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HUMAN SERVICES, CHAIR  
HIGHER EDUCATION

Patrick M. Rose  
TEXAS STATE REPRESENTATIVE  
DISTRICT 45

COUNTIES:  
BLANCO  
CALDWELL  
HAYS

**RECEIVED**

OCT 15 2008

OPINION COMMITTEE

October 13, 2008

FILE # ML-45854-08  
I.D. # 45854

The Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711

**RQ-0750-GA**

RE: Request an Attorney General's Opinion

Dear General Abbott:

After the passage of House Bill 1717 during the 80<sup>th</sup> Regular Session, a question has arisen relating to the definition of a "device having the appearance of a fire hydrant" under Section 341.0357 of the Health and Safety Code. Subsection (b) defines such a device to be nonfunctioning if it "pumps less than 250 gallons of water per minute."

In portions of Hays County served by Aqua Texas, Inc, including neighborhoods in the Buda, Kyle, Woodcreek and Wimberley areas, this water company has painted black every device within their system having the appearance of a fire hydrant. Aqua Texas has done so without individually testing the flow from each device and admits that the flow from many of the devices exceeds 250 gallons per minute. In doing so, I believe they have violated the intent of the statute.

I would like to request an Attorney General's Opinion regarding the following two questions related to Section 341.0357:

- 1) In order to paint a device black under Section 341.0357, must the utility first determine the flow of that individual device to be less than 250 gallons per minute?
- 2) Does Section 341.0357 allow a water utility to paint all devices within a system black even when the flow from certain devices within that system exceeds 250 gallons per minute?

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or if I may be of assistance to you in any way.

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Sincerely,

A handwritten signature in black ink that reads "Patrick M. Rose". The signature is written in a cursive, slightly slanted style.

Patrick M. Rose

CC: Mr. Rick Beaman  
Buda City Council  
The Honorable Will Conley  
Chief Carroll Czichos  
Mr. Don Ferguson  
The Honorable Miguel Gonzalez  
The Honorable Tom Haley  
The Honorable Glenn Hegar  
Chief Clay Huckaby  
Kyle City Council  
The Honorable Bobby Lane  
Mr. Bob Laughman  
Mr. Tom Mattis  
The Honorable Jim McReynolds  
Mr. Pieter Sybesma  
The Honorable Jeff Wentworth  
The Honorable Gloria Whitehead  
Mr. Kenneth Williams  
Wimberley City Council  
Woodcreek City Council