

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-0544-KP

Requestor:

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Whether a taxing unit is entitled to recover attorney's fees pursuant to Property Tax Code section 33.48 in certain circumstances (RQ-0544-KP)

Briefs requested by July 12, 2024

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

TRD-202402671

Justin Gordon

General Counsel

Office of the Attorney General

Filed: June 18, 2024



Opinions

Opinion No. KP-0467

Mr. R. Scott Kesner

Chair, Texas Real Estate Commission

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether a person who negotiates a lease of property for the development of a wind power project on behalf of another, for compensation, is required to hold a license issued by the Texas Real Estate Commission (RQ-0523-KP)

S U M M A R Y

Occupations Code chapter 1101 governs the Texas Real Estate Commission and requires licensure of certain professionals engaged in transactions involving real property, including the negotiation of a lease. Subsection 1101.005(9)(A) excludes transactions involving the lease of mineral or other mining interests in real property from the application of chapter 1101. As commonly defined, wind is not

a mineral or mining interest. And no other provision in chapter 1101 expressly excludes transactions involving wind leases. Further, under related Occupations Code chapter 954, governing land services, wind is an "other energy source" and not a "mineral."

For these reasons, a court would likely find that subsection 1101.005(9)(A)'s language "mineral or mining interest" does not include wind such that a person negotiating a lease for property of a wind power project on behalf of another, for compensation, is required to hold a license issued by the Commission.

Opinion No. KP-0468

Mr. Tristan Marquez

Ector County Auditor

1010 East 8th Street, Room 121

Odessa, Texas 79761

Re: The legality of certain actions of the Ector County Utility District Board of Directors (RQ-0524-KP)

S U M M A R Y

Election Code subsection 141.034(a) prohibits a challenge to an application for a place on the ballot as to form, content, and procedure after the fiftieth day before the date of the election for which the application is made. Once that period has passed, any form, content, and procedural insufficiencies in a candidate's application are moot. Thus, a court would likely conclude a person who is elected to office does not unlawfully hold the office as the result of filing a deficient application for a place on the ballot.

Water Code subsection 49.105(a) provides that a vacancy on the board of certain water districts "shall be filled for the unexpired term by appointment of the board not later than the 60th day after the date the vacancy occurs." A court would likely conclude the term "shall" in subsection 49.105(a) is directory in nature.

Local Government Code subsection 178.053(a) authorizes a commissioners court to remove for misconduct the director of a municipal utility district if, among other things, directors of the district are wholly or partially appointed by the commissioners court. Subsection 178.053(a) does not, therefore, apply to a municipal utility district whose directors are elected rather than appointed.

Section 66.001 of the Civil Practice and Remedies Code authorizes an action in quo warranto in certain instances, including when a person unlawfully holds an office or a public officer forfeits his or her office. It imposes no factual threshold which mandates an action in the nature

of quo warranto, but instead lays out the grounds for when the remedy is "available" and gives the Attorney General or a district or county attorney the discretion whether to petition the court.

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

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