THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

January 13, 1989

Mr. Terry S. Bickerton
Cox & Smith
600 NBC Building
San Antonio, Texas 78205

Dear Mr. Bickerton:

This will acknowledge receipt of your letter of December 13, 1988. That letter was assigned ID# 5066; this informal letter ruling is OR89-028.

Your letter states that a mistake of fact occurred regarding OR88-352. In OR88-352, this office held that the Daughters of the Republic of Texas ("DRT") did not have to release information about the dismissal of the DRT's former librarian. That informal letter ruling relied on the DRT's representation to this office that the DRT's library affairs committee was not supported by and did not expend funds received on behalf of the Alamo. As stated in OR88-352, the DRT is subject to the Open Records Act only to the extent it collects, administers, and expends funds on the behalf of public property.

You have now informed the attorney general that the DRT does indeed expend Alamo funds for its library affairs. You assert that the result reached in OR88-352 should be the same regardless of these facts because the information concerns a personnel matter and is exempt under section 3(a)(2) of the act. You also stated that the information concerns a "non-public employee." Finally, you stated that a portion of the minutes contains matters protected from disclosure by the attorney-client privilege. You did not submit copies of the information requested or the minutes referred to in your letter.

The primary issue in determining whether certain private entities are "governmental bodies" for purposes of the Open Records Act is whether the entity is supported in whole or in part by public funds. Attorney General Opinion JM-821 (1987) (and authorities cited therein). Because Alamo funds were expended on the library, library affairs

must be characterized as activities supported in part by public funds. Information concerning those activities is therefore subject to the Open Records Act. See § 2(1)(F); Attorney General Opinion H-841 (1976).

The information requested is subject to the act. Your assertions regarding the attorney-client privilege cannot be addressed due to your failure to submit information for review as required by section 7(b) of the act. Section 3(a)(2) does not exempt the information from disclosure unless the information meets the test for non-disclosure articulated in Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). You have 10 days from receipt of this decision to submit the information for review as provided in section 7(b) of the act.

This informal letter ruling overrules OR88-352 to the extent of any conflict. The attorney general strongly advises you to report accurately the facts underlying any future requests for opinions. Should you have any questions regarding this ruling, please refer to OR89-028.

Yours very truly,

Open Government Section of the Opinion Committee

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of the Opinion Committee
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PB/bra

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