

The Moody interests argue that Moody Gardens' money won't be used in the convention center campaign. But what constitutes a campaign?

Does a brochure promoting expansion of the Moody Gardens convention center constitute a campaign against the Fertitta proposal? What about a billboard?

One wing of city government should not be campaigning against a proposal put forward by another wing of city government.

While the Moodys and Fertitta battle it out over the convention center proposal, the place for Moody Gardens to be is on the sidelines.

● This editorial was written by Heber Taylor, editor of The Daily News. His email address is [heber.taylor@galvnews.com](mailto:heber.taylor@galvnews.com).



# Gardens director bows out

Sheriff protests contract  
at Isle's Moody facility

By KEVIN MORAN  
Houston Chronicle

**GALVESTON** — Galveston County Sheriff Joe Max Taylor resigned as president of Moody Gardens on Monday, saying he cannot support efforts to expand a convention center at the popular tourist attraction.

A 16-year member of the Moody Gardens board of directors, Taylor said that developer Robert L. "Bobby" Moody has not honored an agreement to support the winner of a city contract to create a new official city convention center.

Moody representatives in recent months publicly vowed to support whichever proposal the city adopted.

However, even before the Galveston City Council awarded the contract last week to Tilman Fertitta's San Luis Resort and Conference Center, Moody launched a campaign to scuttle the deal.

In November, Taylor refused Moody Gardens permission to use his name or photograph in a newspaper advertisement stating that the city had rejected an offer to spend \$14 million to expand the Moody Gardens convention center.

The city and Fertitta already were negotiating the contract for a beachfront convention center.

"I have been put in a very uncomfortable position and I feel that my business and professional ethics are at risk," Taylor said in his resignation letter to Moody Gardens board chairman Doug McLeod.

"I feel that the direction and goals of this board have changed significantly in the past year and its failure to honor (the convention center) agreement makes it impossible for me to serve as its president and as a board member."

Bobby Moody is chairman of his family's powerful Moody Foundation, which

## Resign

Continued from Page 23A.

has spent \$300 million to build Moody Gardens in the past decade. The city owns the property and buildings that house the facility but receives no income from the operation.

Moody Gardens includes a rain forest in a glass pyramid, an aquarium, IMAX theater and other attractions. Proceeds from the operation go to support a therapy program for brain-injured people.

The tourist attraction — which operates a convention center for the city, using some proceeds from the local hotel tax — submitted a proposal for a new convention center, as did Fertitta and developer George Mitchell.

Fertitta's winning proposal calls for the city to receive half of all profits from the new center.

To knock Fertitta out of the running, Moody forces must convince Galveston voters to reject a proposed increase in the city's hotel occupancy tax rate from 13 percent to 15 percent. An election is scheduled for Jan. 20.

Revenues from the increase would help finance construction of a \$30 million convention center at Fertitta's beachfront hotel-restaurant complex. A study financed by Fertitta, Mitchell and the Moody Foundation concluded that a beachfront convention center would be best for the city.

Taylor said he supports that

choice as Galveston's best chance of spurring significant economic development.

He is a member of the boards of directors of both American National Insurance Co., which Bobby Moody heads, and Landry's Seafood Restaurants Inc., which Fertitta heads. Taylor, who has been sheriff for 20 years and a member of the Sheriff's Department for 43 years, has long-standing political ties to Moody.

He chose not to seek re-election this year and will step down at the end of his term Dec. 31.

Moody Foundation attorney Irwin "Buddy" Herz said he believes "it's appropriate, under the circumstances," that Taylor should leave his board seat.

While Herz and others in Galveston have speculated that Taylor plans to work for Fertitta when he leaves office, Taylor said he has no such plans and could not work for Fertitta while serving on the board of his company.

Herz declined comment on other aspects of the dispute over where to build the new convention center. Because Moody Gardens is a nonprofit entity, its officers are prohibited by law from engaging in political campaigns.

It is expected that whatever political campaign the Moody camp develops will be financed through a political action committee that will receive donations from employees of firms in which the Moody family has interests, as well as from people who support expanding the convention center at Moody Gardens.

See RESIGN on Page 24A.

## Taylor letter

*Editor's note: This is the full text for Joe Max Taylor's letter of resignation as president of Moody Gardens board.*

Mr. E. Douglas McLeod  
Chairman of the Board  
Moody Gardens, Inc.

Dear Douglas,

As you well know, I have been on the board of Moody Gardens for the past 16 years.

I am an original board member, and presently serve as president. I remember personal conversations with Shearn Moody Jr. about how proud he was of Moody Gardens. It was his dream that Moody Gardens be a world-wide attraction for the city, as the finest gardens and rainforest in the country.

I have always supported the growth of Moody Gardens, and feel that Shearn's dream has become a reality.

I have lived in Galveston most of my adult life. I have served the citizens of Galveston County as a member of the Galveston County Sheriff's Department since 1957, and as sheriff of Galveston County for the past 20 years. I plan to retire on Dec. 31, 2000.

The Galveston Park Board requested a request for proposal from anyone who wished to submit a bid for a new convention center in Galveston.

A committee was appointed

to hear proposals, evaluate them, and make a recommendation to the park board.

George Mitchell, Moody Gardens (Bobby Moody), and Tilman Fertitta submitted a request to make a proposal. Each bidder agreed to support the winning proposal.

The Ad-hoc Committee, the park board and the city council have all unanimously approved the proposal submitted by Tilman Fertitta.

Moody Gardens has not honored their agreement to support the winning proposal. Now, we have taken it to another extreme and hired

a political consultant to fight the winning proposal.

I was extremely disappointed by this action. I have been put in a very uncomfortable position and I feel that my business and professional ethics are at risk.

I feel that the directions and goals of this board have changed significantly in the past year and its failure to honor this agreement makes it impossible for me to serve as its president and as a board member.

I plan to support the leaders of this city in their quest to build a new conven-

tion center on the beach. I feel that the future of the city depends on economic development and that this new convention center will be the first step in insuring Galveston's future as a major tourist attraction, and convention city.

I have enjoyed my years helping the development of Moody Gardens, but feel at this time, that I can no longer support their goals. Please accept my resignation as board member and president effectively immediately.

Sincerely,  
Joe Max Taylor

GUEST COLUMN

By  
Tom Cook

*the whole of the  
...  
...  
...*

The Moody Foundation is very un-charitable in making demands on the Park Board to put the Galveston Racquet Club out of business. It is clearly evident from recent Park Board meetings that one of the Foundation's highest priorities is to cause financial harm to this small business taxpayer. Lofty charitable goals have fallen by the wayside and Buddy Herz is threatening to play "hardball" unless the Park Board openly competes with the Racquet Club, an act which would violate state law and is opposed by both the Park Board and most local residents.

Herz has made several threats to the Park Board and the City. Herz claims that Foundation trustees will not fund any more construction at Moody Gardens unless the Park Board expresses confidence in the manner it is operated. This threat defies all logic. Moody trustees have crafted the perfect deal with the Park Board. It's so good that Foundation trustees only make occasional grants to any entity other than Moody Gardens. The Moody Foundation conceived, funded, and created the Moody Gardens complex. It is a vehicle to which Foundation grants can flow freely and where those persons who control the Foundation can derive whatever benefits and control are possible by having Gal-Tex, a company they control, serve as the manager of Moody Gardens. When the IRS suggested that entities at Moody Gardens should be taxable, the Foundation moved quickly, convincing the City to allow the Park Board to act as a "straw man" (owner in name only) for the Moody complex. This made it possible for the Foundation to "carry on," tax free, with tax exempt charity funds, and continue to operate the commercial

businesses being developed at Moody Gardens. The highest priority of the Foundation is clearly making grants to Moody Gardens. Foundation trustees could have made \$300 million in grants to other charities, i.e. American Cancer Society. However, Gal-Tex, does not manage the American Cancer Society and in the last 10 years the major portion of all Moody grants have gone to charities managed by Gal-Tex.

Buddy Herz claims Foundation trustees are sick and tired of Moody bashing and a lack of trust. Everyone in the community is grateful for any genuine charity given by the Moody Foundation. Having opinions that differ from Moody opinions is not Moody bashing. Trust cannot be bought. Money is not used as a measure of trust. Trust must be earned through honest dealings over time. The Foundation asked the people and the Park Board to trust it when it asked to limit the "give-back" clause. The Foundation agreed to the regulations of the Park Board denying the right of Moody Gardens to compete with the health and fitness sector and agreed that that regulation was reasonable. That regulation was an integral part of the consideration for limiting the "give-back" clause. "Trust us to live by your rules", the Foundation said. Now they threaten to not live up to their funding commitments if that regulation remains in force. Suspicion grows and trust wanes when the Foundation threatens the Park Board with punishment if it doesn't change a rule which the Foundation had previously agreed to obey. This action erodes trust. A billion dollars cannot restore it.

Unfair competition by the Moodys can best be countered by the taxpayers joining together and insisting on fair and equal laws. Something is dreadfully wrong with the law if such abuse of a taxpayer by a charity is possible. We must ask our elected representatives to close the loopholes in our laws. One solution is to put Moody Gardens

on the tax rolls. This is only fair since the Foundation wants to actively compete with our taxpayers. Please call, write, email, etc., each of your federal and state representatives and senators, the IRS, and the Texas Attorney General. Let each of them hear from you that you want the loopholes closed, so as to prevent tax exempt charities from causing abuse and financial harm to taxpayers. Please let your voice be heard in Washington and in Austin in support of legislation to close these punitive loopholes which exist under the present law.

## PARK BOARD VOTE SEALS DOOM FOR RACQUET CLUB

Park Board members voted yesterday to enter into direct competition with the Racquet Club and according to Racquet Club representative, Tom Cook, their vote will certainly force the Racquet Club to go bankrupt and force yet another taxpayer off the Galveston tax rolls. After over a year of begging the Park Board not to go into competition with the Club, Park Board members succumbed to wishes of the Moody Foundation and agreed to put the Racquet Club under tremendous competitive and financial pressures. Mr. Cook stated that he was very disappointed that the Park Board would not stand up and support taxpayers and the interests of the public. The Park Board appears to be very comfortable in their new role of aggressively competing against our own taxpayers. Armed with Moody money and power, the Park Board is now almost invincible. Due to its tax exempt status, the Moody Foundation could not own and operate a fitness club which sells memberships to the public. However, with the Park Board out in front, in essence acting as a straw man for the Foundation, the Foundation can now do almost anything a taxpayer can do, except pay taxes. Cook thinks it is a horrible situation and very unfair to taxpayers. Cook believes the Foundation has simply lost its way, forgetting much of its original charitable purpose. Cook says the Foundation appears primarily interested in operating commercial business enterprises without the burden of paying taxes.

Cook said he never dreamed he would be put out of business by a charity, much less a charity that hides behind the skirts of the Park Board and entices the Park Board to compete against and cause financial harm to innocent and defenseless taxpayers.

Cook said that the City Council has the power to ensure the Racquet Club's survival by preventing the Park Board from selling fitness memberships to the public. Instead, the Park Board would only allow overnight guests of the new Park Board hotel to use the facilities of their fitness center. This act would insure the Racquet Club would stay in business and remain a viable taxpayer in Galveston. The City Council has both the right and the duty to require that this action be taken. The City's lease with the Racquet Club contains a no compete clause which prohibits the City from selling fitness memberships on airport property. Certainly, the Park Board's decision to sell fitness memberships on airport property is against the spirit and intent of the City of Galveston's lease with the Racquet Club. The honorable thing would be for the City to honor its commitment and not compete with the Racquet Club. Cook hopes the City Council will act to restrict the Park Board from selling fitness memberships to the public.

(9/30/98)

## FOLLOW THE MONEY!

The Moody Foundation has sued our City demanding, among other things, that the City be forced to accept additional gift money and use it for expanding Moody Gardens Convention Center. The City, as owner of the Hotel and Convention Center, should have the right to accept or reject gifts based on the best interests of our City. Moody has an obsession to force-feed the Foundation's charitable funds into the City's mouth through Moody Gardens. Why does Moody so badly desire to give to the city-owned Moody Gardens? Perhaps you will find the answer in a company called Gal-Tex Management Company, a co-plaintiff in the Moody lawsuit. Follow the money: Moody Foundation/Moody Gardens/Gal-Tex Management Company. Gal-Tex receives fees and other reimbursements to manage Moody Gardens, and is a Moody-controlled company. Therefore, the Moodys control 100% of all charitable grants to, and all profits of, Moody Gardens. The City gets nothing for acting as a "straw man", while the Moodys reap benefits by transferring charitable funds from Moody Foundation to Moody Gardens then to Gal-Tex.

The problem began in 1988. The IRS informed the Foundation that Palm Beach and Colonel Paddle Wheeler were too commercial, and their continued operations would cause the Foundation to lose its tax exemption. Without City ownership of Moody Gardens, Moody could not continue to fund or operate these or future businesses. The Foundation is using our city to avoid taxation of its businesses at Moody Gardens. Moody trustees are using our city to funnel funds through Moody Gardens for the private benefit of friends and family and their family businesses. When have we funneled enough? Hundreds of millions of charitable funds have been moved through Moody Gardens for Foundation trustees' management, control and benefit. Foundation trustees build and operate tax-exempt commercial businesses that benefit the Moodys, while causing loss of taxes to our City and financial losses to our taxpaying businesses. They have petitioned a court to reverse the City and Park Board's decision to limit certain expansion of Moody Gardens, and order the City to allow the funnel to continue to expand. Surely they jest!

But this is no joke. Galvestonians must recognize the damages these "gifts" truly cause. Through the City, Moodys operate commercial businesses at Moody Gardens and are not taxed. The City must accept gifts from the Foundation for that to happen. Foundation trustees and controlled businesses should not expect to directly benefit from those "gifts". The City was right to say that it had accepted all the "gifts" it could afford to accept.

Everybody has heard the old saying, "It couldn't have worked out better if we had planned it". Well, that's exactly how the trustees of the Moody Foundation must feel unless they did plan it, and I believe it was carefully contrived and thought out.

It all started when the IRS, in 1987, issued a warning to the Moody Foundation. The operations of Palm Beach at Moody Gardens and the Colonel Paddle Wheeler Museum are just too commercial. You must discontinue funding them!

It was then, I believe, that the Moody trustees asked their advisors: How can we continue to move funds out of the Moody Foundation and into Moody Gardens without any retribution from the IRS? The answer: Have the City of Galveston own it. The Galveston Park Board of Trustees, to be exact. The Foundation can't own it. There must be a qualified owner who can legally even receive foundation grants – a straw man would be best. That way we can always do what we want. The foundation can give grants to be used to build large commercial businesses and a company controlled by foundation trustees can manage and deposit all of the grants (into Moody National Bank – trustees' bank) and earn a management fee for managing Moody Gardens. After all, if the foundation trustees gave grants to the American Cancer Society, they get nothing in return. Trustees' gifts to Moody Gardens comes back in spades: Deposits to trustees' bank, Moody National Bank; management fees to GalTex, a company controlled by foundation trustees. It is personal, private ~~investments~~, at its best and most flagrant, and it is a violation of IRS rules regarding foundations. But where is the IRS? We all know they work slowly. Hopefully there will be justice some day. It is becoming apparent, in this county, that if you have enough money, you are above the law. I'm afraid that is the problem here. Remember O.J. Simpson and his money and attorneys? Well, he is a pauper financially when compared to Bobby Moody.

*Investment*



# Fertitta asks city to back new center

■ The hotelier urged city leaders to support his proposal at the ballot box in January while ignoring the opposing plan.

By MICHAEL A. SMITH  
and CARTER THOMPSON  
The Daily News

12-1-00

12-1-

**GALVESTON** — Hotelier Tilman Fertitta on Thursday urged about 500 business and political leaders to ignore opponents' spin and support a January referendum to fund construction and operation of a new convention center.

■ Opinions/A10

Fertitta spoke on the same day city council members set a Jan. 20 election day, signed the contract governing the new facility and voted to cut tax funding to his arch-rivals at Moody Gardens, the operators of which are spearheading a campaign to sink the election.

The speech, made during a quarterly meeting of the Galveston Chamber of Commerce, was a benchmark event for several reasons.

It marked the apparent end of a process beginning four years ago with a similar speech at a similar chamber meeting, and the beginning of open political warfare between referendum supporters and the powerful Moody Foundation.

The foundation, a \$700 million private charity that funds and controls the Moody Gardens complex on Offatts Bayou, also bid for the convention center deal.

Council members awarded the contract to build and operate the center to a company headed by Fertitta.

What voters will see on Jan. 20 is a proposal that would allow the city council to raise the tax charged to hotel room visitors from 13 to 15 percent.

The new center would be funded with the

proceeds of 4½ percent of the hotel tax rate. Included would be the 1 percent slice that now goes to Moody Gardens. That slice now totals about \$670,000 a year.

City leaders, irked the Moodys were campaigning both to enlarge the Moody Gardens center and defeat the bond measure, also voted Thursday to instruct City Attorney Susie Green to begin the process of cutting that funding. The city by contract can divert the hotel tax money from Moody Gardens with 30 days' notice.

In the absence of Thursday's actions, Moody Gardens would have faced losing that revenue only if the ballot issue passed.

The new center would be between 114,000 and 120,000 square feet. Details of the layout and construction will be handled in a subsequent contract that might not be approved until after the election.

Under the deal, Landry's Management will cover construction overruns. Profits from operations will fund a \$300,000 capital replacement fund. Profits afterward would be split between the company and city, except for proceeds of the hotel tax, which would continue to be deposited in the capital reserve account.

Moody Gardens Inc. has for years used the revenues to fund operations of the city's existing convention center.

Its board of directors hired Austin-based public relations consultant Bill Miller to promote an expansion funded wholly by the Moody Foundation. A Moody-controlled private subcontractor also hired the same consultant to try to convince voters not to vote for the new center.

Miller has launched mail and telephone campaigns

urging residents to vote against the hotel-tax increase during the January referendum.

"Don't let them spin this to you," Fertitta said. "You're going to see the ads and get the telephone calls. Please be smart."

Fertitta spoke for about an hour in a third-floor ballroom of the San Luis Hotel, which he owns.

It was clear from the venue that the Moody campaign would not be the only one. The San Luis, adjacent to the land where a new convention center would be built, was adorned with green and black "Vote Yes" banners. Employees there were festooned with similar buttons and stacks of yard signs were available for the crowd.

"Please put a sign in your yard" Fertitta said. "If it gets stolen, we'll get you another one."

His speech linked Galveston's economic future with the center project's success and was peppered with warnings about the Moodys' intentions and references to The Daily News.

It harkened back to a speech he delivered in November 1996 accusing the Moody Foundation of unfair competition for building a tax-exempt hotel on city land.

If the January vote failed, Galveston would enter a period of climbing property tax rates and declining economic fortunes, he said.

The \$200 million Moody Gardens development, which is exempt from property taxes, had failed to spark economic development because

of its location, he said.

"I think Moody Gardens is a great destination for Galveston, but show me one new business that has opened near that convention center," he said.

He said that Moody patriarch Robert Moody would spare no expense trying to defeat the referendum and that the millionaire head of American National Insurance Co. had broken an agreement to support the vote no matter who won the contract.

"They weren't team players 100 years ago when others rebuilt Galveston after the Great Storm, and they are not team players now," Fertitta said.

Doug McLeod, Robert Moody's brother-in-law and



PAGE 2

NICOLE FRUGÉ/The Daily News

**Tilman Fertitta speaks about his convention center proposal during Thursday's Chamber of Commerce luncheon at the San Luis Resort, Spa and Conference Center.**

a frequent spokesman for his interests, declined to comment on Fertitta's remarks.

McLeod, a Moody Foundation executive, said laws forbidding nonprofit groups from engaging in politics prevented him from responding.

He referred calls to Miller, who could not be reached at his Austin office.

Fertitta called The Daily News "the best watchdog the city has" and said editors there were right to question the city.

Those comments were a departure from some made hours earlier to the city council.

Fertitta told the council that he was offended by a Thursday newspaper editorial that questioned parts of the deal and urged city leaders to get specific in the final contract.

He said the editorial neglected to talk about the overwhelmingly positive parts of the deal for the city.

"It could have easily gone the other way, and they could have talked about the positives," Fertitta said. "Their job is to sell papers."

● Reporter Michael Smith can be reached at (409) 683-5241 or michael.smith@galvnews.com.

# Fertitta claims Moody Gardens breaking the rules

By CARTER THOMPSON

The Daily News

**GALVESTON** — Reacting to complaints from hotelier Tilmann Fertitta, the park board will instruct the Moody Gardens Hotel to be more specific in its advertisements for a New Year's package deal.

The hotel is offering a weekend stay for two at the

hotel plus two one-day passes to Moody Gardens for \$469.

The advertisements deceive the public into thinking the passes are a perk available only at Moody Gardens, said Steve Greenberg, director of government affairs for Fertitta's Landry's Seafood Restaurants.

Since those passes aren't free to guests of other ho-

tels, Moody Gardens was violating the rules of its 1998 operating agreement with the city, he said.

San Luis Resort representatives today will ask Moody Gardens for free passes for their guests, Greenberg said.

Board members speculated, however, that the charge for the passes was part of the total.

"I don't think they're get-

ting much for free at \$469," said board Chairman Melvin Williams.

The board voted to send a letter to Moody Gardens instructing its leaders to specify in future advertising that the passes are a separate charge.

● **Reporter Carter Thompson can be reached at (409) 683-5230 or carter.thompson@galvnews.com.**

# Sheriff resigns from Moody Garden board of directors

By MICHAEL A. SMITH  
The Daily News

12-5-2000

**GALVESTON** — A rift between two of the island's most

**GALVESTON** prominent people widened Monday when Sheriff Joe Max Taylor resigned his post as president of the Moody Gardens board of directors.

■ Taylor's letter/A12

Taylor cited conflicting opinions about a proposed seawall convention center and ethics concerns in a two-page letter to board Chairman Doug McLeod.

"I did what I felt in my heart was the right thing," Taylor said.

Taylor's resignation from a board on which he had served since its creation almost 20 years ago marks a shift in Galveston politics of almost geological proportions.

Sheriff for two decades, Taylor is among the county's most long-lived and powerful politicians. His break with the Moody Gardens board is also a break with Robert L. "Bobby" Moody, millionaire patriarch of family that helped shaped the island for more than 100 years.

Taylor always had been a staunch Moody ally until recently when the two found themselves at odds over a plan to build a city convention center.

The city council awarded a contract to build and run the center to a company headed by hotelier Tilman Fertitta.

Moody Gardens, which is funded and controlled by the Moody Foundation — a \$700-million private charity — also bid for the convention center deal.

When it lost the bid, Moody Garden's board of directors hired Austin-based public relations consultant Bill Miller to promote an expansion of an existing center funded wholly by the Moody Foundation.

## Taylor

Continued from Page A1

Meanwhile, a Moody-controlled private subcontractor hired the same consultant to convince voters not to support the proposed seawall center.

Miller has launched mail and telephone campaigns urging residents to vote against a hotel-tax increase needed to pay for the project.

Those moves breached an agreement bidders made to support whoever won the contract, Taylor wrote in the resignation letter.

"Moody Gardens has not honored their agreement to support the winning proposal," Taylor wrote. "Now, we have taken it to another extreme and hired a political consultant to fight the winning proposal. I was extremely disappointed by this action.

"I have been put in a very uncomfortable position and I feel that my business and professional ethics are at risk. I feel that the directions and goals of this board has changed significantly in the past year and its failure to honor this agreement makes it impossible for me to serve as its president and as a board member."

McLeod, Robert Moody's brother-in-law and a frequent spokesman for his interests, issued a brief statement shortly after the letter was delivered by a deputy sheriff Monday afternoon.

"I was saddened to learn of Mr. Taylor's resignation from the first of his three Moody directorships. I always believed his loyalty to the Moodys was indisputable," McLeod said.

"There must be an explanation other than he gave in his letter, but I will never question a man's motives."

Taylor also serves on the board of directors of Moody's American National Insurance Company, of which Robert Moody is chairman and CEO.

He also is a director of the nonprofit Transitional Learning Community, a program for people who've suffered brain injuries, which is funded by the Moody Foundation.

He said he did not think his status on those boards would change.

"It shouldn't. They are completely separate things," he said. "But you are appointed to a one-year term every year."

Taylor also serves on the board of Landry's Seafood Restaurants, the Fertitta-controlled company that won the convention contract.

● Reporter Michael Smith can be reached at (409) 683-5241 or michael.smith@galvnews.com.



Joe Max Taylor

# Hotel tax hot topic in debate

12-20-2000  
Opponents in convention center  
battle argue the tax's legal issues

By CARTER THOMPSON  
The Daily News

**GALVESTON** — The two sides in the battle over a seawall convention center are now fighting over the legal uses of the hotel-occupancy tax that would fund it.

Both sides are armed with legal opinions.

The head of the Texas Hotel Motel Association claims nearly all of the uses proposed by a political action committee working to sink the convention center are not authorized by state law.

"We say they are," said Christy Cheves, a spokeswoman for Good Alternatives, a committee with close ties to the Moody interests.

Cheves on Tuesday made available to the press an opinion by a lawyer at the Houston firm of Fulbright and Jaworski.

The state law that authorizes local governments to raise the tax charged to hotel room visitors allows the proceeds to be used for educational facilities, new sports complexes, zoos and economic development, beautification and housing development projects, wrote firm attorney Fredric A. Weber.

Officials with Landry's Seafood Restaurants, the company that would build the seawall center, on Tuesday chal-

## Fertitta: Moodys breaking the rules

Reacting to complaints from hotelier Tilman Fertitta, the park board will instruct the Moody Gardens Hotel to be more specific in its advertisements for a New Year's package deal.

See Back page

lenged Good Alternatives to list what cities had used hotel-occupancy taxes for those purposes.

"Why, one year ago, did the Moodys think it was such it was a great idea to use this money for their convention center?" said Steve Greenberg, the company's director of governmental affairs.

Scott Joslove, president and chief operating officer of the state motel association, sent his opinion to Good Alternatives in response to a newspaper advertisement touting other uses of the funds.

The dispute centers on a clause in the Brimer Bill, the state law under which the city is holding a January election. The law authorizes cities to use the tax on economic development projects in addition to convention centers and sports arenas.

Joslove, a former chief of municipal affairs for the Texas attorney general's office, said many

## Tax

Continued from Page A1

of the options proposed by Good Alternatives violate other state laws that require that the hotel-occupancy tax be used only for tourism-related purposes.

Good Alternatives shares public relations consultants with Moody Gardens, and it has offices at a gas station foreclosed upon by Moody National Bank.

The organization is funded by American National Insurance Co. and led by its president.

Landry's convention center proposal was chosen over one submitted by Moody Gardens.

The city council has called an election for Jan. 20 to decide whether to raise the taxes charged to hotel room visitors to help in funding a seawall convention center.

The tax now stands at 13 percent, and if the measure passes, it will rise to 15 percent.

Please see TAX/BACK PAGE

TO: TILMAN FERTITTA  
STEVE GREENBERG

BY: T. COOK & M. FIEGLEIN

## THOUGHTS ON EXPANSION OF CONVENTION CENTER AT MOODY GARDENS

The Park Board has no need for a larger convention center at Moody Gardens. The purpose of the Park Board is to promote tourism for the whole island and to benefit the tourist industry as a whole.

The City decided that it benefited the City to have a convention center, in addition to the existing Moody Gardens Convention Center, because the seawall location benefits a large segment of the Galveston tourist industry.

To increase the size of the Moody Gardens convention center would benefit only Moody Gardens and the Moody Gardens Hotel, and would have the effect of adversely affecting the new convention center which the Park Board and the City recognize will have a significant benefit to a large portion of the Galveston tourism industry, and not just a single attraction and interest.

The Moodys' single significant justification for expanding the Moody Garden convention facility is to increase the revenues available to that single center and that single center hotel. There is no benefit to the City or the Galveston tourism industry as a whole. All revenues and profits of the Moody Gardens convention center benefit only the Moody Gardens facility and various Moody interests, and would only detract from the revenues available to the greater Galveston community through the new seawall convention center.

The Moodys claim that the Moody Gardens convention center needs to make enough money to support itself and generate a profit or a return on investment. This is not true. The Moody Foundation has agreed that its charitable purpose is to protect the City (taxpayers) from any burden of the cost of the convention center, and if the center itself can't meet that burden, then the Foundation has promised that its charitable purpose at Moody Gardens is to alleviate that burden from the City.

Other comments: Mr. Moody, this is what you said: "Do it! If it takes all or most of the funds of the Moody Foundation to alleviate this burden of government, do it!" Don't ask the taxpayers of Galveston to assume the burden which you agreed to assume through grants from the Moody Foundation. You don't need a bigger convention center in order to make grants to the City. A bigger convention center only detracts from and causes financial harm to the rest of the taxpaying businesses in Galveston.

Mr. Moody, why do you want to enlarge your convention center? If you're answer is because you want to generate more revenue, it is wrong. The Moody Foundation is a charity. The Moody Foundation is supposed to make grants/gifts and never seek to profit from or make a return on an investment off those gifts/grants. You would have the Moody Foundation act like it is a taxpayer. It is not a taxpayer. It is not entitled to make profits from its gifts/grants.

p.s. Please read attached complaint to the IRS regarding Moody Gardens by Cook & Fieglein.

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GALVESTON COUNTY, TEXAS

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## COMMENTARY

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### **No convention center is better than a bad deal**

It is my opinion that it would be better to lose the cheerleader competition than for the city to subsidize a millionaire's venture.

If Bobby Moody wants to expand "his" convention center at "his" Moody Gardens, he should do so with his own money and not come to the citizens of Galveston for help.

Even adding two-cents to the hotel tax for the purpose of expanding the convention center is basically taking money away from the citizens of Galveston that can be used for other purposes.

If a two-cent tax were passed for any convention center, the money should be used to build a center on a site where no single hotel benefits and any venture has the opportunity to manage, maintain and profit from the complex.

What is needed in Galveston is a convention center owned by the city — where the city owns the building and profits annually from an entity that holds the lease on the facility for a set number of years, and where there is open competition for the opportunity to hold the lease.

This is the way it is in other cities, and this is how it should be on this island.

**Robert A. Compean  
Galveston**

2-2 -2000

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# Park board competition has big impact on business

**R**eading the guest column of Rudy Garza has prompted me to respond. His comments minimize the huge impact that competition by the park board at Moody Gardens has on small-business owners.

Many small businessmen and women have invested their life savings and their life's work in their small business. This is certainly true at the Racquet Club.

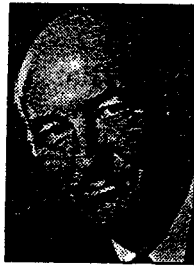
Garza says the Moodys and the Racquet Club assumed equal risk in asking for the opinion of the attorney general. That's not true.

First of all, the Racquet Club did not request the opinion. Next, to say that the Racquet Club and the Moodys assumed equal risk is utterly preposterous.

Would they have us believe that if the Moodys do not sell fitness memberships it will cost them their entire fortune? They will be penniless?

Well, that's exactly what would happen to the Racquet Club if the park board sells fitness memberships.

The Racquet Club stands to lose everything: all its assets, all its net worth, all of the \$1.5 million the owners invested.



**Eddie Marx**  
Guest column

The Moodys stand to lose absolutely nothing. Equal risk? Certainly not!

The Galveston Park Board of Trustees is to be praised and commended for passing the rule against fitness

membership sales at the park board's hotel. Remember, the rule against fitness membership sales was an important part of the Moody "give-back" clause negotiation. That negotiation greatly benefited the Moodys but resulted in the park board's giving up their most valuable right to control activities at Moody Gardens.

The rule against membership sales should never be changed. The recent ruling by the attorney general confirms the park board's right and authority to make such a rule.

In addition, the attorney general stated that even though it is legal to sell memberships, the park board is not required or encouraged to do so.

So, the park board, in its wisdom, made a good rule. That

rule prevents a small business from going bankrupt as a result of competition by the park board.

The sale of fitness memberships in the park board's hotel to local Galvestonians does absolutely nothing to promote tourism. It does not even bring a single tourist to town.

The park board does not want to compete with and cause financial harm to the Racquet Club, so it made a rule prohibiting fitness-membership sales. The city does not want to compete with the Racquet Club, so the city council insisted on a non-compete clause in the Racquet Club's lease. Quoting Garza, "case closed."

Garza implies that all citizens who voted against the Moody Gardens convention site are "anti-Moody." This is not true. It is not a function of being anti-Moody. It is a function of merely having an opinion that differs from the opinion of Moody interests, and then having to stand up to the onslaught from Moody supporters who belittle you for not agreeing with them.

A citizen can disagree and not be anti-Moody.

● Eddie Marx is manager of operations at the Galveston Health and Racquet Club.

## LETTERS TO THE EDITOR



8-10-00

# Park board should not compete against community

**R**udy Garza's sarcastic criticism (The Daily News, Aug. 1) of Eddie Marx's comments is unwarranted and inaccurate.

History has established that when Moody Gardens competes with the Racquet Club it underprices the services below cost — a practice a billion-dollar foundation can afford but a small business cannot.

When Moody Gardens opened Palm Beach as a chlorinated swimming pool rather than a white sand beach leading to Offatts Bayou, the Racquet Club lost over 200 of its swimming memberships to Moody Gardens.

They offered unlimited annual-use passes for \$25, 7 percent of the cost of an annual swimming membership at the Racquet Club.

To make up for the business lost to Moody Gardens and to maintain its existence as a viable business operation, the Racquet Club expended significant additional capital and expanded its facilities and operation to be a health and fitness center.

Now that the Racquet Club has established the health and fitness market, the Moody Gar-



**Tom Cook**

Guest Column

Trustees of the city of Galveston.

The city and its park board do not exist to compete with its citizens or to cause them unnecessary unwarranted business hardship.

The park board passed a rule approved and agreed to be reasonable by the Moody Gardens operators, prohibiting the sale of fitness center memberships for good reasons:

- It was in part consideration for releasing the Moody Foundation from the "give-back" clause, and

- The park board did not believe it should compete with the Racquet Club or any other fitness club. The sale of memberships to the hotel fitness center

dens operators demand the right to take that business away like it did the swimming memberships.

The facilities and operations at the Moody Gardens complex belong to the Park Board of

is not necessary or essential to promote tourism to Galveston or the operation of Moody Gardens.

Its impact and result would only be to reduce or remove business of the Racquet Club and the other fitness clubs operating in the city.

No legitimate positive purpose would be served from allowing the Moody Gardens Hotel to open its fitness center to membership sales — only hardship upon existing business citizens.

In fact, the recent attorney general's opinion on the issue made it clear that the facilities at Moody Gardens, as a park board tourist attraction, should be operated only as support and convenience for the tourist — guests of the Moody Gardens complex.

The park board should not be operating any businesses at Moody Gardens for purpose of competing with its business citizen community, whether they be restaurants, dress shops, hair salons, hotels or fitness centers.

- Tom Cook is an owner of the Galveston Health and Racquet Club.

## LETTERS TO THE EDITOR

# New Moody offer puts \$12 million into bidding mix

9-6-00

■ The Moodys remove one of their proposals while offering grant money to the city.

By CARTER THOMPSON  
The Daily News

GALVESTON — Robert L. Moody on Tuesday raised the stakes in the bidding for the city's new convention center.

Moody, a trustee of the foundation, pulled the larger of its two proposals off the table and then added to the smaller plan \$12 million in foundation grants to the city and/or park board over the next 10 years.

Tilman Fertitta, one of Moody's competitors, likened the Moody Foundation's new proposal to a bribe that he sarcastically offered to match.

The "gifts in lieu of taxes" include \$2 million to the city government over the next four years, money Moody said could be used for raises for firefighters and city employees not currently paid a living wage.

"The trustees of the Moody Foundation hope that these \$12 million gifts 'in lieu of taxes' show, not only the Moody Foundations' commitment to this community, but the Moody Foundation's desire to be part of the solution to this city's financial and economic development problems," Moody said.

Moody made the pitch at a meeting of the park board's ad hoc convention center evaluation committee. The group of volunteers has been weighing the

## Moody

Continued from Page A1

merits and liabilities of the proposals submitted in June by the Moody Foundation, George Mitchell's MBP Corp. and two Fertitta-led companies, Fertitta Hospitality Inc. and Landry's Seafood Restaurants.

In addition to the \$2 million grant to the city, the foundation would set up a \$10 million fund for tourism-enhancing or quality-of-life improvements, Moody said.

He cited as a possibility a new golf course, a draw for conventioners.

"We need to find a way when they come down here, they're not on brown grass," Moody said.

Fertitta said the offer merely represented the Moodys returning to the city money the city had given to the Moodys. He turned to Moody attorney Irwin "Buddy" Herz and said he would like to submit an application to get Moody grant funding for his convention center and golf course.

Mitchell was not present for the presentation, and a representative declined comment until Mitchell could be made aware of the proposal.

The committee is slated to make its recommendation to the park board on Sept. 13.

On Friday, Mayor Roger "Bo" Quiroga lunched with Moody, Fertitta and Mitchell. Among the issues discussed was the prospect of two convention centers — one on the seawall and one at Moody Gardens.

The lunchtime haggling involved Moody Gardens and a seawall facility possibly splitting hotel-occupancy tax, Quiroga said. There also was a request that the foundation to provide a grant to the seawall location, he said.

No deal was reached, he said.

Herz said the foundation took the city's concerns of Moody Gardens' tax-exempt status seriously.

"We live here, too, and we have heard the concerns of the people of Galveston," he said.

## OUR VIEW

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# Offer to buy decision an insult to community

**O**n Tuesday afternoon, Galveston multi-millionaire Bobby Moody went before an ad hoc committee charged with deciding where to locate a new convention center. He offered the committee, and the city of Galveston some money — \$12 million — if they choose his site, Moody Gardens.

The idea was a crass attempt to buy the committee's decision. It is insulting to men and women who have worked hard to sort out the best of three proposed convention center alternatives. As badly as Galveston may need the money, we hope everyone has the courage to refuse.

Here is Moody's proposal. First, he and his colleagues are withdrawing one earlier plan they offered — the larger of two proposed centers they said they would build. They will amend the second, smaller proposal to include a request to build 200 additional hotel rooms at tax-exempt Moody Gardens.

If the city rubber stamps that watered down convention center proposal, Moody proposes making two grants from the huge, tax-exempt Moody Foundation.

One would be a direct grant to the city of \$2 million over four years "in lieu of taxes." The other would be a pool of \$10 million in grant money to be used over the next 10 years for "non-Moody Gardens" economic development projects. Moody Gardens trustees would control the grants.

Surely, at first glance, many may be swayed by a \$12 million "gift" to Galveston, which is notoriously cash poor. However, there is much wrong with this proposal. A few of the many objections are:

● It ignores the obvious question — Which site is best for the convention center?

● The specific proposal to which this \$12 million “gift” is attached probably would be the worst of all the alternatives. It's too small, most agree.

● It's unfair to the other convention site proposers — Tilman Fertitta and George Mitchell — to allow so sweeping a change in the Moody proposal at this late date.

● It's insulting to the men and women who have met 20 times now to examine the highly complicated issue of location for the convention center. In the Moody proposal, their questions and investigations count for nothing.

Johnny Smecca, one member of the site selection committee, asked a very good question after hearing the Moody proposal: “Why didn't you just make this proposal from the beginning? If this is such a great thing for the city, why is it being offered contingent on the convention center now?”

It's not likely that the idea for the dramatic proposal came from any sudden enlightenment concerning the state of Galveston's chronic economic problems.

It's likely, instead, Moody and his colleagues, who can count votes, saw the very real possibility that the committee might do the unthinkable — make an impartial decision and choose someone else's proposal. It was a notion that never occurred to them in the early days of this debate. The Moodys don't lose often on such issues.

The proposal is a more than normally naked attempt to use the almighty dollar to influence a public decision in a way that may not, in the long run, be best for the public. The site selection committee, the park board and the city of Galveston should just say no, politely but firmly.

● This editorial was written by Dolph Tillotson, president and publisher of The Daily News. His email address is [d.tillotson@galvnews.com](mailto:d.tillotson@galvnews.com).

# JUST SAY NO

## Proposed convention center deal chock full of problems

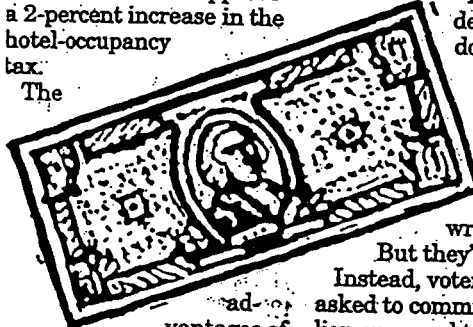
**H**ere's a tip for Galveston voters: Vote no on the proposed increase in the hotel tax on the Nov. 2 ballot.

The Galveston City Council and the park board of trustees have urged voters to approve the tax increase to expand the Galveston Island Convention Center at Moody Gardens.

Moody interests have offered to build a \$55.5-million convention center and have said the city's share will be \$10 million.

All the city has to do to get this windfall is to convince its voters to approve a 2-percent increase in the hotel-occupancy tax.

The



The advantages of the deal — the generous contribution of funds from the Moody interests — are obvious.

One school of thought, endorsed by the council and the park board, is that anyone who looks at the financial package will see a great deal.

We disagree. We think that anyone who looks at the financial package will wonder how anyone could think there is enough information to tell whether this is a good deal.

The city and park board have been trying to work

out an agreement with the Moody interests for operation and funding of the convention center.

The negotiators have stalled in their efforts to wrap up a deal before early voting starts.

The Moody interests are asking that the city lock in three cents of the 15-percent tax on hotel rooms over 25 years. No one knows how much that tax would generate, but a conservative guess is that more than \$90 million in public money would be locked in for the convention center at Moody Gardens.

Is that a good deal or a boondoggle?

It would be difficult to tell if the details of that deal were

written down.

But they're not.

Instead, voters are being asked to commit \$90 million or so and trust that the negotiators will work something out.

Surely intelligent voters could be excused for declining that opportunity and waiting for a sensible, clear plan.

There are other problems with this plan.

One of its strongest selling points is that this really isn't a tax that Galvestonians will pay. The argument is that Marge and Joe from Des Moines will pay the tax that funds the convention center when they come down to stay at island hotels.

SEE PAGE 2 →

Actually, the \$90 million — or \$150 million or whatever the amount turns out to be — is public tax money.

The decision to commit that money to a convention center comes at a cost. The cost is this pool of public money is not available to any other project.

Is a convention center valuable to the city? Certainly.

Is locking down that much money for 25 years the best use of that much public tax money?

We don't see a clear answer. And we don't see how anyone could think there is enough information on the table to allow a conscientious voter to make an informed decision.

There are other problems, which we've cited before:

● First, concentrating that much of the city's tourism industry into the hands of one organization has the potential to drive others out of the business.

Rather than taking this concern as a serious issue, however, the negotiators have dodged the most obvious problem before them. The Galveston Health and Racquet Club is concerned that it would be put out of business if the Hotel at Moody Gardens were allowed to sell memberships at its health club.

The negotiators' response; so far, has been that all the problems would be solved by making the hotel's health club pay taxes. But anyone who thinks that would level the playing field certainly has a trusting view of hu-

manity.

The hotel was built with funds from the tax-exempt foundation, and keeping the tax and tax-exempt portions of the hotel distinct is impossible.

The Moody interests have the deep pockets to operate a health club at a loss for centuries. Requiring it to pay taxes on a business at Moody Gardens, while a step in the right direction, is something short of a guarantee of a level playing field.

If you ask negotiators whether they would insist on a prohibition on the sale of memberships as part of the convention-center deal, they say they really don't have a convincing answer. Do the city's negotiators consider it a deal-breaker? We don't know.

They are asking voters to support the deal — but without basic information on how it would affect competition.

● Second, no real effort has been made to determine whether Moody Gardens is the best site for the city's only convention center.

A study commissioned by the city concluded it would be the best site — but only if you considered the city's financial straights. But if you throw another \$90 million or so in tax subsidies into the mix, the picture changes. The study cited several problems with Moody Gardens, including its distance from the beach and other attractions.

● Third, it is awfully difficult to determine whether

this is the best deal for the future when it's the only deal being considered.

It's awfully easy to sell something if the buyer thinks he's getting something for nothing. But \$90 million is a lot of money. It should be enough to entice other developers, including national hotel chains, to offer proposals.

● Finally, there is simply the question of trust.

The whole negotiations at Moody Gardens have been difficult at times.

Within the past year, Moody Gardens representatives promised not to sell memberships at the hotel's health club if the park board would eliminate a key clause in the contract.

The park board eliminated the clause, and now the health-club memberships are back on the table.

Given the history of these negotiations, the public has every right to ask to see a deal in writing.

The smart consumer wouldn't think of agreeing to make payments on a business, home or car without reading the fine print.

It's just good business.

Now, voters are being asked whether they think it's a good idea to commit millions of dollars of public money — no one can even say how much — with no details in writing and many key questions unanswered.

The sensible answer is no

● This editorial was written by Heber Taylor, editor of The Daily News. His email address is heber.taylor@galvnews.com.

# Moody's investigate expansion

■ The convention center at Moody Gardens might still be looking to expand with its own funding.

9-24-00

By CARTER THOMPSON  
The Daily News

**GALVESTON** — Though passed over in favor of a seawall location, the convention center at Moody Gardens still might be expanded.

Whether that expansion or a related expansion of the Moody Gardens Hotel hinges on an election on a new convention center to be built behind the San Luis Resort was unclear.

Doug McLeod, director of development for the Moody Foundation, said the Moodys were examining the options.

"Probably we can't do anything until we see what voters do on the Brimer Bill," he said, referring to the state legislation that authorizes such elections. "It in essence prevents us from planning."

If voters approve the increase in the city's hotel-occupancy tax, the facility at Moody Gardens almost certainly will lose the tax allotment it now receives for operation and maintenance expenses. That allotment is now worth \$600,000 a year.

The Moodys also would be on their own to finance the expansion, which McLeod said would be for the most part a new convention center tied into the current facility's west side that includes the Floral Ballroom.

During recent evaluation process of proposals submitted for the new center, Moody attorney Irwin "Buddy" Herz said the plans were to expand the center regardless of whether it was chosen and funded by the city.

Family patriarch Robert L. Moody also reportedly has expressed an interest in expanding both the center and adjoining hotel at Moody Gardens to city leaders.

Councilman Joe Jaworski and Moody met for lunch at Luigi's Ristorante Italiano on Monday. Jaworski said it was a frank and open discussion in which Moody indicated he was displeased with the evaluation process but did not suggest he was organizing opposition to the election, the date for which has not been set.

Moody Foundation funds grants would be used to expand convention center + on 9/24/00

Moody asked about the possibility of adding 200 rooms to the hotel and perhaps paying property taxes on those new rooms. The hotel's current stock of 303 hotel rooms is owned by the city and is tax-exempt, an arrangement that irks some other island hoteliers.

"I appreciate him coming forward and wanting to discuss these kinds of things," said Jaworski. "I think it needs to be done with the park board, but I don't begrudge him for seeking out elected officials and feeling out their positions."

Moody did not return a phone call to his office on Thursday.

Asked about whether the Moodys would support or oppose the election, McLeod responded, "Officially our best bet is to stay out of it." But he went on to say, "I think our posture is to wait and see if Tilman keeps his word."

Tilman Fertitta heads the two companies that submitted the proposal recommended by the park board's ad hoc convention center evaluation committee.

McLeod was referring to whether commitments Fertitta made verbally to the committee on the proposal would end up in a written agreement.

9/24/2000

Please see MOODYS/A7

## Moody's

Continued from Page A6

Fertitta said he welcomed an expansion of the convention center at Moody Gardens. But the new hotel rooms, even if taxable, would compete unfairly with the private sector, he said.

Fertitta, the head of Landry's Seafood Restaurants and owner of Fertitta Hospitality, said he always kept his word.

"Whatever was in my presentations is what I'm going to do," he said. "Whatever I say is going to happen."

The park board this week will decide whether to adopt the committee's recommendation. If it does so, negotiations on the written agreement will begin soon after.

Other council members contacted this week, including Mayor Roger "Bo" Quiroga, said

they had not met with Moody representatives. Quiroga said was "bothered" that other council members had met with Moody representatives.

The Moodys need park board approval for any major expansion. Its operating agreement states that park board trust must approve any projects that cost more than \$1 million, even completely financed by the Moody Foundation or family members.

GALVESTON COUNTY DAILY NEWS

OCT 16, 2000

## Moody representatives ought to be ashamed

**M**oody Foundation representatives put on quite a show for the Galveston City Council last week.

They marched in people who benefit from the foundation's many programs to plead that the city not take away funding for them.

What a crock.

Doug McLeod, chairman of the Moody Gardens board, was the ringmaster for what might have been the most shameless display ever organized by the Moody interests. The message was clear: If the city council turns off the tap for that \$600,000 in annual hotel tax revenues now going to the Moody Gardens convention center, the foundation might turn off the tap for some of its charitable giving.

"We are worried about the money," McLeod told the council. "You might not think that has much credibility from an organization like the Moody Foundation, but we have to make plans."

McLeod is right. We don't think the foundation's cry of poverty has much credibility. The foundation has almost \$1 billion in assets. There are a lot of places it can find \$600,000 without cutting its charitable programs.

According to the financial statements Moody Gardens provided to the park board, the operation had a net income of almost \$2.4 million for the first 11 months of the current fiscal year. And it's going to have to raid the funding for scholarships to make up for the loss of \$600,000?

What this whole thing sounds like to us is blackmail. The foundation seems to be saying that if the city doesn't bow to its power, innocent people will suffer.

We are floored by the audacity of it.

● This editorial was written by Kelly Hawes, associate editor of *The Daily News*. His email address is [kelly.hawes@galvnews.com](mailto:kelly.hawes@galvnews.com).

.....  
*A representative of Moody Gardens told the Galveston City Council that a number of charity programs funded by the Moody interests could be cut if the city diverts \$600,000 in hotel tax money toward building a convention center.*

### Moody officials say anything for deal

Let the propaganda begin. It seems that officials at Moody Gardens will say anything to ensure their "little cash cow" will keep coming through for them.

The idea that \$600,000 from the city is the only thing that is keeping charitable therapies from occurring at Moody Gardens is ludicrous.

Anyone who is familiar with Moody Gardens or has read its literature knows that it began as a place for therapy with horses.

For Moody Gardens to now state that the denial of monies from the city will end the very program on which Moody Gardens was founded is an insult to the intelligence of everyone.

Robert Compean  
Houston



# MENTARY

## GUEST COLUMN



● TOM COOK

### City, Moodys need level playing field

**M**oody Gardens representatives now state that there is no need for the city and Park Board of Trustees to have parity in bargaining with Moody Gardens.

The reason given is that now Moody Gardens has invested \$130 million and intends to invest \$140 million in the future.

The amount of money invested should not be a measure of the relative need for parity.

Parity is needed forever so that the park board can control forever what the park board will own and operate at Moody Gardens.

By agreeing to own Moody Gardens, the park board has enabled Moody Gardens to build and operate businesses and avoid all income taxes, sales taxes, school taxes, property taxes, and rent that should apply to the operation of those businesses.

The park board has become the enabler for tax avoidance by Moody Gardens. But the park board must have the right at any time for any reason to stop the unfair competition with our local taxpayers, if it goes too far.

What is too far? That's up to the park board to decide.

Obviously if Moody Gardens, over the years, develops businesses that compete with most of Galveston's taxpayers, then they

It must be decided on a case by case basis as the development unfolds.

The park board must remain in absolute control until the entire development is complete and an agreement is reached that nothing else will be built at Moody Gardens that competes with the taxpayers.

There are so many things that can be built at Moody Gardens that don't compete with local taxpayers, i.e., 3-D IMAX theater, rain forest, aquarium and hundreds more.

New developments need to be confined to those areas.

But what if eight years from now Moody Gardens decides to open a jumbo discount grocery store or an automobile dealership.

Because of their tax exempt status, businesses operated by Moody Gardens can offer their products and services far cheaper than competing taxpayer owned businesses.

If the park board gives up the 30-day, give-back clause now, then the park board has no power to bargain with Moody Gardens.

The park board will own a jumbo discount grocery store and an automobile dealership.

The park board will have no recourse and will be forced to own and operate these businesses.

The park board must keep the right, for any reason, to give back the Moody Gardens project.

Moody Gardens wants the park board to be able to return Moody Gardens to the foundation only if "a material breach" occurs.

What is a material breach?

That's for a judge and jury to decide.

Moody Gardens can afford \$200,000 in legal fees to fight the park board in a lawsuit.

But the park board cannot, and why should it weaken its position and be subject to very costly litigation?

Again, the city would find itself unable to bargain because it couldn't afford the legal fees.

The park board must retain the right to give the gardens back for any reason with no litigation ... and absolutely no high legal fees.

● Tom Cook is a Galveston businessman.

# Park board tables Moody Gardens proposal

By CARTER THOMPSON  
The Daily News

**GALVESTON** — A project to expand the Moody Gardens convention center will have to wait.

**GALVESTON** Park board trustees voted to table the request by the Moody Foundation for permission to undertake the \$14 million expansion with its own money.

It was unclear Tuesday when the proposal would come up again.

Park Board Chairman Melvin Williams set a time frame of two weeks to six months before trustees would see the proposals again.

He said the decision to delay the vote was made in deference to the ongoing negotiations for a convention center on the

“I thought in the interest of fairness to everyone, I should table it.”

**Melvin Williams**  
park board chairman

seawall and to avoid any allegations that the Moodys were trying to sabotage an upcoming election.

“I thought in the interest of fairness to everyone, I should table it,” he said.

The Moodys’ usual spokesmen were absent from the meeting.

In their place, Moody Gardens executive director Mike Riley — also a park board trustee — was prepared to pitch

the expansion.

The board is now in negotiations with Fertitta Hospitality and Landry’s Seafood Restaurants for the new center to be built behind the San Luis Resort.

Tilman Fertitta, who heads the two companies, said he was “scared to death” that the park board would approve a larger convention center at Moody Gardens because he has committed to underwriting the losses at the San Luis site and has promised the city half of the profits. He was considering addressing the issue in the contract now being negotiated.

“It is a shame that I have to continue to come down here to watch my backside,” said Fertitta, who flew in from Detroit for the meeting.

Please see **MOODY/BACK PAGE**

## Moody

Continued from Page A1

Doug McLeod, director of development at the foundation and chairman of the board of Moody Gardens, has said that while not in the current expansion proposal, a request for more rooms at the tax-exempt Moody Gardens hotel would likely follow.

Fertitta said the Moodys should not piecemeal their request.

“If it ever comes up again, everything should be put on the table — hotel rooms, shops, restaurants,” he said.

Theresa Elliott, general manager of Casa Del Mar, criticized the board for not putting the Moody proposal through the tourism development committee, a group made up of trustees and industry representatives that typically renders recommendations for the full board.

She also said the audience should have been permitted to address the board. There was no discussion prior to the vote to table the Moody proposal.

Williams said the board received the proposal late last

week and did not want to let the issue linger.

“The longer it lingers, the more people ask questions and more rumors get started,” he said.

Williams also said the Moody proposal may help speed the negotiations with Fertitta.

All involved are aiming for a Jan. 20 election day.

● **Carter Thompson can be reached at (409) 683-5230 or carter.thompson@galvnews.com.**



# THE DAILY

## NEWS

THURSDAY

November 30, 2000

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# Vote on Fertitta deal may precede call for tax election

By CARTER THOMPSON  
The Daily News

**GALVESTON** — City leaders today will vote on an agreement with a company run by Galveston hotelier Tilman Fertitta for a new convention center.

They also will consider calling a Jan. 20 election in which voters will be asked to approve about half of the public financing needed to build the convention center immediately north of the San Luis Resort, which is owned by Fertitta.

**What:** City council workshop and meeting.  
**Where:** City Hall, 823 25th St. Workshop in room 204; meeting in room 200.  
**When:** Today. The workshop begins at 8:30 a.m. and will recess at 9:30 a.m. for the first part of the meeting. The second part of the meeting begins at 2 p.m.

### ■ Convention center opinions/A12

It is hoped the new facility will generate economic development along the seawall. But there are concerns the deal may prompt the operators of Moody Gardens to sue

the city.

The contract contains a clause that prohibits the city from putting money into a competing facility. The city owns Moody Gardens, where the operators have asked for permission to expand the existing con-

vention center.

Despite previous statements that he would not oppose the expansion if it came at no cost to the city, Fertitta said he added the clause out of fear a larger convention center at Moody Gardens would put the San Luis center out of business.

Fertitta has committed to covering any construction overruns and splitting the operating profits with the city. He doesn't expect the company to recoup its investment until several years into the deal, and said even that would not happen if it had to compete with a convention center

funded by the Moody Foundation.

"All we are saying is keep it, we don't have a problem," he said. "But you're not going to enlarge it to put us out of business."

City leaders, frustrated that Moody entities were opposing the upcoming election, also will vote today on whether to cut public funding to the Moody Gardens convention center.

An agreement laying out the specifics of the facility will be worked out between the company and park

Please see FERTITTA/BACK PAGE

## FERTITTA BACK PAGE

Continued from Page A1

board at a later date. Fertitta said the plans likely would be finalized after the election.

Landry's Management L.P., a subsidiary of Landry's Seafood Restaurants, will operate the center for at least 30 years under the contract.

The deal calls for the excess revenue from the center to first be plowed into a capital reserve account. Once that reaches \$300,000, excess revenues will flow into another account that will be split between the company and city

as profit.

The company can get reimbursed for its operating costs prior to the profit being split. The contract defines operating costs as "all expenditures or obligations of whatever kind of nature made or incurred by LMLP attributable to the performance of LMLP's duties and responsibilities in connection with the operation and maintenance of the convention center," and lists dozens of examples.

The company will submit monthly financial reports to the park board, and the city

would have the right to audit the company's books. Any disputes, if not resolved, would be taken to arbitration.

Fertitta said there would be employees and services shared between the convention center and the San Luis Resort. But each entity would pay its fair share so the convention center revenue would not be used for a private business.

"I care what people think," he said. "I want to be well thought of in Galveston."

The agreement allows the company to make changes of up to \$1 million without first

getting the city's approval. Fertitta said the clause was modeled after the city's agreement with Moody Gardens and was inserted by the lawyers.

"I don't know what it means," Fertitta said. "They can take it out."

The company in the contract also agrees to abide by the public information laws and release information provided it is not confidential, proprietary or contains trade secrets.

"We have no problem letting you see everything you all want to see," Fertitta said.

Park board chairwoman Sheila Lidstone said that, although Fertitta and Mitchell want city officials to revisit the convention center issue, she is not sure how soon the park board will want to do that after the disappointment of last week's election loss.

"It's not to say we wouldn't," she said. "It's just that we're not there yet. We haven't had a chance to meet and discuss what went wrong the last time."

Meanwhile, Mitchell and others say things are generally looking up in Galveston.

"The business this summer was quite good," said Mitchell, who owns the restored beachfront Hotel Galvez, the downtown Tremont House Hotel and dockside Harbor House Hotel at Pier 21. The Galvez, whose recent restoration garnered a prestigious award from Houston architects, is adjacent to Beach Central at 21st and Seawall Boulevard.

Mitchell and Fertitta are adamant about the impact of the tax-exempt Moody Gardens Hotel on their hotels and other island inns.

"The Moody hotel has definitely hurt me and everybody else," Fertitta said. "The Moody hotel is able to rent rooms for a lot less than I do and pay people a lot more."

"It's made me have to change my whole benefits package and my hourly rates," he said. "Just on my labor front, it's cost me this year about \$130,000."

"The property taxes on the San Luis-Hilton complex are about \$600,000 a year," Fertitta said. "This year, we'll do close to \$400,000 less in cash flow at (those) hotels than we did last year, and it's 100 percent attributable to the Moody hotel."

"If that were a Marriott or a Westin that opened up, and they were paying taxes, that would be just business," Fertitta said. "But I shouldn't have to be competing against a foundation. They don't have to make a profit."

Mitchell agreed.

"They can undercut me by at least \$15 a room any night of the year," he said. "It's not fair."

Despite their feelings, Fertitta and Mitchell publicly supported the hotel tax increase that would have helped finance a convention center expansion at Moody Gardens.

"If anyone should want more convention space, it would be me because I've got more hotel rooms and more restaurant seats in Galveston than anybody else," Fertitta said.

He personally owns the San Luis Resort & Conference Center and the nearby Galveston Island Hilton Resort on Seawall Boulevard. His restaurant corporation runs a Landry's,

Willie G's, Joe's Crab Shack and other restaurants on the island.

Whatever happens on the convention front, Mitchell and Fertitta said things are looking up in Galveston.

Carnival Cruise Lines is scheduled to begin regular service out of Galveston in October, another cruise line is shopping the port and a Las Vegas group plans to operate a day-cruise casino ship out of Galveston beginning in May, Mitchell said.

The downtown Strand Historical District is scheduled for a sprucing-up, financed by federal grants and local matching funds totalling about \$3.5 million, he said.

"I think the future is bright," Fertitta said. "I think you're going to see more and more development in Galveston and, eventually, we'll get a convention center for everybody and not just for one operator."

Meanwhile, Mayor Quiroga cautions against putting all of Galveston's eggs in the tourism basket.

"About 34 percent of our general-fund income comes from sales tax," he said. "If our sales tax revenues drop, the city could be sunk if we have a rainy summer or an oil spill."

"The thing we're going to really concentrate on in the near future is to take advantage of the exploration in the western Gulf," he said. "That's really heating up, and there are a lot of possibilities out there right now."

Consultants have recommended that the city court firms that serve the offshore industry.

"If we're going to be a tourist town, we've got to be the best one," Quiroga said. "But I think we also need to get some small industry or some industrial base to complement the University of Texas Medical Branch and other institutions here."

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'If (the Moody Gardens Hotel) were a Marriott or a Westin that opened up, and they were paying taxes, that would be just business. But I shouldn't have to be competing against a foundation. They don't have to make a profit.'

Developer Tilman Fertitta

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# Mitchell to Moody's: No more rooms

■ Local developers compete to build a new city convention center.

By CARTER THOMPSON  
The Daily News

GALVESTON — The prospect of additional hotel rooms at Moody Gardens remains the thorniest issue in the ongoing effort to build the city's new convention center.

The ongoing battle between Moody Gardens and its tax-paying competition took an unexpected turn last week when Bill Ross, vice president and general manager of George Mitchell's GPM Inc., reportedly told a committee weighing the convention center proposals that Mitchell himself endorsed a Moody proposal on one condition: Drop a demand for 200 more hotel rooms.

But the city's new convention center still should be on the seawall, Mitchell said Monday. Mitchell and companies run by Tilman Fertitta have pitched seawall locations.

The waters cleared a little as Mitchell went on to explain he thought the park board should take the Moodys up on statements made by their attorney last week.

Irwin "Buddy" Herz told the ad hoc convention center evaluation committee that Moody Gardens would continue to operate its convention center even if the city's official facility was built elsewhere.

"If they're going to do the \$54 million deal, fine," Mitchell said. "Let them do it themselves.

"I don't think they should be allowed any more rooms now or in foreseeable future."

The Moodys submitted two proposals. The larger one is a \$57 million project, in which the foundation itself pays up to \$51 million. In exchange, Moody Gardens wants permission from the city to add 200 rooms to the 303-room hotel.

The hotel has been the center of a fair amount of controversy in its short life. Fertitta filed two lawsuits against Moody Gardens and others, claiming the tax-exempt hotel presented unfair competition to taxpaying hotels. Both were dropped and the park board drafted a set of rules aimed at leveling the playing field.

When the proposals were filed in June, Fertitta said he would sue again if the hotel were expanded.

For the park board, the hotel will be a factor to consider along with location, financing and operational considerations.

Last week, park board staff told the committee that in order to be successful, a new convention center would need more hotel rooms in its vicinity than currently available at the Galveston Island Convention Center at Moody Gardens.

Herz said he couldn't say whether the foundation and Moody Gardens' leaders would knock off the request for more hotel rooms. But if the hotel rooms were such a concern, the board could go with the Moodys' other proposal.

"Our proposal two is bigger than both Fertitta's and Mitchell's and is \$40 million cheaper than Tilman Fertitta's proposed convention center and \$20 million cheaper than George Mitchell's proposed convention center, in terms of hotel-occupancy tax spent on construction over 25 years," he said.

Mitchell did discuss over the weekend with Fertitta his views on the Moody proposal that involved a hotel expansion.

Mitchell and Steve Greenberg, director of governmental affairs for Fertitta's Landry's Seafood Restaurants, on Monday said they did not think the Moodys would give up the request for more rooms.

● Carter Thompson can be reached at (409) 683-5230 or [carter.thompson@galvnews.com](mailto:carter.thompson@galvnews.com).

The Moody offer has prompted calls to park board trustees from representatives of Fertitta and developer George Mitchell and from city council members — all worried that it jeopardizes the election, said board Chairman Melvin Williams.

"I don't think that's the case at all," he said. "I think they feel they need a new facility."

Williams, who supports the Moody proposal, gave it a 50 percent chance of success in Tuesday's meeting. He gave it no chance of success if side issues were attached.

"I can guarantee if they come in saying we want to build more rooms or a fitness center, they'll lose," Williams said. "It will be a unanimous vote."

Under Moody Gardens' operating agreement, the park board must give its permission for any expense of more than \$1 million.

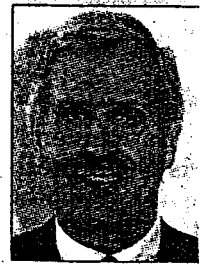
● Carter Thompson can be reached at (409) 683-5230 or carter.thompson@galvnews.com.

"Where is the gift? Moody Gardens has made \$7 million in the last two years and the city's gotten nothing for it, even though the city owns it."



Tilman Fertitta

"Why would the people of Galveston go out and give Tilman Fertitta \$2.5 million a year for 30 years?"



Doug McLeod

# Moody charities looking at cuts due over revenue

By CARTER THOMPSON  
The Daily News

GALVESTON — Moody Gardens did well last year, reaping \$3 million in profits. And now the Moody Foundation, the funding muscle for the tourism attraction, wants to spend \$14 million to expand the Galveston Island Convention Center at Moody Gardens.

Moody Gardens does not appear to be hard up for money. So why did foundation officials earlier this month warn of cuts — including in the charitable purposes that spawned the facility — at Moody Gardens if the convention center lost its \$670,000 of city funding?

Doug McLeod, the foundation's director of development and chairman of Moody Gardens' board of directors, said the budget year that ended in Sept. 30 was the first in which Moody Gardens posted a profit.

Over the previous 10 years, the foundation has backed \$22 million of losses at Moody Gardens, he said.

Revenues generated by Moody Gardens have tripled since 1998, with nearly all the gains attributable to the opening of the hotel and aquarium.

Moody Gardens officials say they plan to plow a good share of last year's profits into developing new attractions.

If not, people will stop coming to Moody Gardens,

and that would threaten its profitability.

McLeod said Robert L. Moody, family patriarch and foundation trustee, placed a premium on self-sufficiency.

"We hope we at least break even next year," McLeod said. "But what if we don't?"

Moody officials earlier this month made their case to the council to keep the penny of hotel-occupancy tax — worth \$670,000 last year — at Moody Gardens at least until the seawall facility opened. The presentation included testimony of recipients of Hope Therapy, where horses are used to help disabled children and people who have suffered brain injuries.

It struck some observers as a threat that if city leaders took away the hotel tax penny, the Moodys would reduce their charitable giving.

McLeod said that was not the intent.

The Moody Foundation and Moody Gardens would have to make budgeting decisions as any other entity would that suffered a \$670,000 loss, even if the cuts nicked the original mission of Moody Gardens.

"I think if we had to make some hard choices, we would have to trim across the board," he said. "Hope Therapy loses \$500,000 a year. It's very expensive to underwrite. I can't say right now whether that program would be trimmed by 5 percent or what."

# Moody programs could suffer if Fertitta deal done



**Doug McLeod:** "(Moody Gardens is) worried about the money."

By MICHAEL A. SMITH  
The Daily News

■ Neighborhood scared/A6

GALVESTON — Charity programs might be cut if the city diverts \$600,000 in hotel tax money toward building a convention center, a Moody Gardens official said Thursday.

The information was delivered by Doug McLeod, chairman of the Moody Gardens Inc. board of

directors, just minutes before city council members voted to pursue a convention center project.

Moody Gardens Inc., along with George Mitchell's MBP Corp. and two companies headed by Tilman Fertitta, had bid to build the convention center.

The park board of trustees voted in September to negotiate with Fertitta for a new conven-

tion center to be built behind the San Luis Resort and the city council followed suit Thursday.

At issue now is revenue from a one-cent slice of the taxes charged on hotel and motel rooms in the city.

One cent of the tax rate generates about \$600,000 a year that now goes to Moody Gardens to operate the city's existing convention center.

The plan being negotiated with Fertitta calls for that money,

along with revenue from a proposed tax increase, to be earmarked for construction and operation of a new center.

McLeod said he was not speaking against the deal but warned that charitable programs might be cut if Moody Gardens lost the \$600,000.

Those programs include Hope Therapy, where horses are used to help disabled children and people who have sustained serious brain injuries.

"We are worried about the money," McLeod said. "You might not think that has much credibility from an organization like the Moody Foundation, but we have to make plans."

The Moody Foundation, which has more than \$700 million in assets and earns hundreds of millions a year from American National Insurance Co. stock, subsidizes Moody Gardens Inc.

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## Moody

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Moody officials want the \$600,000 to stay with Moody Gardens at least until the new convention center opens, McLeod said.

"It's just not fair to ask us to subsidize the city convention center at Moody Gardens while the new one is being built," he said.

Fertitta spokesman Steve Greenberg said revenue from the contested penny was needed to build the center.

"We need that penny," Greenberg said. "The project just won't work without it."

He said giving up the revenue would force Fertitta to scale back the project.

"A center smaller than the

planned 40,000 square feet would not benefit any of the other hotels. Mr. Fertitta has already said he does not want to use public money on a project that will only benefit his hotel."

Mayor Roger "Bo" Quiroga told McLeod the council would have an answer about what would happen to those revenues in about two weeks.

City council members on Thursday instructed the city attorney to seek federal approval for an election on the convention center.

If all goes as expected, voters will be asked to approve a two-cent increase in the hotel tax during an election on Jan. 20, 2001.



# Campaign against convention center didn't appear to help

■ Proponents of the seawall convention center voted 3-to-1 in favor of the proposal. **1/23/01**

By CARTER THOMPSON  
The Daily News

**GALVESTON** — Did the Moodys hurt their own cause by waging such an aggressive campaign against the seawall convention center?

The hotel tax increase needed to fund

## Galveston vote totals

For: 6,092 (71 percent)  
Against: 2,498 (29 percent)  
Total votes: 8,606  
Registered voters: 36,878  
Turnout: 23.3 percent

the new facility won the overwhelming support of voters on Saturday, despite a blitz of advertising on television, in print

Please see CAMPAIGN/BACK PAGE

Continued from Page A1

and through the mail.

The proposition won handily in each of the city's 18 voting precincts.

It gained the most lopsided victories in the East End precincts, some by nearly 4 to 1 margins. The narrowest margin came at the polling site closest to the planned facility near the San Luis Resort. Still, nearly 55 voters casting ballots in Precinct 118 supported the proposition.

Representatives of the city's richest family continued Monday to be unavailable for comment on the election.

The Moodys, who run Moody Gardens and also have sizable philanthropic, insurance and banking interests on the island, in the last week of the campaign focused their efforts on swaying minority and senior citizen voters.

The results do not indicate it worked. The proposition won by nearly 4 to 1 margin at the polling place at Gulf Breeze Apartments, public housing for senior citizens.

It captured about 68 percent of the votes cast at the Somerset Retirement Village.

Voter turnout north of Broadway and west of 25th Street — a low-income area with a large minority population — was light but in line with the margins of victory the convention center won all over the island. Residents voting at the Old Central Cultural Center also came out decisively for the proposition.

A spokeswoman for Good Alternatives, the Moody's political action campaign, said she believed anti-Moody sentiment contributed to the landslide victory.

Those who have historically spoken on the Moodys' behalf on Monday continued the practice they developed during the campaign of not commenting to the media.

Those on the other side — represented by Mayor Roger "Bo" Quiroga and Tilman Fertitta — agreed.

Fertitta heads Landry's Seafood Restaurants, the parent company of the new convention center's developers and operators.

"I think that it would have been closer margin if their advertising wasn't so negative," said Quiroga of Good Alternatives' campaign. "The two pieces that offended the people the most were the

## Voting

	TOTAL	FOR(pct.)	AGAINST(pct.)
Early voting	2,749	2,069 (75.5)	671 (24.5)
Precinct 105	336	232 (69)	104 (31)
Fire Station No. 2			
428 Church St.			
Precinct 106	417	308 (73.9)	109 (26.1)
Robert L. Moody Community House			
1515 Market St.			
Precinct 107	178	139 (78.1)	39 (21.9)
Menard Park			
2119 27th St.			
Precinct 108	511	402 (78.7)	109 (21.3)
Gulf Breeze Apartments			
1211 21st St.			
Precinct 109	29	22 (78.6)	6 (21.4)
Fire Station No. 5			
1104 56th St.			
Precinct 115	563	395 (70.3)	167 (29.7)
GISD Administration Building			
3904 Ave. T			
Precinct 117	256	168 (65.9)	87 (34.1)
Catholic Charities			
4416 Ave. M			
Precinct 118	600	328 (54.8)	271 (45.2)
Westminster Presbyterian			
5201 Ave. U			
Precinct 216	435	287 (66.3)	146 (33.7)
Alamo Elementary			
5200 Ave N 1/2			
Precinct 221	328	218 (66.5)	110 (33.5)
Fire Station No. 7			
3006 Buccaneer			
Precinct 222	164	111 (68.1)	52 (31.9)
Somerset Retirement Village			
2828 61st St.			
Precinct 223	605	403 (66.6)	202 (33.4)
Parker Elementary			
6802 Jones Dr.			
Precinct 224	578	389 (67.3)	189 (32.7)
Weis Intermediate			
7100 Stewart Rd.			
Precinct 276	345	236 (68.4)	109 (31.6)
Oppe Elementary			
2915 81st St.			
Precinct 310	42	33 (78.6)	9 (21.4)
City Hall			
823 25th St.			
Precinct 311	73	48 (65.8)	25 (34.2)
Wright Cuney Park			
718 41st St.			
Precinct 313	117	88 (75.2)	29 (24.8)
Old Central Cultural Center			
1310 27th St.			
Precinct 314	280	216 (77.1)	64 (22.9)
L.A. Morgan Elementary			
1410 37th St.			

Santa Claus ad and the last one that was run."

The television advertisement showed Santa Claus being shocked into a cardiac arrest by the convention center deal.

That ad Quiroga spoke of targeted minority households and showed an African-American child at the beach and reflected the convention center vote as a civil rights issue.

About 15 voters approached Fertitta on election day claiming they voted for the proposition out of disgust with the Moody advertising campaign, he said.

"I think they helped us because people don't want to see that trash," said Fertitta.

How much of the resentment was aimed at the advertisements and how much at the Moodys themselves is difficult to quantify, but previous election results may provide a hint.

In 1999, the Moodys sought the same hotel tax increase to help fund an expansion of the Moody Gardens convention center.

That proposition lost by nearly a 2 to 1 margin, and drew less than 4,000 votes. Saturday's election attracted 8,606 voters to the polls.

Moody officials apparently knew defeat was imminent on Saturday.

A Dec. 4 poll they paid for showed that 63 percent of voters supported the new convention center, 28 percent opposed it and 9 percent were undecided. A poll Good Alternatives received on Jan. 4 — well into their campaign — showed little change, with 2 percentage points shifting from approval to undecided.

On-the-record interpretation from Moody representatives that observed both elections was not forthcoming.

Moody attorney Irwin "Buddy" Herz did not return phone calls to his office on Monday. On election night, he left Good Alternatives' campaign headquarters when the press arrived.

Doug McLeod, a top official with both Moody Gardens and the Moody Foundation, referred election questions to the Good Alternatives spokeswoman.

Questions regarding the lawsuit the Moodys filed eight days before the election against the city and Fertitta were referred to outside counsel.

"For professional reasons I can't comment," McLeod said. "And neither side should be commenting."

The persistent rumors that American National Insurance Company, headed by Robert L. Moody, would leave Galveston were invigorated by the election.

But Moody himself in a question-and-answer session published by The Daily News denied any such move was afoot.

Representatives of UTMB — rumored to have looked at ANICO's Galveston skyscraper — also said the rumors were not true.

"To our knowledge, there hasn't been anyone at UTMB looking at the ANICO building nor has anyone approached us about it," said university spokeswoman Doris White.

FEB 4 '01

OUR VIEW

# Pact with Moodys deserves reconsideration

**M**embers of the Galveston City Council and park board are meeting to plot strategy in a \$250 million lawsuit. That suit comes from the Moody interests and seeks to get money from the community's taxpayers and to bully city officials into choosing Moody Gardens for a new convention center.

It's impossible to predict how federal district Judge Sam Kent, in whose court the case landed, will see the legal issues. One possible outcome of the suit (most likely the Moodys' intended outcome) is a long series of closed-door negotiating sessions.

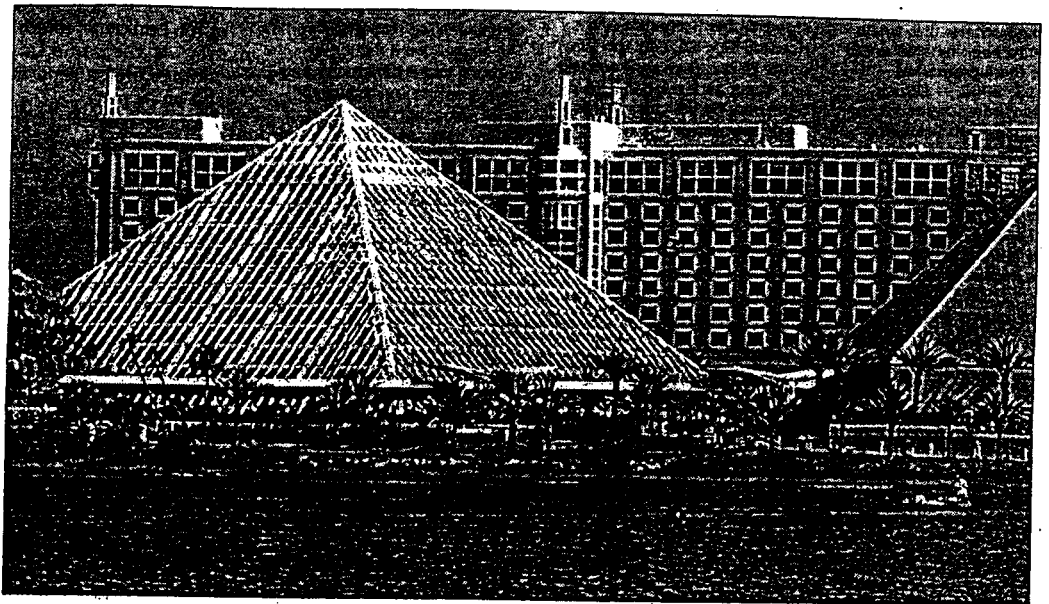
That prospect is at least likely enough that city officials should now be discussing their approach to any such negotiations. We have a suggestion: View this as an opportunity.

Over recent years, through pressure and threats, the city has been bullied into giving up virtually all control over Moody Gardens, ironically a facility the city of Galveston owns. The city owns it because that is necessary to maintain the tax-exempt status so beneficial to the Moody interests.

Based on community history, there may be some who want to begin any negotiations by meekly asking the Moodys what they want, taking that as the basis for discussions, then cutting the best deal possible.

What if, instead, the city develops its own wish list and pursues those goals aggressively, as it should, in the public interest? What might such a list of demands include?

● First, restore the "give-back" clause foolishly removed from the agreement with Moody Gardens not long ago.



Moody Gardens is a facility that the city of Galveston owns.

FILE PHOTO/The Daily News

This would allow the city, upon any serious future disagreements (or lawsuits) with the Moody interests, to give the property back with 30 days' notice and begin to charge property taxes on it.

● For now, establish an ongoing payment in lieu of taxes to the city. For a city chronically in need of money, the notion is practical and badly needed.

● Seek more control over management, booking policy and rates at Moody Gardens. At present, the people of Galveston, who own Moody Gardens, have virtually no say about how the facility is managed.

● Seek profit sharing. The city of Galveston will share 50-50 in any profits generated by its new convention center near the San Luis Hotel. Why should it not share profits with Moody Gardens also? A 50-50

split would yield about \$1.5 million annually. That would fill a lot of potholes.

● Seek competitive bidding on all aspects of Moody Gardens operations. As a publicly owned facility, this is only good business. For example, a Moody-owned company, Galtex Inc., is paid a sizeable fee to manage the property. Why not seek competitive bids on overall management of the facility? And what about all the other contracts — food service, linens, liquor and so on?

● Establish community control over the Moody Gardens board of directors. That board currently is populated with Moody friends and family members. It sets policy for the facility. If the community owns it, why shouldn't the people — through the city or park board — control board membership? Furthermore, board meetings, now closed, should be open to

the public.

That's not a complete list, but it gives the flavor of what we suggest. The city should seek control of what is now a community-owned facility. The city should never allow itself to be cowed into simply accepting a Moody list of demands as basis for negotiations.

To some, this may seem a hard-nosed approach. They should remember a simple fact: The people of Galveston did not sue the Moody empire. The Moodys sued the city. That's all of us, everyone who lives and pays taxes in Galveston.

That lawsuit against the people invites precisely this type of hard-nosed re-examination of the city's agreements with Moody Gardens.

● Dolph Tillotson, president and publisher of The Daily News, wrote this editorial. His email address is [d.tillotson@galvnews.com](mailto:d.tillotson@galvnews.com).