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Susan D. Reed
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February 17, 1999

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Honorable John Cornyn
Texas Attorney General
Administrative Office
P.O. Box 12548
Austin, Texas 78711

FILE # ML-40684-99 Opinion Committee
I.D. # 40684

RE: Opinion Request regarding authority or a political subdivision to spend public funds to retain a registered lobbyist.

Dear Attorney General Cornyn:

I respectfully request that you issue an opinion in answer to the following question:

Is there any statutory or constitutional prohibition against a County using public funds to pay a *registered lobbyist* to communicate directly with legislative officials and their employees for the purpose of influencing legislation?

The relevant statutory authority is found in Section 305.026 of the Texas Government Code. Section 305.026(a) to the Government Code provides:

Public funds available to a political subdivision may not be used to compensate or reimburse the expenses over \$50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation, unless the person being compensated or reimbursed resides in the district of the member with whom the person communicates or files a written statement with the commission that includes the person's name, the amount of the compensation or reimbursement, and the name of the affected political subdivision.

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The Texas Ethics Commission has written two opinion letters wherein they conclude that the Texas Government Code does not “prohibit the use of public funds to pay a person for communicating with legislative officers or employees to influence legislation if the person has either provided the information required under Government Code Section 305.026(a) or registered as a lobbyist under Gov’t Code Chapter 305.” Copies of the two letters are attached.

This office concurs in the opinion of the Ethics Commission on this subject. However, because the Ethics Commission has advised that it “does not have authority to respond to general questions about the statutory or constitutional authority of a political subdivision to spend public funds for such a purpose”, that our request from an opinion is being sought.

Our review of the current state of the law does not reveal any other statutory or constitutional provision which would prohibit this. Indeed, the Texas Supreme Court, while acknowledging that the basis for any action taken by a Commissioner’s Court in running the business of the county must be grounded in the Constitution or the statutes, noted in its decision in *Guynes v. Galveston County*, 861 S.W.2nd 861 (Tex. 1993) that:

“As the administrative head of county government, a commissioners court also possesses broad implied powers to accomplish its legitimate objectives.”

The legislative history, certainly supports the conclusion of the Texas Ethics Commission. Specifically, legislative history research from the daily floor report regarding Section 305.026 reports that supporters had this to say:

Public entities need to retain the right to representation before the Legislature. It would be unreasonable to deprive public entities of the same access that private companies have, when they have the public interest in mind. Even with professional lobbyists, local governments have not always fared well with the Legislature. The Legislature no longer has the time to deal in depth with complex local issues, increasing the value of information from local government lobbyists even more.

Attorney General Opinion No. DM-325, of February 21, 1995, which addresses whether Tex. Ed. Code §21.939 restricts school districts from using local funds to employ persons to monitor the activities and supply information to legislators and state administrative agencies, offers further support for our conclusion. That opinion contains a footnote that §305.026 anticipates that public funds will

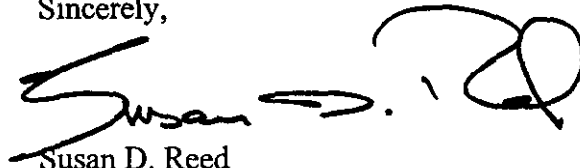
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by used by "... other local public entities for purposes of communicating with legislators.¹ A copy of that opinion is attached for your convenience.

I respectfully request that your examination of this issue take into account: (1) the language of the statute; (2) the legislative history of Section 305.026; (3) the prior Attorney General Opinion on a related issue; (4) the opinions of the Texas Ethics Commission and (5) the case authority providing Commissioner's Court with the requisite broad implied powers to carry out its directives and come to the conclusion that not only is there no statutory or constitutional prohibition against public funds from being expended for the purposes of retaining a registered lobbyist but that Section 305.026 provides the required authority for a county to retain a registered lobbyist.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan D. Reed", with a large, stylized flourish extending to the right.

Susan D. Reed
Criminal District Attorney
Bexar County

¹ It should be noted that if in fact political subdivisions (which have been defined to include school districts, §305.026(b)(3)(A), cannot retain registered lobbyists pursuant to §305.026, there would have been no need for the amendment to the Education Code in 1993 to prohibit a school district from hiring a registered lobbyist. Education Code §21.939.