

THE ATTORNEY GENERAL

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Opinions

Opinion No. KP-0078

Mr. Richard A. Hyde, P.E.

Executive Director

Texas Commission on Environmental Quality

Post Office Box 13087

Austin, Texas 78711

Re: Administration of funds received through the federal Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RQ-064-KP)

S U M M A R Y

The federal RESTORE Act provides that its funds shall "be available for expenditure, without further appropriation." The federal Gulf Coast Ecosystem Restoration Council has previously determined that subjecting RESTORE Act funding to the Texas appropriations process would violate this law. The rider in the General Appropriations Act the Legislature passed ultimately draws RESTORE Act funds into the appropriations process and to the State Treasury and grants disapproval authority to an agency that is granted no such authority under the RESTORE Act. Therefore, the rider in the General Appropriations Act is in direct conflict with the federal interpretation of the federal RESTORE Act and is without effect.

Pursuant to section 404.093 of the Government Code, to the extent that the Office of the Governor or the Governor's appointee receives RESTORE Act funds in trust for the benefit of a person or entity other than a state agency, such funds may be deposited outside of the State Treasury in an account for which the Comptroller serves as trustee.

Opinion No. KP-0079

The Honorable C.R. Kit Bramblett

Hudspeth County Attorney

Post Office Box 221528

El Paso, Texas 79913-1528

Re: Administration and audit of accounts maintained by a county sheriff (RQ-0065-KP)

S U M M A R Y

Although the county sheriff has limited authority to maintain certain funds outside of the county treasury, all funds held by the sheriff in

his official capacity are subject to oversight and audit by the county auditor, whether or not they are county funds.

In a county with a population of less than 190,000, unless a statute provides otherwise, a court would have a basis to conclude that there is no authority to require an auditor's countersignature on sheriff's funds properly held outside the county treasury.

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

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Amanda Crawford

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Office of the Attorney General

Filed: May 4, 2016



Opinions

Opinion No. KP-0080

Mr. Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Post Office Box 13225

Austin, Texas 78711-3225

Re: Whether the Texas Board of Professional Geoscientists has implied authority under Occupations Code chapter 1002 to accept and place limits on the voluntary surrender of a license (RQ-0066-KP)

S U M M A R Y

A court would likely determine that the Board of Professional Geoscientists has implied authority under chapter 1002 of the Occupations Code to accept the unilateral, voluntary surrender of a license by a licensee. A court would likely also find that the Board may impose reasonable conditions on its acceptance of a voluntary license surrender.

Opinion No. KP-0081

Ms. Lisa Smith

Bastrop County Auditor

804 Pecan Street

Bastrop, Texas 78602

Re: Whether Tax Code section 33.06 authorizes ad valorem property tax deferral on mixed-use property (RQ-0067-KP)

S U M M A R Y

A court would likely conclude that section 33.06 of the Tax Code impliedly authorizes a district to investigate facts recited in an affidavit for deferral, request additional information, and allow or deny a deferral as warranted by the law and facts. An appraisal district may grant deferral on mixed-use property provided that all uses are compatible with occupancy as a residence homestead. Whether an owner occupies an entire parcel as a residence homestead will depend on the particular facts.

Section 33.06 of the Tax Code does not authorize an appraisal district to require a property owner to provide a survey at the owner's expense

in order to claim entitlement to tax deferral under subsection 33.06(a) of the Tax Code.

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

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