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CLYDE ALEXANDER

April 6, 1998

RQ-1119

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

Dear General ~~Morales~~: *Dan,*

The provisions of Sec. 9, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) pertain to administration and enforcement of the Act. Subsections 9(a) and 9(b) confers authority upon the Executive Director of the Texas Department of Housing and Community Affairs "to adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Manufactured Home Construction and Safety Standards Act of 1974 and to provide for the effective enforcement of all HUD-code manufactured home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development."

Subsection 9(d) defines the word "rule" as it is used in the section, and Subsection 9(e) requires that "all rules shall be promulgated and adopted in accordance with Chapter 2001, Government Code, and with the provisions of this section." Subsections 9(d) and 9(e) were amended by Section 9 of H.B. 2703 which was passed by the legislature during the 75th Regular Session, signed into law by the Governor, and became effective on September 1, 1997.

In 1995, TDHCA began promulgating what are commonly known and referred to as "Standard Operating Procedures" (SOPs) to be utilized by department personnel in connection with the regulation of the manufactured housing industry.

H.B. 2703 amended the definition of "rule" in Subsection 9(d) of the Act to read as follows:

"(d) In this section 'rule' means a standard, requirement, regulation, order, and statement of general applicability that implements, interprets, or prescribes law or policy or that describes the procedures or practices of the department. Internal management operating procedures that affect the private rights or procedures of license

holders or consumers, including requirements for the use of a particular form, are also rules. An administrative order that is not of general applicability but that is directed to a specific license holder relating to warranties, the correction of defects, or compliance with the law and regulations is not a rule."

Between September 1, 1997, and December 19, 1997, TDHCA issued at least 33 SOP's, or revisions thereto, consisting of, literally, hundreds of pages. These SOP's are attached hereto for your inspection. I believe that numerous other SOP's have been issued since then, but I do not have copies of them at this time. It appears to me that all of the SOP's attached hereto fall within the definition of "rule" and, therefore, must be adopted through the normal rulemaking process before they are effective. In the opinion of the Attorney General, which of the attached Standard Operating Procedures (SOP's) constitute rules and, therefore, must be adopted through the normal rulemaking process before they are effective?

Thank you for your prompt attention to this matter.

Sincerely,



Clyde Alexander
State Representative
District 12

CA/cj