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MBJ
file # ML-17658-92
ID # 17658

October 8, 1992

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-448

RE: Opinion Request

Dear General Morales:

Article 1118y, Section 23B, provides that an authority established under that Article or under Title 112, Revised Statutes, as a public transportation entity is a governmental unit, as that term is defined by the Texas Tort Claims Act, and all operations of the authority or entity are deemed to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act. The Section also provides that if an independent contractor of the authority or entity performs a necessary function of the authority or entity, the contractor is held liable only to the extent the authority or entity would be liable if the authority or entity itself were performing the function.

Article 1118y, Section 2(11), defines public transportation as the conveyance of passengers and hand-carried packages or baggage of passengers by any mode of transportation.

I would appreciate an opinion on the following:

Does an authority established under Article 1118y, V.A.T.S., or entity created under Title 112, Revised Statutes, that operates a passenger train come within the protection afforded by Article 1118y, Section 23B, in a way that all operations of the authority or entity are deemed to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act?



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Page 2

If the transportation association or entity cited above enters into a contract with a freight railroad to operate the association's or entity's passenger trains over the tracks of the freight railroad, does the freight railroad by providing the use of its track perform a function of the authority or entity such that the freight railroad is liable for damages only to the extent that the authority or entity would be liable if the authority or entity itself were performing the function?

If you would like additional information or particulars, you can contact Michael B. Hughes, Attorney-at-Law, 802 Rosenberg, Galveston, Texas 77550. His telephone number is (409) 763-2481 extension 118.

Your assistance in this matter is greatly appreciated.

Respectfully,

COPY

Chet Brooks
Chairman

CB:pbnh

cc: Mr. Michael B. Hughes