THE ATTORNEY GENERAL

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Requests for Opinions

RQ-0114-KP

(Withdrawn by Requestor prior to publication)

RQ-0115-KP

Requestor:

The Honorable Sharen Wilson

Tarrant County Criminal District Attorney

401 West Belknap

Fort Worth, Texas 76196

Re: Simultaneous service on the board of trustees of a public library district and on the city council (RQ-0115-KP)

Briefs requested by August 10, 2016

RQ-0116-KP

Requestor:

Mr. William E. Tye

Bowie County Auditor

710 James Bowie Dr.

New Boston, Texas 75570

Re: Authority of a district attorney to use forfeiture funds for certain purposes (RQ-0116-KP)

Briefs requested by August 10, 2016

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

TRD-201603475
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: July 12, 2016

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Opinions

Opinion No. KP-0101

The Honorable Micheal E. Jimerson

Rusk County and District Attorney

115 North Main Street, Suite 302

Henderson, Texas 75652

Re: Whether the Rusk County school district tax violates article VIII, section 1-e of the Texas Constitution (RQ-0090-KP)

S U M M A R Y

In *Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District,* the Texas Supreme Court determined that an ad valorem tax imposed by county education districts was unconstitutional under article VIII, section 1-e of the Texas Constitution because the levy, assessment, and disbursement of revenue was so directed by the State that the tax amounted to a state ad valorem tax. A county equalization tax under former chapter 18 of the Education Code appears to provide a county school board operating thereunder meaningful discretion with regard to the tax such that a court could determine that the tax is not similarly constitutionally infirm under article VIII, section 1-e.

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

TRD-201603383
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: July 7, 2016

♦ ♦ ♦

Opinions

Opinion No. KP-0102

The Honorable Ana Markowski Smith

Val Verde County Attorney

207 East Losoya Street

Del Rio, Texas 78840

Re: Whether a school district board of trustees may fill a vacancy through a special election on a uniform election date more than 180 days from the onset of the vacancy (RQ-0091-KP)

S U M M A R Y

Subsection 11.060 of the Education Code authorizes a board of trustees of an independent school district to fill a vacancy within 180 days of the occurrence of the vacancy by special election. If no uniform election date falls during the 180-day period that would afford enough time

to hold a special election in the manner required by law, subsection 41.004(a) of the Election Code authorizes the board to hold the special election on the first authorized uniform election date following the 180-day period.

Opinion No. KP-0103

The Honorable Charles Schwertner

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

The Honorable Todd Hunter

Chair, Committee on Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The status of Insurance Code article 21.52B, the Any Willing Pharmacy statute, in light of federal court decisions (RQ-0092-KP)

S U M M A R Y

Were a court to address the issue today, it would likely conclude that article 21.52B of the Texas Insurance Code ("Any Willing Pharmacy" statute) is saved from preemption under the federal Employee Retirement Income Security Act of 1974 ("ERISA"), pursuant to the test set forth by the U.S. Supreme Court in Kentucky Ass'n of Health Plans, Inc. v. Miller. However, the current Fifth Circuit Court of Appeals decision in Texas Pharmacy Ass'n v. Prudential Insurance Co. of America, holding that article 21.52B is preempted under ERISA, still stands. Until a court affirmatively concludes that the statute is saved from preemption, we cannot conclude as a matter of law that article 21.52B is enforceable.

Opinion No. KP-0104

Ms. Brandy Lee

Upshur County Auditor

Post Office Box 730

Gilmer, Texas 75644

Re: Whether a county may participate in a nonprofit organization's flag project (RQ-0093-KP)

S U M M A R Y

A county has express authority to expend county funds for the display of the United States flag on county property.

In expending public funds on an organization's flag project, a county commissioners court will avoid violating article III, section 52(a) of the Texas Constitution if it determines in good faith that the expenditure serves a public purpose, it places sufficient controls on the transaction to ensure that the public purpose is carried out, and it ensures that it receives a return benefit.

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

TRD-201603498
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: July 13, 2016