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OPINION COMMITTEE

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

OFFICE OF THE GOVERNOR

1553

November 27, 2001

RQ-0468-JC

RICK PERRY
GOVERNOR

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

FILE # ML-42298-01
I.D. # 42298

Dear General Cornyn:

Texas Government Code § 441.201 provides that: "In consultation with the [Texas State Library and Archives] commission, a governor may designate an institution of higher education or alternate archival institution in the state, in lieu of the Texas State Library and Archives, as the repository for the records of the executive office of the governor created or received during that governor's term of office."

On or about December 19, 2000, then-Governor George W. Bush signed a Designation Agreement, whereby the records of the Governor's Office created or maintained during his terms of office would be kept at the George Bush Presidential Library. Tex. Govt. Code § 441.201 further provides that the terms of "such alternative repository arrangement" are to be "recorded by the commission through a memorandum of understanding, deposit agreement, or other appropriate documentation." In discussions with the current Office of the Governor, the National Archives and Records Administration, the George Bush Presidential Library, and a representative of former Governor George W. Bush, and the Texas State Library and Archives Commission (TSLAC), some issues have arisen concerning (1) the role of the TSLAC in the process under Tex. Govt. Code § 441.201 and (2) the extent to which the Texas Public Information Act, Tex. Govt. Code chapter 552, applies to gubernatorial records transferred to a non-state repository under Tex. Govt. Code § 441.201. The issue to be resolved is not whether TSLAC maintains title to an outgoing Governor's documents, but instead how this special provision for all governors is carried out to accomplish legislative intent. In order to clarify these matters, I request your official opinion on the following questions:

1. May an outgoing Governor designate a repository other than the TSLAC, pursuant to Tex. Govt. Code § 441.201, without including the TSLAC as a party to the "memorandum of understanding, deposit agreement, or other appropriate documentation" between the outgoing Governor and the repository? In other words, does the TSLAC have the authority to negate an outgoing Governor's repository choice by virtue of its

insistence on signing any agreement or conversely by withholding its signature on any agreement between the outgoing Governor and the repository?

2. Is the outgoing Governor in compliance with the requirement of Tex. Govt. Code § 441.201, that the alternative repository "shall ensure that the records are available to the public," if the agreement with the repository institution provides for reasonable access, without incorporating all the specific requirements of the Texas Public Information Act, Tex. Govt. Code chapter 552?

In order to answer this question, it may be necessary for you to resolve, or at least consider, the following subsidiary issues:

a. What is the role, if any, of the current Governor in responding to requests for documents designated by a former Governor under Tex. Govt. Code § 441.201? I believe none.

b. What is the role, if any, of the Texas State Library and Archives Commission in responding to requests for documents designated by a former Governor under Tex. Govt. Code § 441.201? As long as the records are made available to the public, I believe none.

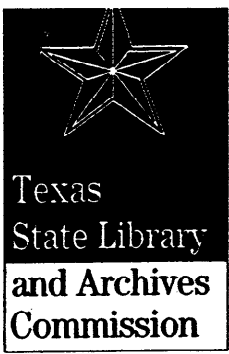
Thank you for your prompt attention to this matter. Further briefing on these issues will follow shortly.

Sincerely,


Rick Perry
Governor

RP/sr

Cc: Susan Gusky
Chair
Opinion Committee
Office of the Attorney General



November 19, 2001

NOV 21 2001
OPINION COMMISSION

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

FILE # ML-42296-01
I.D. # 42296

RE: Request for Attorney General Opinion

RQ-0468-JC

PO Box 12927
Austin, Texas
78711-2927

Dear General Cornyn:

Lorenzo de Zavala
State Archives and
Library Building

On or about December 19, 2000, then-Governor George W. Bush signed a Designation Agreement authorized by Texas Government Code §441.201, providing that the records of the Governor's Office created or maintained during his terms of office would be kept at the George Bush Presidential Library. The statute states that the terms of "such alternative repository arrangement" are to be "recorded by the Commission through a memorandum of understanding, deposit agreement, or other appropriate documentation."

1201 Brazos St.
Austin TX 78701

The Texas State Library and Archives Commission is currently involved in discussions with the Governor's Office, the National Archives and Records Administration, the George Bush Presidential Library, and a representative of former Governor George W. Bush concerning that memorandum of understanding.

www.tsl.state.tx.us

In order that we may conclude the negotiations with a legally appropriate document, we request your official opinion on the following questions concerning the interpretation of Texas Government Code §441.201 and any other laws that might affect these records:

Commission Chairman
Carolyn Palmer

1. Does the State of Texas retain legal title to the Governor's state records after they are transferred to the designated alternate repository?
2. If the State of Texas does retain legal title to the state records, what duties, obligations, and authority reside in the State of Texas because of that title?
3. Is the Texas State Library and Archives Commission the state agency legally responsible for exercising the duties, obligations, and authority for the State?
4. Should the Texas State Library and Archives Commission be a signatory to the memorandum of understanding?
5. What continuing authority does a former Governor have over the records once he or she leaves office?
6. What authority does a current Governor have over the records of a former Governor who has made a designation under this statute?

Members
Chris A. Brisack
Kenneth R. Carr
Sandy Melton
Sandra Pickett
Elizabeth Sanders

Director and Librarian
Peggy D. Rudd

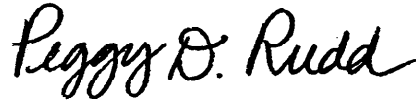
Assistant State Librarian
Edward Seidenberg

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information
work
for all
Texans*

7. Are the records of former Governor Bush, now residing in a federal repository under the control of the National Archives and Records Administration, subject to the Texas Public Information Act, Texas Government Code Chapter 552?
8. When the state records of a former Governor are residing in an alternate repository that is not subject to Chapter 552, is the Texas State Library and Archives Commission the state agency legally responsible for exercising the duties, obligations, and authority of Chapter 552 in regard to these state records?
9. Does the term "executive office of the governor" used in the statute mean something other than all the records of the Governor's Office, including such offices as the Office of Budget and Planning, Office of Criminal Justice, Committee on People with Disabilities, etc.?
10. Does review of records by National Archives and Records Administration or a representative of former Governor Bush waive any rights to an exception from disclosure under the Texas Public Information Act?

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Peggy D. Rudd". The signature is written in a cursive, flowing style.

Peggy D. Rudd
Director and Librarian