Requests for Opinions

RQ-0500-KP
Requestor:
The Honorable Landon Ramsay
Franklin County Attorney
200 North Kaufman
Mt. Vernon, Texas 75457
Re: Authority of a county commissioners court to adopt and enforce a moratorium regarding commercial solar projects (RQ-0500-KP)

Briefs requested by March 24, 2023
For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202300951
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 28, 2023

Opinions

Opinion No. KP-0431
The Honorable Will Metcalf
Chair, House Administration Committee
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910
Re: Applicability of Texas's minimum wage laws to minor league baseball players when playing baseball for one of eight minor league teams in Texas (RQ-0487-KP)

SUMMARY
Texas Labor Code section 62.151 exempts "a person covered by" the federal Fair Labor Standards Act ("FLSA") from the minimum wage requirements of chapter 62. Whether a minor league baseball player or the player's employer is "covered by" the FLSA for purposes of section 62.151 is determined by whether the player "is engaged in commerce or in the production of goods for commerce" or "is employed in an enterprise engaged in commerce or in the production of goods for commerce." Based on legal precedent and publicly available information, minor league baseball players are "covered by" the FLSA. Whether the player or the employer is subsequently exempt from certain FLSA provisions pursuant to the Save America's Pastime Act ("SAPA") depends on whether the player is compensated according to the terms set forth by the SAPA. If the player's compensation is consistent with the terms of the SAPA, then the player is "covered by" the FLSA but exempt from sections 206 and 207 of the FLSA.

Section 62.158 of the same code exempts an employer from the minimum wage provisions of chapter 62 with respect to employment in an amusement or recreational establishment that: (1) does not operate for more than seven months in a calendar year; or (2) meets certain average receipt requirements. Whether the exemption applies is a fact question that cannot be answered in an Attorney General opinion. However, to the extent a court concludes that a six-month baseball season amounts to the entirety of the annual "operation" of an amusement or recreational establishment, it would conclude the exemption is satisfied.

Opinion No. KP-0432
The Honorable Rene P. Montalvo
Starr County Attorney
401 North Britton Avenue, #405
Rio Grande City, Texas 78582
Re: Whether Tax Code subsection 6.43(c) authorizes a county attorney to also serve as legal counsel to the appraisal district in the same county (RQ-0461-KP)

SUMMARY
Tax Code section 6.43 governs an appraisal review board's employment of personnel and expressly authorizes an appraisal review board, not a tax appraisal district, to utilize the legal services of the county attorney. A court would likely conclude that subsection 6.43(c) does not authorize the county attorney to serve as legal counsel to the tax appraisal district.

Opinion No. KP-0433
The Honorable Luis V. Saenz
Cameron County District Attorney
964 East Harrison Street, Fourth Floor
Brownsville, Texas 78520
Re: Commencement of the terms of city council positions after an election under Texas Constitution article XI, section 11, and the validity of the election in particular circumstances (RQ-0472-KP)

SUMMARY

A ballot measure may be inadequate when it misleads the voters by omitting certain chief features that reflect its character and purpose. A court would likely conclude the length of terms of office of the mayor and aldermen, not the enabling date, was the chief feature of the measure submitted to voters and that the City of Combes' May 2022 special election was not invalid because of the absence of that date in the Proposition language.

When a municipality sets the terms of office at more than two but not more than four years under article XI, section 11 of the Texas Constitution, it must elect members of its governing body by majority vote. To the extent the City did not have the necessary changes in place to implement a majority system and the candidates were not elected by majority vote, a court would likely conclude the candidates elected at the May 2022 general election serve two-year terms.

Opinion No. KP-0434

The Honorable Matthew E. Minick
Hardin County Attorney

Re: Whether a commissioner of an emergency services district may also serve as a volunteer fire fighter for the emergency services district (RQ-0477-KP)

SUMMARY

A court would likely conclude that the common-law doctrine of incompatibility bars a person from simultaneously serving as a volunteer fire fighter for an emergency services district and a commissioner on the ESD's board of commissioners.

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General Counsel
Office of the Attorney General
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Post Office Box 516
Kountze, Texas 77625

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