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THE SENATE
COMMITTEE ON ADMINISTRATION

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July 27, 2006

The Honorable Greg Abbott
Attorney General of Texas
Attn: Stacey Napier
209 W. 14th Street
Austin, Texas 78701

RQ-0519-GA

EXECUTIVE ADMINISTRATION
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ACTION BY Nancy Fuller
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OPINION COMMITTEE

Dear General Abbott:

As chair of the Senate Committee on Administration, I am writing to ask for your opinion on a question relating to the applicability of the Amusement Ride Safety Inspection and Insurance Act to cities that install slides at municipal swimming pools.

The Amusement Ride Safety Inspection and Insurance Act (Chapter 2151, Texas Occupations Code) establishes insurance, inspection and reporting requirements for amusement rides, defined as "any mechanical device or devices that carry or convey passengers along, around or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure or excitement." This definition does not include "nonmechanized playground equipment, including a swing, seesaw, stationary spring-mounted animal feature, rider-propelled merry-go-round, climber, playground slide, trampoline, and physical fitness device." It is unclear whether slides located at municipal swimming pools and aquatics centers fall within either the definition of amusement ride or the exception.

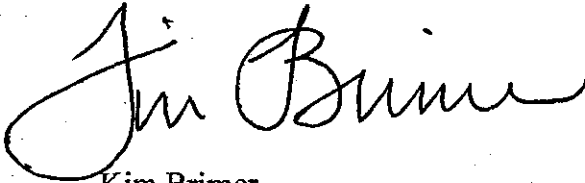
The Amusement Ride Safety Inspection and Insurance Act requires operators of amusement rides to obtain liability insurance in the amount of \$1,000,000 bodily injury and \$500,000 property damage per occurrence for all rides other than those "with a fixed location designed primarily for use by children younger than 13 years of age." This requirement exceeds the liability limits established for municipalities in the Tort Claims Act.

The Texas Tort Claims Act applies to damages arising from a municipality's performance of its governmental functions, "which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public." The operation of swimming pools and recreational facilities is a governmental function. Thus my question

is, since municipalities carry out government functions subject to liability limits established in the Texas Tort Claims Act, then must they also comply with the requirements of the Amusement Ride Safety Inspection and Insurance Act. If municipalities are forced to comply with this act, then they must needlessly purchase insurance policies in excess of their liability limits. The City of Arlington has a compelling interest in resolving this question because Texas Department of Insurance rules implementing provisions of the Act have already been adopted. The City needs to know which, if any, of its facilities will be subject to these new regulations.

Thank you for your consideration of this matter. Should you have any questions, please feel free to contact my office at 512.463.0110.

Cordially,

A handwritten signature in black ink, appearing to read "Kim Brimer". The signature is written in a cursive, flowing style with a large initial "K".

Kim Brimer