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OPINION COMMITTEE

TEXAS STATE SOIL AND WATER CONSERVATION BOARD
Protecting and Enhancing Natural Resources for Tomorrow

January 15, 2019

The Honorable Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0264-KP

RE: Request for an Attorney General Opinion

FILE # ML-48486-19
I.D. # 48486

Dear Attorney General Paxton:

Please accept this request pursuant to Texas Government Code § 402.042 for an Attorney General opinion with respect to the following question:

May a member of the Texas State Soil and Water Conservation Board (State Board) participate in the agency's Financial Assistance Incentive Funding for Soil and Water Conservation Land Improvement Measures Program and receive up to the maximum allowable financial assistance funding of \$15,000.00, in light of Government Code section 2261.252(e) which makes an exception to the conflict of interest provision for purchase orders less than \$25,000?

The Texas State Soil and Water Conservation Board (State Board) manages a cost-share incentive funding program for soil and water conservation land improvement measures. The objective of this program is to:

[P]rovide an incentive to landowners or operators to install soil and water conservation land improvement measures consistent with the purpose of

controlling erosion, conserving water, and/or protecting water quality in accordance with a water quality management plan certified by [the State Board].

31 Tex. Admin. Code § 523.6(a).

The state appropriates funds for a cost-share program to provide an incentive to landowners or operators to install soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality in accordance with a water quality management plan certified by the State Board.

A written agreement between an eligible person for cost-share incentive funding and a local soil and water conservation district is required. 31 Tex. Admin. Code § 523.6(b)(15). The maintenance agreement requires an implementation schedule, specific technical requirements of applicable practice standards and specified life expectancies of practices. 31 Tex. Admin. Code § 523.6(b)(12). The maximum allowable amount of cost-share funds per operating agricultural or silvicultural unit is \$15,000.00, as currently set by the State Board. 31 Tex. Admin. Code § 523.6(e)(5).

An elected member of the Texas State Soil and Water Conservation Board (TSSWCB) asks if the State Board can amend its existing policy and rule (31 Texas Administrative Code section 523.6(f)(2)), which prohibits a board member from entering into a cost-share (financial assistance) agreement while employed or serving on the State Soil and Water Conservation Board, in light of the exception to the conflict of interest provision in Government Code section 2261.252(e). This section of the Government Code states that the conflict of interest provision of section 2261.252(a) only applies to "a contract for the purchase of goods or services solicited through a purchase order if the amount of the purchase order exceeds \$25,000. Tex. Gov't Code § 2261.252(e). "Contract" is defined to include a grant. Tex. Gov't. Code § 2261.002. The award of a cost-share (financial assistance) grant is awarded through the purchase order process.

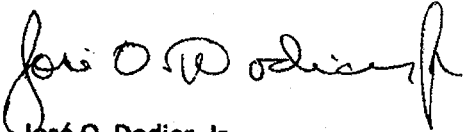
Texas courts have interpreted *Meyers v. Walker* as establishing a strict rule prohibiting a public officer from having a personal financial interest in a contract entered into with a governmental body of which he is a member. 276 S.W. 305 (Tex. Civ. App. – Eastland 1925, no writ). The Office of the Attorney General's Opinion Committee has found that this conflict of interest doctrine applies even in cases in which public officials have a *de minimus* interest. See Attorney General Opinion JM-424 (1986); see also Attorney General Opinion JM-671.

The Board asks whether the statutory exception in Chapter 2261 for purchase orders of less than \$25,000 acts as an exception to the common law conflict-of-interest doctrine established in *Meyers v. Walker*.

The State Board respectfully requests clarification on this issue.

Thank you in advance for your consideration of this matter.

Respectfully,



José O. Dodier, Jr.
Chairman

cc: Rex Isom, Executive Director, Texas State Soil and Water Conservation Board
Veena Mohan, Assistant Attorney General, Office of the Attorney General of Texas