

MEMORANDUM

10-88-14

TO: Jim Mattox (Consultant Rider)

FROM: Rick Gilpin
Article V, section 99; General
SUBJECT: Appropriations Act

COPY TO:

DATE: February 16, 1988

REPLY BY:

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Section 99 of article V, General Appropriations Act for 1988-89, provides:

None of the funds appropriated to a department or agency may be used to enter into a consultant contract with any individual who has been previously employed by the department or agency within the past twelve months.

A question has arisen as to whether this provision applies to attorneys. Although "consulting service" is so broadly defined in section 1(1) of article 6252-11c, V.T.C.S., that it could be read to include an attorney ("the human service of studying or advising an agency under an independent contract"), section 2 of the same act specifically states that its provisions do not apply to "registered professional engineers or registered architects . . . private legal counsel, investment counselors, actuaries, or physicians, dentists, or other medical or dental services providers" If the definition of "consultant" for purposes of section 99 is going to be taken from article 6252-11c, it reasonably follows that article 6252-11c must be read as a whole, with its exemptions included. As a result, "consultant" for purposes of section 99 does not include an attorney.

This conclusion is buttressed by the opinion of the Comptroller. In matters relating to the expenditure of public funds, this office ordinarily accords substantial weight to the Comptroller's construction of a rider to the appropriations act. Unless it is clearly erroneous, we ordinarily follow it. In the present instance, I believe that the Comptroller's interpretation is not only not clearly erroneous, but is consonant with the legislative intent.

cc: Mary Keller
Sarah Shirley
Mike Kitley
Sarah Woelk
Zollie Steakley
Jon Bible

RG/lcd