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OPINION COMMITTEE



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February 14, 2013

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

RQ-1112-GA

Dear General Abbott:

In recent months, confusion has arisen over whether the State of Texas has a legal obligation to financially cover insurance claims in excess of what the Texas Windstorm Insurance Association (TWIA) can pay. Several recent published letters and articles have represented that the State is under a legal obligation to pay claims that TWIA cannot pay. Obviously, this question is of paramount importance to the citizens of the State of Texas. On one hand, if the State has no legal obligation to pay unfunded TWIA claims, recent statements to the contrary could be misleading to TWIA policyholders. On the other hand, if the State does have a legal obligation to essentially act as reinsurer for TWIA's unfunded liabilities, the implication to general revenue could be significant. Therefore, I respectfully request a formal opinion on the following questions:

1. Does the State of Texas have a legal obligation to pay unfunded losses that exceed TWIA's ability to pay? If so, what is the basis of such liability?
2. If the State of Texas has such a legal obligation, is the Legislature required to reserve a sufficient portion of general revenue each biennium, in accord with sound insurance practices, to pay any potential unfunded TWIA liabilities that might arise during that biennium?

Thank you for your attention to these important legal questions that have the possibility of impacting virtually every Texan.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Smithee".

John Smithee

cc: The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Joe Straus, Speaker
Commissioner Eleanor Kitzman, Texas Department of Insurance