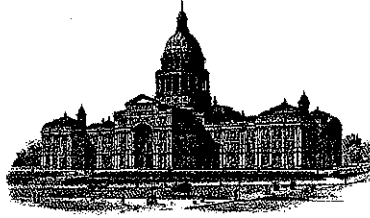


# TEXAS HOUSE OF REPRESENTATIVES

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**JAN 31 2008**

**OPINION COMMITTEE**

**WILL HARTNETT**

January 30, 2008

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

*RQ-0670-GA*

FILE # ML-45530-08

I.D. # 045530

**Re: Request for an Opinion Regarding the Validity of 40 TAC 745.117(4)**

Dear Attorney General Abbott:

I hereby request an opinion of the Attorney General regarding the validity of 40 TAC 745.117(4) promulgated by the Department of Family and Protective Services (the "Department") in 2002.

Questions:

Does Rule 745.117(4) conflict with Section 42.041(a), Human Resources Code because the Rule allows school districts that are unlicensed by the Department to operate short-term child-care programs that are not after-school programs?

If Rule 745.117(4) conflicts with Section 42.041(a), is it invalid?

If Rule 745.117(4) does not violate Section 42.041(a), what is the applicable exemption under Section 42.041(b)?

Background

Rule 745.117(4) creates an exemption from licensing for a program that (a) operates no more than 11 weeks a year; (b) provides care for children who are at least 5 years old and under 14; and (c) is not part of an operation subject to regulation by the Department. As a result of this Rule, an increasing number of summer child-care programs unlicensed by the Department have been offered by school districts. This exemption from regulation raises concerns that these unlicensed programs may not provide the extensive safeguards and protections that are required of licensed programs.



COMMITTEES: JUDICIARY, CHAIRMAN  
REGULATED INDUSTRIES  
DISTRICT 114

Honorable Greg Abbott.  
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Page 2

Section 42.041 of the Human Resources Code requires every child-care facility to be operated by a person holding a license issued by the Department. However, part (b) of this Section contains a list of facilities to which the prohibition in part (a) does not apply. The list is extensive and specific, with detailed descriptions of various exempt facilities, including school based facilities. The specific type of facility exempted by Rule 745.117(4) does not appear to be on this list. Accordingly, the question arises whether Rule 745.117(4) is authorized by, and compatible with, Section 42.041. If not, Rule 745.117(4) should necessarily be invalid.

Thank you for your consideration of this request. If you need further information or clarification, please contact me or David Wilkie, Committee Counsel, at 512-463-0790.

Sincerely,

A handwritten signature in black ink that reads "Will Hartnett". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Will Hartnett