Opinion No. KP-0335
The Honorable Elmer C. Beckworth, Jr.
Cherokee County District Attorney
Post Office Box 450
Rusk, Texas 75785

Re: Whether a search warrant and "warrant return" are subject to disclosure under the Public Information Act, or any other law or regulation of the State of Texas, when there is an ongoing criminal investigation (RQ-0344-KP).

SUMMARY
The Public Information Act does not apply to a district clerk holding a search warrant, warrant return, and property inventory on behalf of the judiciary. Instead, the Code of Criminal Procedure governs public access to such documents.

Based on language in Code of Criminal Procedure article 18.011(d)(1) that a court order temporarily sealing a search warrant affidavit "may not . . . prohibit the disclosure of information relating to the contents of a search warrant, the return of a search warrant, or the inventory of property taken pursuant to a search warrant," a court would likely conclude that such documents are subject to public disclosure by a district clerk.

Opinion No. KP-0336
Mr. Charles G. Cooper
Banking Commissioner
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705

Re: Whether a professional employer organization that conducts money transmission as defined in the Finance Code is subject to licensure under the Finance Code, notwithstanding licensure as a professional employer organization under the Labor Code (RQ-0348-KP).

SUMMARY
A person or entity must obtain a money transmission license from the Commissioner of Banking to engage in the money transmission business under chapter 151 of the Texas Finance Code. A person or entity must obtain a license from the Department of Licensing and Regulation to engage in professional employer services involving the compensation of covered employees under chapter 91 of the Labor Code. A professional employer organization's performance of its statutory duties under chapter 91 of the Labor Code pursuant to a professional employer services agreement does not constitute money transmission for which a separate license is required under chapter 151 of the Finance Code.

Opinion No. KP-0337
The Honorable KP-0337
Chair, Committee on Veteran Affairs and Border Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether Paycheck Protection Program loans are authorized investments under subsection 2256.009(a)(4) the Public Funds Investment Act (RQ-0349-KP).

SUMMARY
To qualify as an authorized investment under subsection 2256.009(a)(4) of the Texas Public Funds Investment Act, an investment must be "unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies."

The federal Paycheck Protection Program authorizes loans to small businesses to pay their employees during the COVID-19 disaster. The Small Business Administration currently guarantees 100 percent of those loans, and they are available for purchase on the secondary market. Thus, Paycheck Protection Program loans fully guaranteed by the Small Business Administration generally satisfy the statutory requirements of an authorized investment under subsection 2256.009(a)(4).

Section 2256.006 requires that public investments "be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived." Whether any specific investment satisfies this standard of care required in the Public Funds Investment Act must be determined by the investing entity in the first instance, after reviewing the entity's policies and the specific investment under consideration.

Opinion No. KP-0338
The Honorable Sharen Wilson
Re: Whether an independent school district may enter into a long-term ground lease with a private entity that intends to develop surplus property owned by the district for non-educational purposes, where the expected financial benefit to the district will exceed the current value of a sale of the property (RQ-0350-KP)

**SUMMARY**

Under the common law, an independent school district may lease school district real property to a private entity provided the lease does not interfere with the property's use for district purposes or divest the school district of the exclusive right to manage and control the property. That the real property is surplus and no longer necessary for the operation of the school district is a factor relevant to the district's determination that a proposed lease complies with these limitations.

Texas Constitution article III, section 52(a) prohibits gifts of public funds for private purposes. The District's agreement to permit a private entity to use its land constitutes a thing of value within the scope of article III, section 52(a) but does not violate that provision so long as the District: (1) ensures the expenditure is to accomplish a public purpose of the school district, not to benefit private parties; (2) retains sufficient control over the public funds to ensure the public purpose is accomplished; and (3) ensures the school district receives a return benefit. Whether a particular lease agreement satisfies this three-part test is a determination for the District in the first instance.

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

Lesley French  
General Counsel  
Office of the Attorney General  
Filed: October 20, 2020

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