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May 27, 2009

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

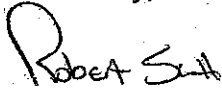
RQ-0806-GA

Dear General Abbott:

Please find enclosed a letter from legal counsel for the Red Oak Independent School District that presents questions related to the application of Section 11.063 of the Education Code to an employment arrangement involving a third-party commercial enterprise. I am requesting your opinion on the issue presented in the enclosed letter.

If you have any questions regarding this request, you may contact David Anderson, General Counsel, at (512) 463-9720.

Sincerely,



Robert Scott
Commissioner of Education

Enclosure

cc: Deron Robinson, Attorney at Law

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Deron Robinson
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May 15, 2009

Mr. Robert Scott
Commissioner of Education
Texas Education Agency
1701 N. Congress Ave.
Travis Building
Austin, Texas 78701

Re: Texas Education Code Section 11.063 School Board Member Eligibility for Employment

Dear Mr. Scott:

On behalf of the Red Oak Independent School District ("ROISD"), we write to ask that your office submit a request for an opinion to the Texas Attorney General regarding the interpretation of Texas Education Code Section 11.063 ("§ 11.063"). Specifically, we would seek an opinion as to the application of this statute to a company contracted with ROISD for staffing purposes. We believe such an opinion would assist school districts in determining employment and staffing eligibility of former trustees.

Senate Bill 1, enacted by the 74th Texas Legislature in 1995, established § 11.063 which reads:

Sec. 11.063. ELIGIBILITY FOR EMPLOYMENT. A trustee of an independent school district may not accept employment with that school district until the first anniversary of the date the trustee's membership on the board ends.

While § 11.063 clearly establishes the waiting period before a trustee is eligible for employment by a school district, a question remains as to the ability of a school district to contract with a company which staffs teachers or administrators who then employs a former school board member and places them at that school district. This question is based, in part, on relevant Texas Attorney General Decisions which, although not directly on point, still allow for some interpretation. For example, the Attorney General has observed that a trustee may be hired as an umpire because that trustee serves as an independent contractor. Tex. Att'y Gen. Op. No. GA-0127 (2003). Additionally, in 1997 the Attorney General issued Letter Opinion No. 97-028

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discussing the nepotism statutes found in Texas Government Code Chapter 573. In this Letter Opinion, the Attorney General determined that the Government Code applies only to individuals and not to businesses. Furthermore, in 2003 the Attorney General determined that retired educators working for third-party contractors who provided educational services to school districts do not forfeit retirement benefits. Tex. Att'y Gen. Op. No. GA-0018 (2003). The Attorney General further found that a retired educator employed by a third party contractor was not considered an employee of the district under section 22.051(c) of the Education Code. Id.

The facts in this matter involve a member of the ROISD Board of Trustees resigning from their position and then becoming employed by a third-party commercial enterprise to provide services to the district of administrative nature. If that company places the former trustee at ROISD before the first anniversary of the date the trustee's membership on the board ended, will this amount to a violation of § 11.063? The statute and subsequent administrative decisions have not addressed this scenario. An opinion on this issue from the Attorney General could be of global benefit to school districts.

As such, we respectfully request your office seek an opinion from the Attorney General regarding the employment eligibility of former school board trustees under § 11.063. If you have any questions or need any additional information, please call me at (817) 810-0717.

Sincerely,



Deron Robinson