

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>.)

Opinions

Opinion No. JS-0002

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Questions related to the ownership of the Texas Revolution and Texas Civil War centennial markers and what state agency, if any, is responsible for the preservation and maintenance of the markers (RQ-0491-KP)

SUMMARY

Article III, sections 51 and 52 of the Texas Constitution prohibits a state agency from making an outright grant of state property. A state agency's conveyance of state property must be authorized by the Legislature. To the extent ownership of the historical markers commemorating the centennial of the Republic of Texas and the Civil War has not been lawfully transferred to another party, the markers remain the property of the State of Texas.

Pursuant to Government Code section 2165.001, the Texas Facilities Commission is the custodian of state property and responsible for the proper care and protection of such property. And under Government Code sections 2166.501 and 2166.502, the Facilities Commission has responsibility for certain monuments and memorials. As a result of those duties, a court would likely conclude the Texas Facilities Commission is charged with maintaining the historical markers commemorating the centennial of the Republic of Texas and the Civil War.

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

TRD-202302255

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: June 21, 2023

Opinion No. JS-0003

The Honorable Stephanie Klick

Chair, House Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of school districts or educators to choose what disciplinary action to impose on a student because of race, ethnicity, sex, or gender of the student (RQ-0492-KP)

SUMMARY

Texas Equal Rights Amendment of the Texas Constitution provides that "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." In applying this provision, the Texas Supreme Court will not uphold a state action based on sex, race, color, creed, or national origin unless it is narrowly tailored to serve a compelling governmental interest. Thus, any race-based student disciplinary decision by an educator or school district, whether motivated by guidance from the Office for Civil Rights of the U.S. Department of Education or otherwise, violates state law unless it meets this standard. A court would likely conclude that avoiding a disparate impact cannot serve as a compelling governmental interest that justifies making a race-based student disciplinary decision.

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

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