

The Texas A&M University System

Office of General Counsel

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FEB 25 2005

OPINION COMMITTEE

February 22, 2005

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

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OPINION COMMITTEE

FILE # ML-44138-05

I.D. # 44138

Re: Request for Opinion
Interpretation of Government Code Section 791(d)(1)

Dear Attorney General Abbott:

RQ-0321-GA

This purpose of this correspondence is to request an opinion on behalf of The Texas A&M University System ("TAMUS). An opinion is sought regarding the following questions:

- (1) For purposes of Government Code Section 791.011(d)(1), may an agency's governing body delegate authority, within the agency, to approve an interlocal contract?
- (2) Is a municipally owned utility subject to a different standard for purposes of Government Code Section 791.011(d)(1)?

Statement of Facts

The Texas A&M University System is an agency of the State of Texas. It is composed of nine universities, seven agencies and a Health Science Center (hereafter jointly referred to as "components").

The Texas Engineering Experiment Station (TEES) is a component of TAMUS. Recently, TEES was involved in contract negotiations with a municipally owned utility. The parties intended to enter into an interlocal agreement under Government Code Section 791.011.

During the negotiation process, a dispute arose regarding interpretation of Government Code Section 791.011(d)(1). The municipally owned utility claimed that the interlocal contract required express approval of TEES' governing body, specifically, the Board of Regents of TAMUS. TEES, however, maintained that express approval of the proposed interlocal contract was not required because the Board of Regents had delegated such authority to TEES as reflected in TAMUS' Policies and Regulations.

Universities

Prairie View A&M University • Tarleton State University • Texas A&M International University • Texas A&M University • Texas A&M University at Galveston • Texas A&M University-Commerce
Texas A&M University-Corpus Christi • Texas A&M University-Kingsville • Texas A&M University-Texarkana • West Texas A&M University

Agencies

Texas Agricultural Experiment Station • Texas Cooperative Extension • Texas Engineering Experiment Station • Texas Engineering Extension Service • Texas Forest Service
Texas Transportation Institute • Texas Veterinary Medical Diagnostic Laboratory • Texas Wildlife Damage Management Service

The Texas A&M University System Health Science Center

Law Applicable to Contracting Parties

The authority to enter into interlocal cooperation contracts is set out in Chapter 791 of the Texas Government Code. The statute was enacted to increase the efficiency and effectiveness of government by authorizing agencies of the state to contract with one another to the greatest extent possible.¹

The elements of an interlocal contract are prescribed by Government Code Section 791.011. There is a difference of opinion regarding interpretation of one of those elements, specifically, Government Code Section 791.011(d)(1) which states that an interlocal contract must

be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body.

Administrative Construction

Components of TAMUS routinely administer and authorize interlocal contracts in accordance with TAMUS policies and regulations. TAMUS policies and regulations do not distinguish interlocal contracts from other contracts.

TAMUS contract administration procedures are governed by TAMUS Policy 25.07 and TAMUS Regulation 25.07.01. Under TAMUS Policy 25.07 and TAMUS Regulation 25.07.01, certain contracts require express approval of the Board of Regents while others do not. For example, contracts involving a stated or implied consideration of more than \$300,000 or those involving a primary term of more than five years require Board of Regents approval.²

Given the large number of contracts entered into each year by individual TAMUS components and by TAMUS, it would be inefficient and impractical to require approval of all contracts by the Board of Regents. Accordingly, the Board of Regents has delegated its authority to approve certain contracts to designees within TAMUS as set forth in TAMUS Policy 25.07 and TAMUS Regulation 25.07.01.

A municipally owned utility has disputed TEES' authority to enter into an interlocal agreement. It claims that TEES must seek Board of Regents approval. The municipally owned utility maintains that all interlocal contracts must be approved by TAMUS' Board

¹ Government Code § 791.001

² TAMUS Policy 25.07, Part 4(2)

of Regents and that the Board of Regents may not delegate such authority to TEES regardless of TAMUS Policies and Regulations.


Summary

An opinion is sought to clarify the meaning of Government Code Section 791.011(d)(1). Is it permissible for the governing body of a state agency to delegate authority, within the agency, to approve an interlocal contract?

In addition, clarification is sought concerning that portion of Government Code Section 791.011(d)(1) pertaining to municipally owned utilities. If a municipally owned utility is permitted to establish procedures to approve interlocal contracts not in excess of \$100,000 does this mean that other governmental entities may not establish similar procedures?

Thank you in advance for your time and consideration of this matter. Should you require additional information to make a determination, please do not hesitate to contact me.

Sincerely,


Delmar L. Cain
General Counsel

DLC:pjs