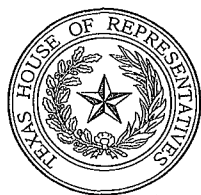


TEXAS HOUSE OF REPRESENTATIVES

HOUSE COMMITTEE ON HUMAN SERVICES
CHAIR



HOUSE COMMITTEE ON JUDICIARY
AND CIVIL JURISPRUDENCE

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OPINION COMMITTEE

RICHARD PEÑA RAYMOND

STATE REPRESENTATIVE

DISTRICT 42

September 21, 2016

FILE # ML-48084-16

ID # 48084

RQ-0130-KP

The Honorable Ken Paxton
Attorney General
State of Texas
209 W. 14th St., 8th Floor
Austin, TX 78701-1614

Re: Attorney General Opinion request relating to a state employee's ability to register a position on legislation pending before the Texas Legislature

Dear General Paxton:

As Chairman of the House Committee on Human Services, I respectfully request an Attorney General Opinion to clarify the ambiguity that currently exists as to the ability of the State Long-term Care Ombudsman to testify "for" or "against" legislation that comes before the Texas Legislature in the normal course of its business.

The State Long-term Care Ombudsman (Ombudsman) has authorization under federal legislation that is not normally accorded other state employees or state officials. The original federal statute at 42 USC 3058(g) dictated that part of the functions of the Ombudsman will be to "analyze, comment on, and monitor the development and implementation of Federal, State, and local laws ... that pertain to the health, safety, welfare, and the rights of the residents, with respect to the adequacy of long-term care facilities and services in the State". Furthermore, the Ombudsman is to recommend changes in such laws. The directive contained in the Older Americans Act of 1965 was recently reauthorized by the Older Americans Act Reauthorization Act of 2016 (P.L. 114-144, Enacted April 19, 2016). Under the reauthorization, the directive remains the same.

The Texas statute, found at Human Resource Code, Subchapter F, Sec. 101A.260, also requires the Ombudsman to analyze and monitor the development and implementation of laws and to recommend any changes.

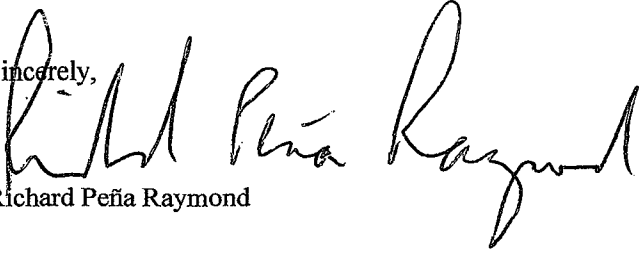
At issue is the matter of how the Ombudsman carries out the duties imposed by federal and state statute. Do those duties permit the Ombudsman to act beyond the scope of restraint normally imposed on state employees or state officials such that the Ombudsman may testify "For" or "Against" proposed legislation, or is the Ombudsman held to the same standard as other state employees or state officials and required to testify "On"? Can the state and federal laws be reconciled with Texas' ethics requirements found in the Government Code that pertain to state agencies and state employees?

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Thank you for providing your opinion on this issue.

Sincerely,



Richard Peña Raymond