

# THE ATTORNEY GENERAL

---

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

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

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: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

---

## Opinions

### Opinion No. KP-0098

The Honorable Carlos Omar Garcia

79th Judicial District Attorney

Jim Wells and Brooks Counties

Post Office Drawer 3157

Alice, Texas 78333

Re: Requirements for a municipality's posting of notice regarding the carrying of handguns (RQ-0087-KP)

#### S U M M A R Y

Subsection 46.035(c) of the Penal Code makes it an offense to carry a handgun "in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code" and the entity provided the requisite notice. By specifically limiting the offense to carrying a handgun in "the room or rooms," the Legislature made it clear that it did not intend to prohibit the carrying of handguns throughout an entire building but instead only in the specific room or rooms where an open meeting of a governmental entity is held.

Governmental entities should place their notices that entry with a handgun is prohibited at the entrance to the room or rooms where an open meeting is held. A governmental entity may not provide notice that excludes the carrying of handguns when the room or rooms are used for purposes other than an open meeting.

### Opinion No. KP-0099

Mr. Mike Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether a school district board of trustees may enter into a contract for legal services under a flat fee arrangement (RQ-0088-KP)

#### S U M M A R Y

Under the test articulated by the Texas Supreme Court, a school district's contract for legal services would violate article III, section 52(a) of the Texas Constitution if (1) the expenditure's predominant purpose does not accomplish a public purpose, but instead benefits private par-

ties; (2) sufficient control over the expenditure is not retained to ensure that the public purpose is accomplished; (3) the school district does not receive a return benefit; and (4) the expenditure fails to provide a clear public benefit in return. Whether a public purpose is served by a particular expenditure raises fact questions that cannot be answered in an attorney general opinion and would be a decision for the school district in the first instance, subject to judicial review.

In utilizing this test to evaluate public expenditures, Texas courts have suggested that (1) an incidental benefit to individual trustees does not invalidate the expenditure if the contract is predominantly for the direct accomplishment of a legitimate public purpose of the school district; (2) the principal constitutional concern regarding control measures is not who is implementing them but whether such controls are put into place to begin with; and (3) what constitutes an adequate return benefit depends on a variety of specific circumstances but is called into doubt if there is such a gross disparity in the relative values exchanged as to show unconscionability, bad faith, or fraud.

To the extent that circumstances forming the basis for an alleged violation of the Texas Disciplinary Rules for Professional Conduct suggest that an expenditure does not comport with the requirements of article III, section 52(a), a court would rely on the test articulated by the Texas Supreme Court to make that determination. However, it is unlikely that a court would consider conduct subsequent to a contract's execution in determining whether the contract itself violates article III, section 52(a).

### Opinion No. KP-0100

The Honorable Dan Patrick

Lieutenant Governor of Texas

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Fort Worth Independent School District transgender guidelines violate chapter 26 of the Education Code and whether the superintendent had authority to adopt the guidelines without a vote by the school board or public comment (RQ-0107-KP)

#### S U M M A R Y

Chapter 26 of the Education Code provides that parents must have access to all written records of a school district concerning their child, as well as full information regarding the child's school activities. Attempts to encourage a child to withhold information from his or her parents may be grounds for discipline. To the extent that the Transgender Student Guidelines adopted by the Fort Worth Independent School

District superintendent limit parental access to information about their child and operate to encourage students to withhold information from parents contrary to the provisions in chapter 26, they violate state law.

Chapter 11 of the Education Code requires that boards of trustees adopt policies for the district, while superintendents implement those policies by developing administrative regulations. While a superintendent is authorized to recommend policies to be adopted by the board, chapter 11 requires that policy decisions, like those addressing parental involvement with students' gender identity choices, be addressed by the board of trustees prior to the development of any related administrative regulations.

*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-201603292

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: June 29, 2016

