

# **RECENT ATTORNEY GENERAL OPINIONS**

**Opinions of Interest For Cities**

**Texas City Attorney=s Association Conference**

**June 11-13, 2008**

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF TEXAS  
GREG ABBOTT

RECENT ATTORNEY GENERAL OPINIONS  
OF  
INTEREST TO CITY OFFICIALS

The following is a summary of Attorney General opinions of municipal interest that have been issued by General Greg Abbott in the last year, from GA-546 through GA-625. A categorized index is located at the back of these opinion summaries.

A copy of the opinions noted in this update may be obtained from the Attorney General's website at <http://www.oag.state.tx.us/opinopen/opinions/op50abbott/indexpdf.shtml>. For additional discussion of the opinions, please call the Municipal Affairs Section of the Attorney General's Office at (512) 475-4683 or send e-mail to [julian.grant@oag.state.tx.us](mailto:julian.grant@oag.state.tx.us).



## Annexation Opinions-None

## City/Government Administrative Authority Opinions

### **GA-625     Collective Public Safety Bargaining May Include Payroll Deductions as Mandatory Issue**

The issue of payroll deduction of association dues is a mandatory subject of bargaining under the Fire and Police Employee Relations Act (\_FPERA\_), codified at chapter 174, Local Government Code. Thus, we conclude that a general-law municipality with a population of 10,000 or fewer and a duty to bargain collectively under section 174.105 of the FPERA has implied authority to provide payroll deductions for association dues.

## City/Government Ordinance Authority Opinions

### **GA-558     Rules for Sale/Lease of Land from City to School District**

A home-rule municipality may lease parkland to an independent school district if the lease will serve a public purpose of the municipality in compliance with Local Government Code section 272.005. If the lease requires the use or taking of parkland, the municipality must hold a hearing and make the determinations required by Texas Parks and Wildlife Code chapter 26. With respect to a lease of public land, Local Government Code section 272.005(b)(3) abrogates the requirement in Parks and Wildlife Code chapter 26 that the municipality notify the public of the school district's proposed use or taking of parkland by publishing notice in a qualifying newspaper of general circulation.

A school district may not enter a lease that commits future revenues, but a school district may enter a long-term lease that allows the school district's board of trustees to

terminate the lease at the end of each budget period or is conditioned on the school board's best efforts to obtain and appropriate sufficient funds for the contract, or both. The school district may construct a school and related facilities on the leased property. A home-rule municipality may sell parkland to an independent school district for no less than fair market value. The municipality must comply with Parks and Wildlife Code chapter 26, including its notice and publication requirements, if the sale requires the use or taking of parkland.

### **GA-561 Alcohol Regulations Do Not Apply to BYOBs**

Under the terms of the Texas Alcoholic Beverage Code, a pool hall may operate on a BYOB (\_bring your own bottle\_) basis without a permit or license from the Texas Alcoholic Beverage Commission. Moreover, the City of Corsicana may not by municipal ordinance regulate the possession or consumption of alcoholic beverages within a pool hall that operates on a BYOB basis.

### **Civil Service Opinions**

#### **GA-586 Local Civil Service Rules on Applicant Points Preempted**

A local civil service commission may not adopt a rule that awards additional points to an applicant on the basis of residency within the municipality.

#### **GA-612 No Pay for Officer Witness at Civil Service Hearing**

Under section 142.009 of the Local Government Code, a municipality is required to \_pay a fire fighter or police officer for an appearance as a witness in a criminal or civil suit in which the municipality or political subdivision or government agency is a party in interest if the appearance: (1) is required; (2) is made on time off; and, (3) is made by the fire fighter or police officer in the capacity of a fire fighter or police officer.\_ In section

142.009, the Legislature did not provide, however, that a municipality is required to pay a fire fighter or police officer for an appearance as a witness in a civil service hearing before a hearing examiner when the fire fighter or police officer is subpoenaed in his or her capacity as a fire fighter or police officer and testifies during time off.

## **Compensation/Benefits Opinions**

### **GA-615      No Cap on Increases in Benefits for Vested Employees**

Texas Constitution article XVI, section 66(d) generally prohibits a change in retirement benefits of a non-statewide retirement system that reduces or otherwise impairs \_benefits accrued\_ by persons eligible to receive such benefits, without accumulating additional service, on or after the effective date of the change. Based on a review of the constitutional text and purpose and case law from other jurisdictions construing similar constitutional limits, we construe article XVI, section 66(d) to prohibit a change in the method of determining the compensation base of vested employees if such action reduces or impairs retirement benefits that the employee would have been eligible to receive before the effective date of the change. Accordingly, the City of Fort Worth's recently adopted 12% cap on increases in earnings used to determine the compensation base for calculating retirement benefits contravenes article XVI, section 66(d) to the extent it reduces or impairs retirement benefits that vested employees would have received before the effective date of the change.

## Competitive Bidding Opinions

### **GA-604 County Competitive Bidding Analysis**

It is a county auditor's duty under the statutory mandates of that office to decide whether to approve a claim, bill, or account. A county auditor is not, therefore, bound by the advice or opinion of the county attorney regarding the lawfulness of a claim, bill, or account against a county.

In order to conclude that a project financed in distinct phases violates the competitive bidding requirements of the County Purchasing Act (Act), one must consider the facts, including whether the purchase is undertaken with the intent of avoiding the requirements of the Act and whether the purchase would in normal purchasing practices be made as a single purchase. These considerations involve questions of fact that cannot be resolved in an attorney general opinion.

## Conflict of Interest Opinions-None

## Criminal Procedure Opinions

### *Court Operations*

### **GA-551 Judges Probably May Not Administer Polygraph Tests**

The State Commission on Judicial Conduct (the Commission) is responsible for applying the Code of Judicial Conduct to specific conduct by judges, including justices of the peace. The Commission has opined that the public's confidence in an impartial and independent judiciary is undermined when a person attempts to serve both as a judge and in law enforcement. The Commission must initially determine whether a justice of the peace is prohibited by the Code of Judicial Conduct from administering polygraph examinations to criminal defendants for the criminal district attorney's office.

### **GA-557          Former Judge May Be Prosecutor**

The employment of a former district judge as an assistant district attorney, under the particular circumstances, does not violate constitutional and statutory provisions pertaining to dual office holding or conflicts of interest.

The professional conduct of attorneys is governed by the Texas Disciplinary Rules of Professional Conduct. Such rules include prohibitions against appearances of impropriety and conflicts of interest, but violations thereof are to be determined, in the first instance, by the attorney and the disciplinary arm of the Supreme Court of Texas and the State Bar of Texas. Moreover, questions about violations of the rules of professional conduct cannot be answered in an attorney general opinion because they involve considerations of fact.

### **GA-560          Proper Uses of Justice Court Technology Fund**

The Justice Court Technology Fund established under Code of Criminal Procedure article 102.0173 may be used only for technological enhancements for the justice court and continuing education and training for justice court judges and clerks regarding technological

enhancements. Whether the purchase of a computer for a constable serves as a technological enhancement for the justice court is a fact question to be determined by the commissioners court in the first instance. The Fund may not, however, be used to finance continuing education and training for a constable.

#### **GA-570                    Forum for Felony Cases**

Pursuant to proper assignment by the presiding judge of the judicial region, a statutory county court judge is authorized to hear and decide a felony case in a district court within the judge's county of residence.

#### **GA-574                    New Procedure for Filing School Delinquency Cases**

Under section 25.0951(a) of the Education Code, a school district must file a complaint or referral against a student who has accumulated ten or more unexcused absences within a six-month period in the same school year within ten school days of the student's tenth absence. Failure to file within the requisite time will lead to dismissal of the complaint or referral, but the school district may file a new complaint, listing some of the same absences as well as a subsequent tenth unexcused absence, within ten school days of the tenth absence listed in the complaint or referral. To the extent Attorney General Opinion GA-0417 construes section 25.0951(a) to require filing a complaint or referral within seven school days, it has been superseded by amendments to the statute.

Other than requiring a court to dismiss the complaint or referral, the Education Code imposes no penalties on a school district that fails to file a complaint or referral within ten

school days of the student's tenth unexcused absence.

### **GA-593          Limited Ability to Modify Community Services**

A court does not have general authority to modify the conditions of probation to require the probationer to pay a fee to be used for community supervision and correction department purposes in lieu of performing community services.

Under appropriate circumstances, a court may modify conditions of probation to eliminate a condition requiring the performance of community services. A court may modify conditions of probation to require a probationer to make a specified donation to a local food bank or food pantry in lieu of community service. And a court may modify the conditions of probation to require a payment only if the payment is expressly authorized by law or constitutes a fine, court costs, restitution to the victim, or a condition related personally to the rehabilitation of the defendant.

### **GA-605          Parole Revocation Warrant Procedures**

When an individual arrested on an out-of-county warrant under Code of Criminal Procedure article 15.18 is also arrested on a parole revocation warrant, the magistrate who places the arrested person in jail must immediately notify the sheriff of the county in which the offense is alleged to have been committed of the arrest on both warrants. The sheriff receiving the notice must take charge of the arrested person and have him brought before

the proper court or magistrate. The proper magistrate is an officer of the county identified by Code of Criminal Procedure article 2.09 as a magistrate, and the proper court is the court over which the magistrate presides. The sheriff may take the arrested person before a magistrate of the county where the person is held, or, to provide the magistrate's warnings more expeditiously, before a magistrate in any other county of the state. The sheriff is not required to take the arrested person to a magistrate in the county to which the person was paroled. A magistrate may perform a magistrate's duties under chapter 15 for an alleged offender even though he is not authorized to try the offense on the merits.

## **GA-607            More New Procedures for Filing School Delinquency Cases**

Because they can be harmonized, both of the enactments adopted by the Eightieth Legislature amending Education Code section 25.0951(a) are effective. *Compare* Act of May 25, 2007, 80th Leg., R.S., ch. 908, ' 31, 2007 Tex. Gen. Laws 2274, 2288, *with* Act of May 23, 2007, 80th Leg., R.S., ch. 984, ' 1, 2007 Tex. Gen. Laws 3457, 3457-58. Consequently, section 25.0951(a) requires a school district, within ten school days of the student's tenth absence, to file a complaint against or to refer to juvenile court a student who fails to attend school without excuse for at least ten days or parts of days within a six-month period.

If the school district files an untimely complaint or referral, it may file a new complaint that lists some of the absences named in the dismissed complaint in addition to a subsequent, previously unlisted unexcused absence. The new complaint must be filed within ten days of the tenth absence listed in the new complaint.

## *Police Activities*

### **GA-564          State Law Procedures Govern Retired Officers= Concealed Carry**

A federal statute, 18 U.S.C. § 926C, which authorizes a qualified retired law enforcement officer to carry a concealed firearm if the officer also carries proof that he or she has demonstrated weapons proficiency under state law, does not preempt Texas Occupations Code section 1701.357, which provides a means by which some honorably retired peace officers may obtain the proof required by federal law. Those retired peace officers who cannot obtain certification under section 1701.357 may do so under section 411.199 of the Texas Government Code and section 1701.355 of the Texas Occupations Code.

An honorably retired peace officer who is certified as proficient under Texas Occupations Code section 1701.357 must recertify on an annual basis.

### **GA-573          Reduced CLE Tuition OK**

A policy under which the Texas Municipal Police Association reduces the tuition for required continuing education charged to Association members is rationally related to a legitimate state purpose. The TMPA therefore may charge its members a reduced tuition without contravening constitutional equal protection guarantees, and the Texas Commission on Law Enforcement Officer Standards and Education need not require the TMPA to revise its policy.

## **GA-588          Forfeited Funds Procedures**

Under article 59.03(c)(3) of the Code of Criminal Procedure, a peace officer may require a law enforcement agency to take custody of property, including money, that has been seized as contraband. The law enforcement agency's authority and responsibility to maintain custody under the article, subject to other law, continues until a court directs the property's disposition in a final judgment. The law enforcement agency has reasonable discretion to choose the means of maintaining custody of such property. However, a law enforcement agency does not have independent authority to deposit and maintain money seized as contraband in an interest-bearing account, and may do so only pursuant to court order.

## **GA-591          Flashy Bingo Confirmation Not Electronic Bingo**

A Texas Lottery Commission rule authorizing the \_graphic and dynamic\_ video confirmation device solely to inform players of the winning numbers in a bingo game would not by itself convert the game into electronic bingo.

## **GA-592          No State Raffle Allowed**

The Texas Lottery Commission may not operate a \_raffle-style\_ game, nor may it enter into a contract with a private entity to operate such a game on behalf of the state.

## GA-606 Criminal Trespass Rules for RV Parks

Property used as an RV park is property where criminal trespass may occur. Whether a particular person has committed criminal trespass on such property depends on the circumstances and the effect to be given to any agreement with the owner of the property concerning the person's rights of entry or presence on the property.

## GA-622 Needle Exchange Program Faces Prosecution

In May of 2007, the Legislature authorized a pilot program in Bexar County to prevent the spread of HIV, hepatitis B, hepatitis C, and other infectious and communicable diseases. Tex. Gov't Code Ann. ' 531.0972 (Vernon Supp. 2007).

The legislation provided that the Health and Human Services Commission may provide guidance to Bexar County in establishing such a program. *Id.* (emphasis added). The statute also *allowed* Bexar County to include in its pilot program a needle- and syringe-exchange program. *See id.*

The Texas Controlled Substances Act provides that possession or delivery of drug paraphernalia--including a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body--is an offense that subjects a person to criminal prosecution. Tex. Health & Safety Code Ann. ' 481.002(17)(K) (Vernon Supp. 2007).

Because a needle and syringe exchange is an optional component of Bexar County's pilot disease-prevention program, the program need not include a needle- and syringe-

exchange component. If Bexar County's pilot disease-prevention program does not include a needle and syringe exchange, a person would not be subject to prosecution under section 481.125 of the Health & Safety Code for participating in the program. If, however, Bexar County elects to include such a needle- and syringe-exchange program as part of this overall disease-prevention program, the participants in that program appear to be subject to prosecution under the Texas Controlled Substances Act because the Legislature did not except them from such prosecution.

In contrast to the Bexar County pilot-program statute, the Legislature has, in numerous statutes, adopted express language that excludes certain activities from criminal prosecution under the Texas Controlled Substances Act. Because the Legislature has expressly demonstrated its ability and willingness to exclude otherwise criminal acts from prosecution under the Texas Controlled Substances Act--but did not do so here--this office can neither assume nor legislate such an intent.

Additionally, even if the participants are not subject to prosecution under the Texas Controlled Substances Act, participants may face criminal charges under other Texas or federal statutes.

Finally, any decision to prosecute program participants is a matter of prosecutorial discretion.

### ***Prosecutor Activities***

**GA-562            Rules For Donated Funds to District Attorney**

District attorneys generally are not authorized to accept funds donated to compensate their employees. A commissioners court is authorized to accept such donations, and a commissioners court's acceptance of such donations is necessary before the funds may be used to compensate a district attorney's employees.

A commissioners court that accepts funds donated on condition that the funds be used to compensate the district attorney's employees, but fails to use the funds for that purpose, risks revocation of the donation.

#### **GA-613            No Forfeited Funds for Juvenile Detention Center**

Pursuant to Human Resources Code section 63.017(a), the Harris County Commissioners Court may purchase or lease a juvenile detention facility in another county. The Harris County District Attorney may not use asset forfeiture funds to help purchase the juvenile detention facility for the county, because providing a juvenile detention facility is not an official purpose of that office under Code of Criminal Procedure article 59.06(c)(1) and is therefore not an authorized use of those funds.

#### **GA-619            Rules for Peace Officer ID Cards**

Government Code section 614.122 requires a law enforcement agency or other governmental entity that appoints or employs a peace officer to issue an identification card

to its full-time and part-time peace officers. Investigators appointed by the county attorney are peace officers. Full-time and part-time peace officers are defined as compensated peace officers for purposes of this provision. Section 614.122 does not require the Brazos County Attorney to issue identification cards to uncompensated investigators that he has appointed.

### **Dual Office Holding Opinions**

#### **GA-597          Councilmember May Serve as Unpaid Water Supply Corporation Board Member**

Under Local Government Code section 171.009, the mayor of the Village of Wimberley and a member of the Village of Wimberley City Council may serve simultaneously on the Wimberley Water Supply Corporation's board of directors only if they receive no compensation or other remuneration from the water supply corporation.

### **Elections Opinions**

#### **GA-555          Residency Requirement Valid for College Board**

A candidate for election to the Del Mar College District Board of Regents must comply with the six-month residency requirement in Election Code section 141.001(a)(5)(B). Education Code section 130.082(g) does not exempt candidates from the Election Code requirement.

**GA-585        Lengthened Terms Equals Majority Vote Election to Fill  
Vacancy**

Article XI, section 11(b) of the Texas Constitution requires a municipality that has lengthened its non-civil service officers' terms of office to fill a vacancy by majority vote of the qualified voters at a special election. This constitutional requirement prevails over an inconsistent city charter provision.

**Ethics Opinions-None**

**Hotel Occupancy Tax Opinions-None**

**Land Use Opinions**

**GA-558        Rules for Sale/Lease of Land from City to School District**

A home-rule municipality may lease parkland to an independent school district if the lease will serve a public purpose of the municipality in compliance with Local Government Code section 272.005. If the lease requires the use or taking of parkland, the municipality must hold a hearing and make the determinations required by Texas Parks and Wildlife Code chapter 26. With respect to a lease of public land, Local Government Code section

272.005(b)(3) abrogates the requirement in Parks and Wildlife Code chapter 26 that the municipality notify the public of the school district's proposed use or taking of parkland by publishing notice in a qualifying newspaper of general circulation.

A school district may not enter a lease that commits future revenues, but a school district may enter a long-term lease that allows the school district's board of trustees to terminate the lease at the end of each budget period or is conditioned on the school board's best efforts to obtain and appropriate sufficient funds for the contract, or both. The school district may construct a school and related facilities on the leased property.

A home-rule municipality may sell parkland to an independent school district for no less than fair market value. The municipality must comply with Parks and Wildlife Code chapter 26, including its notice and publication requirements, if the sale requires the use or taking of parkland.

### **GA-577                      Grandfathered Impact Fee Rules**

A municipality's assessment and collection of impact fees are not governed by Local Government Code section 395.016(b) when the municipality approves and imposes the impact fee dollar amounts after June 20, 1987.

### **GA-599                      River Authority Lease Rules**

We find no statutory provision in either the Brazos River Authority's enabling legislation or applicable general laws that specifically prohibits a discounted lease rate and freeze for certain lessees.

As to article III, section 52(a) of the Texas Constitution, it does not preclude offering discounted lease rates and rate freezes to certain lessees if the lease terms do not constitute the gratuitous application of public funds for a private purpose and if the governing body reasonably determines, in the first instance, that: (1) the lease terms have as their predominant purpose the accomplishment of a public, rather than a private, purpose of the BRA; (2) the BRA retains sufficient control to ensure accomplishment of the public purpose and to protect the public's investment; and (3) the public receives a return benefit.

## **GA-616                    County-School Land Use Rules**

Article VII, section 6 of the Texas Constitution does not allow a county to cede or share its authority and responsibilities as sole trustee of county school land and the county permanent school fund. Thus, a county and school districts in the county may not jointly develop or sell rights to natural resources and minerals in county school land by forming a joint venture, a local government corporation, or other association to exercise the county's constitutional authority. A county or school district may not recoup expenses to develop or sell natural resources and mineral rights in county school land from subsequent proceeds or income from such land. The county and the school districts in the county may not share in the revenue realized from the sale of natural resources and mineral rights in such land.

## **Nepotism Opinions**

**GA-595                      City Manager with Full Hiring Power May Hire Relative  
to Councilmember**

The charter of the City of Pharr, a home-rule municipality, delegates to the city manager the power to appoint individuals to positions below the department-head level without consulting the municipal governing board. If the charter provides the city manager with full and final appointing authority to appoint individuals to such positions and reserves no authority for the city's governing body in these appointments, the city manager may appoint an individual who is related to a city commissioner, but who is not related to the city manager, without contravening the nepotism statutes, Government Code chapter 573.

**Open Meetings Opinions-None**

**Open Records Decisions**

**GA-566                      Online Information Databases**

Pursuant to Local Government Code section 191.008, the El Paso County Commissioners Court may adopt an order authorizing the District Clerk and County Clerk to create electronic databases of public information in court case documents and to provide online access to that information. Records maintained by each clerk must be available to the public without charge in the clerk's office, but persons who contract with the county for electronic access to such information may be charged a fee as set by the Commissioners

Court. A court clerk should redact social security numbers and bank account numbers from documents made available online.

## **GA-572            State Employee Information Disclosure**

Under the Public Information Act, the gross salary of public employees is public information. In contrast to gross salary, net salary necessarily involves disclosure of personal financial decisions. Net salary is confidential background financial information protected from disclosure by common-law privacy. Although the Comptroller of Public Accounts should disclose gross salary, the Comptroller may not include net salary information of public employees in the state expenditure database pursuant to House Bill 3430.

House Bill 3430 permits, but does not require, the Comptroller to include the county-of-residence information of payees in the state expenditure database. It prohibits the Comptroller from including the information in the database if the information is identified by a state agency as excepted from required disclosure under the Public Information Act or as confidential.

## **GA-603            PIA=s Application to Private and Quasi-Public Entities**

A private entity that is supported in whole or in part by public funds or that spends public funds is in whole or in part a governmental body subject to the Public Information Act. Whether a private entity, such as a non-profit economic development foundation that receives partial funding from quasi-public utilities, is a governmental body requires a determination regarding the public nature of the funds and whether the public funds are spent or received by the entity in return for specific, measurable services or as general support. Such a determination involves the resolution of facts and is inappropriate for the attorney general opinion process.

Private entities that are in whole or in part governmental bodies under section 552.003, Government Code, are subject to the Public Information Act and must make public information available to the public. Whether information is public information required to be disclosed or information otherwise excepted from disclosure is a matter for an attorney general decision under the Public Information Act.

### **Preemption Opinions**

#### **GA-561            Alcohol Regulations Do Not Apply to BYOBs**

Under the terms of the Texas Alcoholic Beverage Code, a pool hall may operate on a BYOB (bring your own bottle) basis without a permit or license from the Texas Alcoholic Beverage Commission. Moreover, the City of Corsicana may not by municipal ordinance regulate the possession or consumption of alcoholic beverages within a pool hall that operates on a BYOB basis.



The Fox Crossing Water District (the \_District\_), a special-law conservation and reclamation district, is authorized to impose taxes and fees and collect other revenues generated by its operations. No statutory provision, however, prohibits the District from funding all its operation and maintenance expenses from other revenues such as grants, gifts, loans or other revenues received from other sources, including Mills County, Texas (the \_County\_), if the source can legally provide the funds. But no constitutional provision or statute authorizes the County to pay for all of the District's maintenance and operation expenses.

### **Public Street Opinions**

#### **GA-576          County May Fund Certain Municipal Streets**

If a county determines that a particular municipal street is a connecting link or an integral part of a county road or state highway, the county may use the proceeds of road bonds issued under article III, section 52(b) and (c) of the Texas Constitution to construct, maintain, or operate the municipal street.

#### **GA-594          Plat Approval is Not Acceptance of Roads**

A commissioners court's approval of the subdivision plat for filing does not constitute county acceptance of a dedication of roads depicted on the plat. Under Transportation Code chapter 281 counties with a population of 50,000 or less may acquire a public interest in a private road only according to the specific methods set out in that chapter. A

road may be dedicated to a county subject to chapter 281 only by an explicit, written communication to the commissioners court. Adverse possession cannot be shown by maintenance of the road with public funds.

## **Section 4A and 4B Sales Tax Opinions**

### **GA-602          County Sports Venue Funding Rules**

A county, such as Terrell County, may use money in its venue project fund to pay any of the costs of constructing an approved venue project. The county may borrow money to pay such costs, to be repaid from the venue project fund, only by the \_issuance of bonds . . . or other obligations.\_

## **Tax Opinions**

### **GA-548          Time Limit for Request to Waive Penalty/Interest Where Taxing Unit or Appraisal District at Fault**

Tax Code section 33.011 requires a taxing unit to waive penalties and authorizes it to waive interest on a delinquent tax if the taxpayer's failure to pay the tax before delinquency resulted from an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates and if the tax was paid not later than the 21st day after the date the taxpayer knew or should have known of



## **GA-589      Rules for Property Tax Consultants**

Section 1.111(b) of the Texas Tax Code authorizes a designation of agent form to be signed by an \_other person authorized to act on behalf of the owner.\_ A property tax consultant that falls within the statutory language, as construed, is authorized by section 1.111(b) to execute and complete the designation form for the property owner. Questions regarding the validity and sufficiency of a given fee agreement are outside the purview of the opinion process.

The Comptroller of Public Accounts must comply with applicable state law. Whether behavior or conduct violates a statute is a fact question that cannot be answered in the opinion process.

## **GA-590      Overlapping Appraisal District Transition Issues**

Waller County Appraisal District is responsible, on or after January 1, 2008, for litigation filed against the district under Tax Code chapter 42 before January 1, 2008, and involving property outside the district's home county. The general savings clause in the Code Construction Act continues in effect relevant portions of section 6.02, Tax Code, such that the district has continuing authority to defend itself in the pending litigation, and a taxing unit has a continuing obligation to pay the related costs.

## **Tax Abatement/Tax Increment Financing Opinions**

**GA-549            TIF Financing Deduct For School Participation Related to  
                          Actual Funds in TIF**

Section 403.302(d)(4) of the Government Code requires the Texas Comptroller of Public Accounts to deduct the total dollar amount of only the percentage of the captured appraised value of school district property located in a tax increment reinvestment zone that corresponds to the percentage of the tax increment actually paid into the tax increment fund by the school district.

**GA-600            No Conflict with Governing Body Owning Real Property  
                          Upon which Fixture and Improvement Receive Abatement**

A county may enter into a tax abatement agreement with the owner of taxable real property located in a reinvestment zone, and with the owner of a leasehold interest in or improvements on tax-exempt property located in a reinvestment zone. Assuming that the fixtures and improvements owned by a wind turbine company constitute improvements on tax-exempt real property that is located in a reinvestment zone under section 312.402 of the Tax Code, the mere fact that a member of a commissioners court owns the real property on which the fixtures and improvements will be located does not prohibit fixtures and improvements from being the subject of a tax abatement agreement.

A member of a commissioners court generally must abstain from a vote on a matter if it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property distinguishable from its effect on the public. Whether a vote on a particular tax abatement agreement will have such a special economic effect is generally a question of fact that cannot be resolved in an attorney general opinion.

**Tort Liability Opinions-None**

**Utilities Opinions-None**

Greg Abbott Attorney General Opinions

GA-546 to GA-625

Annexation/ETJ Opinions

None

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GA-625

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Criminal Procedure Opinions

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Tort Liability Opinions

None

Utilities Opinions

None