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**RQ 0980GA**

**COMMITTEE ON CRIMINAL JURISPRUDENCE**

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CHAIRMAN

FILE # ML-46770-11

I.D. # 46770

JUN 27 2011

**OPINION COMMITTEE**

CMRRR#7008 1140 0000 8844 1363

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

Attention: Opinion Request Division

**Re:** Whether Texas Local Government Code §2157.0611 applies to school districts

Dear General Abbott:

I respectfully request an opinion on the above referenced matter that has been brought to my attention. The Donna Independent School District (DISD) came to me about a concern raised in a July 10, 2006, memorandum (attached) to Adrain Johnson, Associate Commissioner, School District Services, pertaining to an investigation of DISD. Specifically, "Concern 1" in the memorandum alleges that DISD violated Texas Local Government Code §2157.0611.

Texas Local Government Code §2157.0611 states:

A catalog purchase or lease that exceeds \$5,000 or that is made under a written contract shall, when possible, be based on an evaluation of at least three catalog offers made to the commission or other state agency by catalog information systems vendors. If at least three catalog offers are not evaluated by the commission or other state agency before a purchase or lease is made that exceeds the threshold amount or is made under a written contract, the commission or other agency shall document the reasons for that fact before making the purchase or lease under Section 2157.063.

DISD's analysis of this issue begins with Texas Local Government Code §2157.02. Code §2157 which states:

"Subchapters A, B, and D of Texas Local Government Code chapter 2157 apply only to a *state agency* to which Chapter 2054 applies." (*emphasis added*)

Under Texas Local Government Code §2054.003, a "*state agency*" is defined as "a department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code." Under this same section, a "*local government*" is defined as "a county, municipality, special district, school district, junior college district, or other political subdivision of the state."

By definition, DISD is a local governing body and is not considered a state agency. Texas Local Government Code §2157.0611 applies only to commissions or other state agencies; thus, Texas Local Government Code §2157.0611 can not apply to DISD.

Moreover, Texas Education Code §44.031 controls the method by which school districts are required to enter into contracts. Section 44.031 states "*all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district: (emphasis added)*

- (1) competitive bidding;
- (2) competitive sealed proposals;
- (3) a request for proposals, for services other than construction services;
- (4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;
- (5) an interlocal contract;
- (6) a design/build contract;
- (7) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;
- (8) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;
- (9) the reverse auction procedure as defined by Section 2155.062(d), Government Code;
- or
- (10) the formation of a political subdivision corporation under Section 304.001, Local Government Code."

DISD takes the position that, pursuant to Texas Education Code §44.031, a school district is free to choose whichever of the above-referenced methods that provides the best value to the district. Competitive bidding is included as an option, but it is not the only option a school district has.

Attorney General Greg Abbott RE: Donna Independent School District

May 5, 2011

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In conclusion, I request your opinion in this question brought by DISD as to whether Texas Local Government Code §2157.0611 applies to school districts too. If there is any further information you need please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete P. Gallego". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Pete P. Gallego

PPG/mp