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House of Representatives
Committee on Public Safety

Opinion Committee

KEITH OAKLEY
CHAIRMAN

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July 5, 1994

SJS

FILE # ML-27442-94

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

I.D.# 27442

Re: Duty of local enforcement officers to conduct fingerprinting

Dear General Morales:

Section 80.001 of the Texas Human Resources Code deals with the duty of local law enforcement agencies to perform fingerprinting services for Texas citizens, at their request. That statute reads as follows:

Section 80.001. FINGERPRINTING FOR IDENTIFICATION.

- (a) A state law enforcement agency or the law enforcement agency of any political subdivision of the state shall comply with the request of a person to have a record of his fingerprints made or a record of the fingerprints of a child or ward of the person made.
- (b) A law enforcement agency may not charge for the service provided under this section and may not retain records of fingerprints made under this section unless specifically requested to do so by the person requesting the service."

Many law enforcement agencies in Texas currently provide free fingerprinting services for members of the general public. Others either charge a fee or refuse to do it altogether. Some of the law enforcement agencies that refuse to perform such fingerprinting services have stated that they do not perform free fingerprinting because it is too costly. Despite the language of the statute, they believe the statute did not intend for local law enforcement officers to do free fingerprinting for anyone except children.

Under the Texas Open Records Act, (Section 552.023 of the Texas Government Code), Any person in Texas is entitled to obtain all information on himself or herself that the state or local governments possess in their files. This includes the right of a person to obtain his own criminal history. A criminal history on oneself is often legally required and/or necessary as a practical matter, in order to become a lawyer, physician, teacher, school bus driver, pesticide applicator, day care worker, locksmith, apartment maintenance person, etc. In order for a person to obtain

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a criminal history report on himself or herself from the Texas Department of Public Safety (DPS), the DPS requires positive identification in the form of fingerprints. (A copy of the DPS's application form is enclosed.) The DPS will furnish fingerprint cards for free to any person upon request.

As more employers insist on prospective employees producing their criminal histories as a condition of gaining employment, fingerprinting is becoming increasingly important. Many employers take the position that their employees, customers, tenants, and the children and guests of those persons will likely be safer if dangerous criminals are not employed in certain sensitive positions. When an employment applicant's criminal history is considered, it insures increased protection against the employer being held liable for crimes committed by his employees. This is generally a defense used to substantiate that the employer was not "negligent," when a criminal history check was ascertained prior to the employment of the employees.

Fingerprinting is also very important for child identification, immigration, and other purposes.

I respectfully ask the Attorney General to render an opinion whether local law enforcement agencies in Texas can (1) refuse to provide free fingerprinting services to anyone, (2) impose charges for such services, or (3) place conditions on whether they will provide such fingerprinting services (other than normal conditions of doing it during weekdays or normal office hours when staff is available).

Sincerely,



W. KEITH OAKLEY
State Representative

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Enclosure

cc: The Honorable James E. "Pete" Laney
Mr. David Mintz