



TEXAS DEPARTMENT OF AGRICULTURE

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RICK PERRY
Commissioner

September 20, 1994

SEP 20 1994

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

RQ-741

SECTION

SJS

ML-29242-94

ATTN: Sarah Shirley
Opinions Committee

Re: Request for Attorney General Opinion regarding
Tex. Agric. Code Ann. §76.009 (Vernon Supp. 1994)

29242

Dear General Morales:

The 71st Legislature enacted Senate Bill 489, Section 82, creating the Texas Agriculture Resources Protection Authority (ARPA). This section is now codified as Tex. Agric. Code Ann. §76.009 (Vernon Supp. 1994) (§76.009). ARPA is staffed by the Texas Department of Agriculture (TDA). At the request of the ARPA Board of Directors, I hereby request an official opinion as to the following questions regarding the authority of ARPA under §76.009:

1. Does §76.009 violate the Texas Constitution, particularly Article 2, Section 1, in that it delegates legislative authority without furnishing sufficient and definitive standards for the exercise of that authority?
2. Does §76.009 (g)(10) violate the Texas Constitution, particularly Article 5, Section 1, in that it is an invalid delegation of judicial authority to an administrative agency?
3. Does §76.009 (g)(10) violate the Texas Constitution, particularly Article 1, Section 13, the "open courts" provision, in that it purports to limit appeals of contested administrative matters to another administrative agency rather than allowing judicial appeals?
4. Does §76.009 (g)(10) mandate that appeals from orders entered by an administrative agency for which ARPA is the coordinating body may only be taken to ARPA?
5. Does §76.009 (g)(10) authorize ARPA to hear and determine appeals from orders of all agencies for which it is the coordinating body?
6. Does §76.009 prohibit direct judicial appeals of orders entered by an administrative agency for which ARPA is the coordinating body?
7. Should a conflict exist between §76.009 and the Texas Administrative Procedures Act, Tex. Gov't Code, Chapter 2001, which statute prevails?
8. Does §76.009 provide for the adoption of rules by ARPA to implement §76.009 (g)(10)?

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9. What effect, if any, does coverage by the State Office of Administrative Hearings have on ARPA's ability to adopt rules for implementation of §76.009 (g)(10)?

Your assistance in this matter is appreciated. TDA will submit a brief on these questions and we anticipate other affected agencies will want to do likewise. Please advise us of a briefing schedule when you assign a request number to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. S. Connor". The signature is fluid and cursive, with a large initial "G" and "S".

Geoffrey S. Connor
Assistant Commissioner for Legal Affairs and
General Counsel

cc: State Soil and Water Conservation Board
Texas Agricultural Extension Service
Texas Department of Health
Texas Natural Resources Conservation Commission
Texas Structural Pest Control Board
ARPA Board Members