

THE ATTORNEY GENERAL

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An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0390-KP

Requestor:

The Honorable J.M. Lozano

Chair, House Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Sufficiency of an Open Meetings Act notice for a meeting of the Texas Windstorm Insurance Association (RQ-0390-KP)

Briefs requested by January 15, 2021

RQ-0391-KP

Requestor:

Mr. Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

333 Guadalupe, Suite 3-900

Austin, Texas 78701

Re: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers (RQ-0391-KP)

Briefs requested by January 15, 2021

RQ-0392-KP

Requestor:

The Honorable Larry Taylor

Chair, Senate Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of a municipality to establish development regulations for open enrollment charter schools that are different than regulations for other public schools (RQ-0392-KP)

Briefs requested by January 20, 2021

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202005688

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: December 22, 2020



Opinions

Opinion No. KP-0344

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Whether Blinn College District may donate, convey, and transfer the Star of the Republic Museum to the Texas Historical Commission in light of section 442.062(b) of the Government Code (RQ-0358-KP)

S U M M A R Y

Senate Bill 2309 of the Eighty-sixth Legislature transferred the jurisdiction over and management of the Star of the Republic Museum and its contents, as well as all powers and duties of Blinn College District relating to the Museum, to the Texas Historical Commission. Subsection 442.062(b) of the Government Code continues the District's ownership of the real and personal property of the Museum. Neither subsection 272.001(l) of the Local Government Code nor section 130.0021 of the Education Code authorizes the District to donate, convey, and transfer Museum real and personal property to the Commission. However, subsections 11.151(c) and 11.154(a) of the Education Code authorize the District to convey the Museum real and personal property to the Commission so long as the transfer complies with article III, subsection 52(a) of the Constitution.

Opinion No. KP-0345

The Honorable Scott R. Peal

Chambers County Attorney

Post Office Box 1200

Anahuac, Texas 77514

Re: Authority to remove a county auditor and procedure to do so (RQ-0359-KP)

S U M M A R Y

A court would likely conclude that the removal of a county auditor rests within the sole discretion of the district judges. However, two avenues exist for judicial review of that decision. Pursuant to section 87.019 of the Local Government Code, applicable to county officers generally, a party to a removal action may appeal the final judgment to the court of appeals. Section 84.009 of that code, applicable to county auditors exclusively, establishes no administrative procedure to appeal the district judges' decision, but that does not foreclose the possibility of court review under certain circumstances, such as a mandamus action for abuse of discretion.

A court would likely conclude that a county auditor is entitled to written notice of possible removal and some type of forum in which the auditor may be heard by those conducting the fact-finding into the allegation underlying that removal.

Provided the district judges inquire into the facts in a formal, systematic, and appropriate manner, subsection 84.009(a)(1) does not preclude them from considering an independent investigative report procured by the county.

Judges considering the question of official misconduct under section 84.009 of the Local Government Code may rely on the definition of official misconduct in subsection 87.011(3) of that code.

Opinion No. KP-0346

The Honorable Mayes Middleton

Co-Chair, Joint Interim Committee to Study a Coastal Barrier System

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Extension of filing deadlines for elections postponed pursuant to the Governor's proclamation allowing for the postponement of the May 2020 local elections (RQ-0363-KP)

S U M M A R Y

In conjunction with his COVID-19 disaster declaration, Governor Abbott suspended provisions of the Election Code to allow political subdivisions to postpone their May 2, 2020 elections to November 3, 2020. Alongside the Governor's suspension, the Secretary of State's office simultaneously issued an Election Advisory Opinion explaining that the order to allow for postponing the May election did not reopen the candidate filing deadlines.

A court addressing your question would need to reconcile the language of the statutes tying the filing deadlines to election dates, the Secretary of State's express authority to apply and interpret election law in a uniform manner, and the lack of specific statutory instruction on the reopening of filing deadlines when an election is postponed after those deadlines pass. We cannot predict with certainty whether a court would accept the Secretary's conclusion, contained in Election Advisory Opinion 2020-12, that the candidate filing deadlines are not reopened by operation of the Governor's suspension of elections. To the extent the Legislature intends for election filing deadlines to move in such circumstances, the Legislature may choose to clarify in the forthcoming legislative session by amendment to the Election Code.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

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Austin Kinghorn

General Counsel

Office of the Attorney General

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