

THE ATTORNEY GENERAL

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An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0541-KP

Requestor:

The Honorable Daniel M. Gonzalez

Dimmit County Attorney

103 North 5th Street

Carrizo Springs, Texas 78834

Re: Authority of a county commissioners court to use county labor and equipment to open and close graves in private cemeteries (RQ-0541-KP)

Briefs requested by June 20, 2024

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202402370

Justin Gordon

General Counsel

Office of the Attorney General

Filed: May 28, 2024



Opinions

Opinion No. KP-0466

The Honorable Glenn Hegar

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Application of conflict-of-interest rules to grants awarded by the Texas Opioid Abatement Fund Council (RQ-0533-KP)

S U M M A R Y

In Opinion JM-671, this office concluded that the statutory predecessor to Government Code subsection 572.058(a) did not apply to contracts and so did not abrogate the common law as stated in *Meyers v. Walker*.

Instead, JM-671 concluded that the strict conflict-of-interest rule from *Meyers v. Walker* governed contract formation and voided any contract entered into by an agency if a member of its governmental body had any pecuniary interest in the contract. Since the issuance of JM-671, this office has not reconsidered its reasoning or conclusion. Doing so here, this office concludes it is likely that a court considering the questions addressed in JM-671 would decide them differently today. Accordingly, we hereby overrule JM-671 and its progeny to the extent they conflict with this opinion.

Further, a court newly considering whether subsection 572.058(a) applies to contracts and abrogates the common law would likely conclude that it does. Under subsection 572.058(a), an elected or appointed officer with a conflict must disclose the interest and recuse him or herself from participating in the matter. Accordingly, neither JM-671 nor subsection 572.058(a) is a bar to the award of a grant by the Texas Opioid Abatement Fund Council ("Council") established in chapter 403 of the Government Code. Instead, Council members must publicly disclose their interests in an open meeting of the Council and must refrain from deliberating or voting on matters as directed by section 572.058. Accordingly, Council members may participate in deliberations and vote on matters that do not involve their personal or professional interest.

Government Code chapter 2261 provides for contracting standards and oversight for state contracting. Subsection 2261.252(e) provides that section 2261.252 applies only to a contract for the purchase of goods or services solicited through a purchase order if the amount of the purchase order exceeds \$25,000. We question whether a grant award from the Council is made via a purchase order. But we do not resolve fact questions in an Attorney General Opinion and leave the determination about the application of section 2261.252 to the Council.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

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