



**Advisory Commission on
State Emergency Communications**

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EXECUTIVE DIRECTOR

October 22, 1997

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Opinion Commission

RQ-1021

FILE # ML-39860-97
I.D. # 39860

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

RE: REQUEST FOR FORMAL ATTORNEY GENERAL OPINION

Dear General Morales:

The Advisory Commission on State Emergency Communications (ACSEC or advisory commission) requests your formal legal opinion on several critical statutory interpretation questions that are currently before our agency. The questions are as follows:

1. Whether an emergency communication district, as defined in Texas Health and Safety Code Ann. § 771.001(3)(A), that elected to participate in a regional 9-1-1 plan may later withdraw from participation?
2. If an emergency communication district, as defined in Texas Health and Safety Code Ann. § 771.001(3)(A), can withdraw from participation in a regional plan, is that withdrawal effective pursuant to the terms of an interlocal cooperation agreement, such as the agreement between the City of Corpus Christi and the Coastal Bend Council of Governments, or is withdrawal from participation effective only on approval of a regional plan amendment by the advisory commission? If ACSEC has the authority to approve the withdrawal, is ACSEC's authority ministerial or discretionary?

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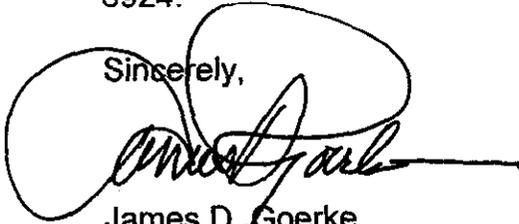
3. On the separate issue of the distribution of *wireless* 9-1-1 service fees as required by *new* Texas Health and Safety Code Ann. § 771.0711(c), ACSEC has an additional question. If either question one or two above is answered in the affirmative as to an emergency communication district's ability to withdraw from the regional plan, must ACSEC distribute a portion of the new wireless 9-1-1 emergency service fee to an emergency communication district, as defined in Texas Health and Safety Code Ann. § 771.001(3)(A), which once participated in a regional plan but is no longer participating in a regional plan?

Attached to this formal opinion request is an ACSEC brief presenting its views and background information on the answers to the above questions. The City of Corpus Christi has also prepared an initial brief stating its views and background information on these matters. Both briefs are enclosed for your review. While ACSEC disagrees with the City of Corpus Christi's legal interpretations of the statute and its application of the facts to the statute, ACSEC does not disagree with the City of Corpus Christi's factual statements in its brief with one possible exception. The exception, to the extent it is a factual assertion as opposed legal argument on its interpretation of the documents, is that ACSEC does not agree that the documentation supports the City of Corpus Christi's assertion that its "participation" was only for a fixed period. ACSEC respectfully requests that both briefs and the documentation attached to the briefs be given full consideration in resolving this matter.

ACSEC wishes to avoid any unnecessary litigation on this matter between itself and the City of Corpus Christi. ACSEC believes that it and the City of Corpus Christi are in agreement that your formal ruling on these issues would be beneficial in avoiding litigation. Under these particular circumstances, ACSEC respectfully requests expedited consideration of this formal opinion request to minimize the potential for litigation. Because collection of the 9-1-1 emergency service fee on access lines within the City of Corpus Christi on or after January 1, 1998 is at issue, a formal opinion before this date could avoid litigation.

Thank you for your attention, consideration, and cooperation in this important matter. If you or anyone on your staff has any questions on this matter, please feel free to contact me at 305-6920 or Richard Muscat (staff counsel) at 305-6924.

Sincerely,



James D. Goerke
Executive Director

cc: Honorable George W. Bush, Governor
Honorable Bob Bullock, Lieutenant Governor
Honorable Pete Laney, Speaker of the House of Representatives
Honorable John Sharp, Comptroller of Public Accounts
Honorable Gene Seaman, State Representative, District 32
Legislative Budget Board (John Keel)
Sunset Advisory Commission (Steve Hopson)
State Auditor's Office (Jeff Lund)
Public Utility Commission of Texas (Eric White)
Marian Drew, Assistant Attorney General, Chief PAR Section
ACSEC Commissioners
9-1-1 Regional Coordinators
Emergency Commination District Directors
Home Rule Cities, 9-1-1 Coordinators
City of Corpus Christi

Enclosures

ACSEC Brief
City of Corpus Christi Brief