

# THE ATTORNEY GENERAL

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Requests for Opinions, Opinions, Open Records Decisions.

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Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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Requests for Opinions

**RQ-0111-KP**

**Requestor:**

Ms. Jennifer D. Robison

Brown County Auditor

200 South Broadway, No. 106

Brownwood, Texas 76801

Re: Authority of county attorneys regarding payments made in conjunction with pretrial diversion agreements (RQ-0111-KP)

**Briefs requested by July 18, 2016**

**RQ-0112-KP**

**Requestor:**

The Honorable Rebecca R. Walton

Hardin County Attorney

Post Office Box 516

Kountze, Texas 77625

Re: Simultaneous service as a municipal police chief and a constable (RQ-0112-KP)

**Briefs requested by July 18, 2016**

**RQ-0113-KP**

**Requestor:**

The Honorable Byron Cook

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Eminent domain authority to condemn property for the Texas High Speed Railway (RQ-0113-KP)

**Briefs requested by July 19, 2016**

*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-201603120

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: June 20, 2016



Opinions

**Opinion No. KP-0094**

The Honorable Dan Flynn

Chair, Committee on Pensions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

**S U M M A R Y**

Under Texas law, a court is not required in family law disputes to enforce a foreign law if enforcement would be contrary to Texas public policy or if it would violate a party's basic right to due process.

**Opinion No. KP-0095**

The Honorable James Keffer

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a rental property owner's use of an online payment option that is accompanied by a convenience fee involves the imposition of a credit-card surcharge in violation of state law (RQ-0084-KP)

**S U M M A R Y**

A court is likely to conclude that a fee uniformly charged to all online means of payment by an arms-length third-party vendor does not violate the surcharge prohibitions of Finance Code subsection 339.001(a) or Business and Commerce Code section 604A.002. Whether a rental property owner or operator and a third-party vendor of online payment processing services have a true arms-length relationship is a question of fact that cannot be answered in the opinion process.

*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-201603109  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: June 17, 2016



Opinions

**Opinion No. KP-0096**

Mr. Mike Morath  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: Application of section 39.112 of the Education Code to a board of managers in specific circumstances (RQ-0085-KP)

**S U M M A R Y**

Subsection 39.112(e) of the Education Code, as amended by House Bill 1842 of the Eighty-fourth Legislature, governs the period of appointment of a board of managers, except that a board of managers' authority may be extended under subsection (f).

Subsection 39.112(e) of the Education Code, as amended by House Bill 1842, governs the period of appointment of the board of managers of the Beaumont Independent School District.

**Opinion No. KP-0097**

Mr. Mike Morath  
Commissioner of Education  
Texas Education Agency

1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: The legal status of real property described by section 12.128 of the Education Code that is returned to the State from a charter school (RQ-0086-KP)

**S U M M A R Y**

Subsection 12.128(c) of the Education Code provides that the Commissioner of Education shall take possession and assume control of, and supervise the disposition of, public property of an open-enrollment charter school that ceases to operate. In this provision, the Legislature has set aside this returned public property such that it is not unappropriated property for the Permanent School Fund under subsection 43.001(a)(2) of the Education Code.

Chapter 31 of the Natural Resources Code does not authorize the General Land Office ("GLO") to unilaterally direct the disposition of public property returned to the State pursuant to section 12.128, but it provides for GLO involvement in the Commissioner of Education's disposition of such property.

Texas Constitution article III, sections 51 and 52(a) prohibit the Commissioner of Education from gratuitously granting such property to private interests, and article IV, subsection 8.02(h) of the 2015 General Appropriations Act appropriates the proceeds from the disposition of such property. Aside from these provisions, we cannot foreclose the possibility that other law may apply to the Commissioner's disposition of the property.

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

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Amanda Crawford  
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