

THE ATTORNEY GENERAL

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Opinions

Opinion No. KP-0289

The Honorable Donna Campbell, M.D.
Chair, Committee on Veteran Affairs & Border Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a depreciation benefit product purchased solely with cash is regulated by Occupations Code chapter 1304 (RQ-0302-KP)

S U M M A R Y

Occupations Code chapter 1304 defines a depreciation benefit optional member program, in part, as a service contract financed under Chapters 348 and 353, Finance Code. A depreciation benefit product that is leased or purchased solely with cash and not on an installment basis is not "financed under chapter 348 or chapter 353" and does not satisfy the definition in subsection 1304.003(a)(3). The product you describe, therefore, is distinct from the one regulated by chapter 1304.

Opinion No. KP-0290

Mr. Mark Wolfe
Executive Director
Texas Historical Commission
Post Office Box 12276
Austin, Texas 78711-2276

Re: Whether a nonprofit organization leasing a publicly-owned property may qualify for and obtain the state tax credit for certified rehabilitation of certified historic structures on behalf of the public owner (RQ-0303-KP)

S U M M A R Y

A nonprofit lessee applicant may generally qualify for and obtain a state tax credit for certified rehabilitation of certified historic structures pursuant to chapter 171, subchapter S, of the Tax Code, but the qualifying costs and expenses must be borne directly by the applicant. An applicant's status as a nonprofit tax-exempt entity and a lessee does not generally disqualify the applicant from eligibility for the tax credit pursuant to sections 171.901(4) and 171.903, provided the applicant meets certain requirements, including the length of time remaining on the lease when the rehabilitation is completed.

Opinion No. KP-0291

The Honorable Isidro R. Alaniz
49th Judicial District Attorney
Post Office Box 1343
Laredo, Texas 78042

Re: Whether a school district may purchase real property outside its boundaries for the purpose of constructing and operating a school (RQ-0304-KP)

S U M M A R Y

A court would likely conclude that section 11.167 of the Education Code does not expressly permit a school district to purchase land outside of its boundaries for the purpose of building and operating a middle school. Given the constitutional and statutory language referencing the construction and maintenance of public school buildings "in the district," we cannot predict with certainty whether a court would conclude that section 11.167 implies the power to do so.

Opinion No. KP-0292

The Honorable Lisa L. Peterson
Nolan County Attorney
100 East 3rd Street, Suite 106A
Sweetwater, Texas 79556

Re: Authority to establish salaries of the staff of a multicounty court at law (RQ-0305-KP)

S U M M A R Y

Under section 25.2702 of the Government Code, the judge of the 1st Multicounty Court at Law does not possess the authority to set the salaries of the official court reporter and the court administrator.

The commissioners court may reduce salaries of the court reporter and the court administrator of the multicounty court at law without giving the judge specific notice before adopting the budget.

The commissioners court must set reasonable salaries for the court reporter and the court administrator, subject to judicial review in district court for abuse of discretion.

Opinion No. KP-0293

The Honorable Rodney W. Anderson
Brazos County Attorney

300 East 26th Street, Suite 1300

Bryan, Texas 77803-5359

Re: Whether the Texas Pawnshop Act preempts municipal regulation of dealers in secondhand personal property who also transact business as a pawnshop (RQ-0306-KP)

S U M M A R Y

The Pawnshop Act generally vests the Legislature with exclusive authority regarding the operation of pawnshops. The Legislature included a pawnbroker's purchase of personal property, without condition of future redemption by the seller, within the scope of pawnshop operations preempted by the Act.

As part of its exclusive governance, the Pawnshop Act creates procedures for pawnshops to record the sale of personal property and coop-

erate with law enforcement to prevent transactions in stolen property. A municipality therefore has no authority to create its own procedures for that purpose.

A municipality does have authority to reduce the amount of time pawnbrokers must retain purchased goods to a period of less than 20 days.

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

TRD-202001065

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Filed: March 10, 2020

