

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-0462-KP

Requestor:

Mr. Randall Rice
Galveston County Auditor
Post Office Box 1418
Galveston, Texas 77553

Re: Application of section 152.052 of the Local Government Code to an elected official who ran on the platform of eliminating the office if elected (RQ-0462-KP)

Briefs requested by July 1, 2022

RQ-0463-KP

Requestor:

Ms. Kelly Parker
Executive Director
Texas Optometry Board
333 Guadalupe Street, Suite 2-420
Austin, Texas 78701-3942

Re: Authority of the Texas Optometry Board under section 351.005 of the Occupations Code to take action against licensed optometrists who are independent contractors

(RQ-0463-KP)

Briefs requested by July 6, 2022

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

TRD-202202131
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: June 7, 2022



Opinions

Opinion No. KP-0407

The Honorable Jenny P. Dorsey

Nueces County Attorney

901 Leopard Street, Room 207
Corpus Christi, Texas 78401-3689

Re: Whether the doctrine of incompatibility or conflict-of-interest laws prevent simultaneous service as a county commissioner and general manager of a water authority (RQ-0433-KP)

S U M M A R Y

A court would likely conclude that the common-law incompatibility doctrine does not bar a Nueces County commissioner from simultaneously serving as the general manager of the South Texas Water Authority.

A court would likely conclude that the management service agreement between the South Texas Water Authority and a corporation for which a Nueces County commissioner serves as president does not constitute a conflict of interest under section 81.002 or chapter 171 of the Local Government Code.

Opinion No. KP-0408

Mr. Darryl D. Thomas
Dallas County Auditor
1201 Elm Street
Dallas, Texas 75270

Re: Whether county community supervision and corrections departments must remit locally generated funds to the State as unexpended balances at the end of the biennium (RQ-0437-KP)

S U M M A R Y

Chapter 509 of the Government Code governing community supervision and corrections departments defines "state aid" as funds appropriated by the Legislature to the Community Justice Assistance Division of the Texas Department of Criminal Justice to provide assistance to the departments. The term does not include funds locally collected and maintained by a department.

A rider in the General Appropriations Act for the 2021-22 biennium directs the Texas Department of Criminal Justice to require the refund of unexpended and unencumbered state funds from community supervision and corrections departments. Nothing in the rider's language authorizes the Texas Department of Criminal Justice to require the remittance of locally generated funds.

Accordingly, a court would likely conclude the Texas Department of Criminal Justice's Community Justice Assistance Division may not require a department to remit locally generated funds to the State's general revenue.

Opinion No. KP-0409

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

1917 South Interstate 35

Austin, Texas 78741-3702

Re: Whether a licensed professional engineer is authorized to certify a subdivision plat in specific circumstances (RQ-0440-KP)

S U M M A R Y

Subsection 232.023(b) of the Local Government Code establishes county subdivision platting requirements under certain circumstances and provides in subsection 232.023(b)(1) that the plat must be certified by a land surveyor or an engineer. Given the context of subsection 232.023(b) as a whole, a court would likely construe subsection 232.023(b)(1) to require both a land surveyor and an engineer to formally attest to the portions of the subdivision platting requirements corresponding to their respective areas of professional expertise or as otherwise provided in other subparts of subsection 232.023(b). Accordingly, no conflict exists between subsection 232.023(b)(1) and the Professional Land Surveying Practices Act.

Opinion No. KP-0410

The Honorable Tracy O. King

Chair, House Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Whether the Lone Star Infrastructure Protection Act prohibits a business or government entity from entering into an agreement to provide utility service to a factory owned by a company that meets one of the criteria under the Act (RQ-0443-KP)

S U M M A R Y

The Lone Star Infrastructure Protection Act prohibits contracts or other agreements with certain foreign-owned companies in certain circumstances in connection with critical infrastructure in this State. For the Act to apply, the agreement at issue must give a company direct or remote access to or control of critical infrastructure. An agreement to provide standard utility services, by itself, does not grant an entity the ability to access critical infrastructure as contemplated by the Act. The extent to which any specific agreement grants direct or remote access to or control of critical infrastructure will depend in part on the terms of the contract at issue

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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