

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>.)

Office of the Attorney General

Opinions

Opinion No. KP-0216

The Honorable Tracy O. King

Chair, Committee on Agriculture and Livestock

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a groundwater conservation district may amend a historic or existing use permit in specific circumstances (RQ-0217-KP)

S U M M A R Y

Under the Texas Supreme Court's opinion in *Guitar Holding Co. v. Hudspeth County Underground Water Conservation District No. 1*, a change in the purpose of the proposed use of water to be produced under a historic or existing use permit is a new use, even if the new use would occur within the district. Whether a district must treat an application for an amended permit as an application for a new-use permit will depend on the particular facts and is a matter for the district to determine, in the first instance, subject to judicial review.

A groundwater conservation district may accept a surrender of a portion of rights to groundwater under a historic or existing use permit and allow the holder to retain the remaining rights not surrendered. A holder of a historic or existing use permit who surrenders a portion of rights subject to the permit may seek a new permit for a new use. A court would likely determine that the uniformity requirements in chapter 36 of the Water Code preclude district rules that would give an advantage to a historic or existing permit holder who seeks new use approval that is not available to other new use permit applicants.

Opinion No. KP-0217

The Honorable Lyle Larson

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the temporary directors of the Southwestern Travis County Groundwater Conservation District (RQ-0218-KP)

S U M M A R Y

A court would likely conclude that the temporary directors of the Southwestern Travis County Groundwater Conservation District had no authority to cancel the 2018 confirmation and candidate election.

A court would also likely conclude that the temporary directors hold office and can exercise those powers expressly given them in section 8871.023 of the Texas Special District Local Laws Code until the initial directors are elected under section 8871.024.

Absent express authority in chapter 8871, a court would likely conclude that the appointing officials may not withdraw their respective appointments.

Certainly, the Legislature has authority to amend chapter 8871. Other potential options to address the disarray resulting from the absence of the confirmation and director election include removal of the temporary directors for misconduct or a quo warranto proceeding challenging the authority of the temporary directors to hold office.

Opinion No. KP-0218

The Honorable Lyle Larson

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether chapter 75 of the Civil Practice and Remedies Code applies to limit the liability of a private property owner on whose property private aircraft lands for purposes of agritourism (RQ-0219-KP)

S U M M A R Y

Chapter 75 of the Civil Practice and Remedies Code limits liability in certain circumstances for the owner, lessee, or occupant of agricultural land. By statutory definition, agritourism occurs only on agricultural land. Thus, chapter 75 applies to property owners conducting agritourism on their agricultural property if they otherwise meet the conditions in chapter 75.

Assuming those conditions are met, if a property owner conducting agritourism on his or her agricultural property invites or grants permission to individuals to enter the premises of the property for recreation, chapter 75 limits the property owner's liability for injuries or property damage occurring on the premises to those invited or given permission to enter, including injuries or damages due to the landing of private aircraft. Chapter 75 does not, however, limit the liability of a property owner who acts with gross negligence, malicious intent, or in bad faith.

Opinion No. KP-0219

The Honorable Lyle Larson
Chair, Committee on Natural Resources
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: The authority of Texas counties to pursue housing programs in specific circumstances (RQ-0220-KP)

S U M M A R Y

Although a county may not expend public funds to solely benefit a private interest, a county may make an expenditure to assist a homeowner to make repairs or subsidize the construction of single- or multi-family housing when the expenditure serves a predominantly public purpose of the county. Whether a particular expenditure serves a predominately public purpose of the county is for the commissioners court to make in the first instance, subject to judicial review.

Section 381.003 of the Local Government Code authorizes housing programs that qualify under federal law as community and economic development programs or housing and community development programs, which generally address the housing needs of persons with low and moderate income.

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

TRD-201804299
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 3, 2018

