

# THE ATTORNEY GENERAL

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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-0353-KP

#### Requestor:

Mr. Rakesh Pandey  
Montgomery County Auditor  
501 North Thompson, Suite 205  
Conroe, Texas 77301

Re: Calculation of the minimum salary of a county court at law judge with twelve or more years of accrued service under section 25.0005(a) of the Government Code (RQ-0353-KP)

#### Briefs requested by June 5, 2020

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

TRD-202001876  
Lesley French  
General Counsel  
Office of the Attorney General  
Filed: May 12, 2020



## Opinions

### Opinion No. KP-0302

The Honorable Larry Taylor  
Chair, Committee on Education  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Re: Matters related to the Texas Windstorm Insurance Association and its compliance with House Bill 1900 and Senate Bill 615 (RQ-0318-KP)

#### S U M M A R Y

Section 2210.453 of the Insurance Code requires the Association to maintain total available loss funding in an amount not less than the probable maximum loss for a catastrophe year with a probability of one in 100. Pursuant to House Bill 1900, which became effective June 10, 2019, any costs of the reinsurance or alternative financing mechanisms

in excess of the probable maximum loss must be paid by assessments on the Association's members. To the extent the Association purchased reinsurance for the 2019 storm season prior to June 10, 2019, subsection 2210.453(d) would not apply to such purchases.

Section 2210.1052 of the Insurance Code requires the Association's Board to provide notice to member insurers if an assessment may be imposed due to an ultimate loss estimate for an occurrence as determined by the chief financial officer or chief actuary. If the first opportunity for the Board to provide the requisite notice to member insurers about an assessment is at a regularly-scheduled Board meeting, it is unlikely a court would require the Board to call an emergency meeting in addition to the regularly-scheduled meeting in order to provide the requisite notice.

A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute. Vacancies on the Board do not impair the Board's ability to take action, so long as the Board satisfies the quorum requirement.

#### Opinion No. KP-0303

The Honorable Clint T. Griffin  
Schleicher County Attorney  
Post Office Box 506  
Eldorado, Texas 76936

Re: Authority of a county sheriff to donate forfeiture funds under Code of Criminal Procedure article 59.06 to a nonprofit entity providing office space for mental health services, drug counseling services, and services for the victims of domestic abuse (RQ-0317-KP)

#### S U M M A R Y

Article 59.06, subdivision (d-2) of the Code of Criminal Procedure authorizes a county sheriff to donate a portion of forfeiture funds to an entity that assists in the provision of services specified in the article. Pursuant to article III, subsection 52(a) of the Constitution, a donation or other expenditure must satisfy a three-part test: (1) the predominant purpose of the expenditure is to serve a public purpose, (2) the expenditure includes sufficient controls to ensure that the public purpose is carried out, and (3) the public entity receives return benefit. A court would likely find that the sheriff of Schleicher County may donate civil forfeiture funds to a nonprofit entity providing office space to entities providing one or more of the services specified in article 59.06, subdivision (d-2) of the Code of Criminal Procedure provided the sheriff determines that the expenditure is statutorily authorized and comports

with the three-part test under article III, subsection 52(a) of the Texas Constitution.

**Opinion No. KP-0304**

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Whether, when operating under a local disaster declaration, local governments may commandeer private property under Government Code section 418.108 (RQ-0342-KP)

**S U M M A R Y**

Section 418.108 of the Government Code authorizes the presiding officer of the governing body of a political subdivision to declare a local state of disaster and grants local authorities certain powers to respond to the disaster. Section 418.108 does not authorize a county judge, a mayor of a municipality, or any other local government official to commandeer private property to respond to a disaster.

**Opinion No. KP-0305**

The Honorable Briscoe Cain

Chair, House Select Committee on Driver's License Issuance & Renewal

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Extension of driver's license expiration dates due to COVID-19 and its effect on firearms purchases (RQ-0346-KP)

**S U M M A R Y**

In the context of the COVID-19 pandemic and the declared state of disaster in Texas, the Governor suspended provisions of the driver's license regulations regarding license expiration dates. A Texas driver's license that on its face lists an expiration date of March 13, 2020, or later is not expired under the Governor's suspension of laws and related DPS guidance until 60 days after the DPS provides further public notice that normal Driver's License operations have resumed.

Treating the driver's license as if it has no expiration date or adding a period of 60 days to the expiration date shown on the face of the driver's license are not advisable solutions for purposes of the ATF Form 4473 required in a transfer of firearms. The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives regulates and enforces federal laws regarding such transfers, and any guidance provided by this office on the issue is not binding on the ATF. We therefore leave it to the ATF to determine the appropriateness of any entry on ATF Form 4473.

**Opinion No. KP-0306**

The Honorable Dan Flynn

Chair, House Committee on Defense & Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county judge to issue emergency orders regulating the business of pawnshops during a declared disaster (RQ-0347-KP)

**S U M M A R Y**

Section 371.005 of the Finance Code provides that the Legislature has exclusive authority regarding the operation of pawnshops. A local official lacks authority to rewrite state law that the Legislature has expressly removed from local control. A court would likely find that the portions of Dallas County's order purporting to regulate pawnshops by limiting the fees those businesses can charge and changing the length of time they must hold pledged goods are invalid and unenforceable.

After declaring a state of disaster in Texas due to COVID-19, the Governor issued Executive Order GA-21, which "supersedes any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed" under the executive order. Operating a pawnshop provides essential lending services. Thus, Executive Order GA-21 prohibits a political subdivision from issuing a conflicting local order that restricts the operation of pawnshops. Whether a local order may limit the number of customers inside the premises of a pawnshop is a fact question. However, to the extent a pawnshop can operate under DSHS guidelines and consistent CDC recommendations with more than one customer on the premises at a time, a local order that purports to limit the occupancy of the premises to only one customer at a time, without regard to the size of the premises, conflicts with Executive Order GA-21 and, therefore, is superseded.

**Opinion No. KP-0307**

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: Procedures for conducting appraisal review board hearings during the COVID-19 disaster (RQ-0351-KP)

**S U M M A R Y**

Subsection 41.41(a) of the Tax Code entitles a property owner to protest the determination of the appraised value of the owner's property, in addition to other adverse determinations made by a chief appraiser. Subsection 45.45(n) of the Tax Code gives property owners a right to appear in person at a protest hearing. Subsection 41.45(o) of the Tax Code and title 34, subsection 9.805(d) of the Texas Administrative Code do not allow appraisal review boards to require protest hearings be conducted by videoconference in lieu of in-person hearings when requested by a property owner.

Subsection 41.461(a)(3) of the Tax Code requires a chief appraiser to deliver a copy of the protest hearing procedures to property owners initiating a protest. The appraisal district does not satisfy this requirement by only posting the protest procedures on the appraisal district website.

Subsection 41.12(a) of the Tax Code requires an appraisal review board, among other things, to approve the appraisal records by July 20. No later than the date it does so, the board must also deliver written notice to a property owner of any change in the records ordered by the board pursuant to subsection 41.11(a) that will result in an increase in the tax liability of the property owner. The board's failure to deliver notice to a property owner required by section 41.11 nullifies the change in the records to the extent the change is applicable to that property owner. However, the nullification is limited to that subsection and does not apply to all failures to give notice required by the Property Tax Code.

**Opinion No. KP-0308**

The Honorable Dade Phelan

Chair, Committee on State Affairs  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a local governmental entity under an emergency declaration has the authority to prevent an owner of a second home from occupying that property or limiting occupancy of housing based on length of the occupancy's term (RQ-0352-KP)

**S U M M A R Y**

The Texas and United States Constitutions prohibit government action that unlawfully discriminates on the basis of residence. They also ensure citizens receive due process and that the government does not act arbitrarily. To the extent a local ordinance restricting access to or limiting occupancy of private property exceeds these boundaries, it is unconstitutional.

In addition, the Governor declared a state of disaster in Texas due to COVID-19 on March 13, 2020, and issued executive orders related

to the provision of essential services. Executive Order GA-21 supersedes any conflicting order issued by local officials in response to the COVID-19 disaster to the extent that such a local order restricts essential services, such as obtaining residential housing. GA-21 therefore prohibits a local governmental entity, acting under the authority of its emergency powers, from issuing an order that limits occupancy of housing based on length of the occupancy's term.

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TRD-202001875  
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General Counsel  
Office of the Attorney General  
Filed: May 12, 2020

