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OPINION COMMITTEE



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The Senate of The State of Texas

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Senator Royce West
District 23

President Pro Tempore
2006

November 3, 2006

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

RQ-0551-GA

RE: REQUEST FOR OPINION CONCERNING WHETHER COUNTY MAY
CREMATE UNIDENTIFIED DECEASED PAUPERS' REMAINS

Dear Attorney General Abbott:

On behalf of Senator Hinojosa, I would like to request your opinion on whether a county may cremate the remains of unidentified deceased paupers. The issue is of concern to the public due to a potential conflict in the law on this matter and the approximately four-fold increase in the cost to the county in burying unidentified deceased paupers' remains instead of cremating them.

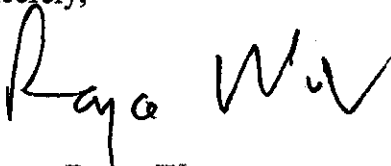
Pursuant to section 694.002 of the Texas Health and Safety Code, the commissioner's court of each county shall provide for the disposition of the body of a deceased pauper. Attorney General opinions construing section 694.002 have determined that the section authorizes cremation of deceased paupers' remains. (Tex. Att'y Gen. Op. No. JC-0228 (2000); Tex. Att'y Gen. Op. No. GA-0235 (2004), Tex. Att'y Gen. Op. No. GA-0301 (2005).)

Because the applicable law allows the commissioner's court to select the manner of disposal, including cremation, and as cremation is substantially less expensive for the county than burial, it is the practice of the Hidalgo County Commissioner's Court to have deceased paupers' remains cremated. For example, it currently costs the county \$250 for each cremation and \$1050 for each burial. The county has, however, now been informed that cremation is no longer an option for unidentified paupers' remains due to section 716.101 of the Texas Health and Safety Code, which provides that a crematory may not accept unidentified human remains for cremation.

If section 716.101 is interpreted as preventing a crematory from accepting unidentified remains from a county (as opposed to accepting them from other persons), it will effectively negate the discretion that section 694.002 has given to the county in terms of selecting the disposal method, and require the county to bury, at substantial additional cost, all unidentified remains despite your earlier decisions to the contrary.

I would appreciate your resolving this issue so that the County will know whether it must undertake the additional expense of buying all unidentified paupers' remains.

Sincerely,

A handwritten signature in black ink, appearing to read "Royce West". The signature is written in a cursive style with a large initial "R" and a stylized "W".

Senator Royce West
State Senator, District 23

cc: The Honorable Juan "Chuy" Hinojosa
Hidalgo County Judge Ramon Garcia
Hidalgo County Commissioner's Court