

RQ-0541-KP

Daniel M. Gonzalez, Dimmit County Attorney
Dimmit County Courthouse
103 North 5th Street
Carrizo Springs, Texas 78834
830-876-4236 830-876-4219 fax

May 7, 2024

Attorney General Ken Paxton
Office of the Attorney General
Open Records Division
P. O. Box 12548
Austin, TX 78711-2548

Via Certified Mail 7018 0360 0002 1885 6052

Re: Requestor – Dimmit County Commissioners Court
Governmental Body – Dimmit County, Texas

Dear Attorney General Paxton:

The undersigned is the Attorney for The County of Dimmit, Texas. On April 23, 2024, the Dimmit County Attorney's Office was ordered to request an opinion by the Dimmit County Commissioner's Court as to the use of County labor and equipment for private cemeteries to open and close graves by the use of (1) an Interlocal Agreement or memorandum of understanding; or (2) by the County establishing some type of Indigent Program or Pauper's Burial Association to assist County constituents in time of need. Specifically, in opening and closing graves within Dimmit County. A copy of the Dimmit's Commissioners Courts' Minutes for the Special Meeting held on April 23, 2024, is attached hereto as **Exhibit "A"**.

It is the County Attorney's position of the County that the Dimmit County Commissioners are prohibited under Article V, Section 18 of the Texas Constitution and confirmed by Attorney General Opinion No. JC-0329 from digging and closing graves in the County. As County Attorney, I am concerned that the continued practice of the Commissioners for over 50 years, may subject the County of Dimmit to liability, if any existing grave sites are damaged, and that our current insurance will not cover any claims for any unauthorized acts or illegal activities performed by a Commissioner with County labor and equipment. A copy of the Cease-and-Desist letter sent to the Dimmit County Judge and Commissioners, with Attorney General Opinion No. JC-0329 enclosed is attached as **Exhibit "B"**.

County Judge Martha Alicia Gomez-Ponce received a conflicting opinion was from the Texas Association of Counties, which was discussed in executed session and cannot be discussed in this letter.

By way of history, and similar to the issues in Hale County in August 24, 2000, it has long been the practice of the Commissioners to assist the public in opening and closing gravesites in Dimmit County. I began receiving complaints that Commissioners were causing damage to adjacent gravesites. One Commissioner was even banded from going onto or digging graves at one of our private cemeteries on or about August 22, 2022. On April 11, 2024, I received a call by one Commissioner that his fellow Commissioner was using County labor and equipment to break cement so that a local private cemetery could repair a fence that was damaged by an automobile accident. I personally went to the site; I advised the County workers to cease all work and leave the site. I called the Commissioner and advised him that he could not be using County labor and equipment on private property. Also, the cemetery that was not even located in his precinct. The County Commissioners did not authorize the use of county labor and equipment for the purpose of repairing the cemetery fence damaged by the automobile accident. The exchange become heated and he asked why do we dig graves? I advised him that all County Commissioners should not be opening and closing graves. The Commissioner, among other things told me to report the incident to the Sheriff's Department. I immediately called for an officer and filed a report. I returned to my office and sent out the "cease and desist" letter to the County Judge and all the Commissioners, which is attached as **Exhibit "B"**.

Against my advice, the County is attempting to find a way to continue to dig and open graves on Perpetual Care Cemeteries (PPC) or private cemeteries maintained by a religious or fraternal organization. I have been ordered to request an opinion on the following issues:

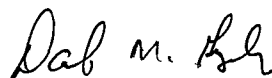
- (1) Can the County of Dimmit enter into an Interlocal Cooperation Contract or agreement with the local private cemetery organization to assist them in digging and opening graves pursuant to Chapter 791 of the Texas Government Code?
- (2) If the County of Dimmit is able to enter into an Interlocal agreement, can they charge a nominal fee to the local private cemetery organizations or local funeral home for assisting in digging and opening graves pursuant to Article III, Sections 51 and 52 of the Texas Constitution provided "(1) it determines in good faith that the expenditure serves a public purpose and (2) places sufficient controls on the transaction to ensure that the public purpose is carried out"? See AG Opinion JC-0113 attached hereto as **Exhibit "C"**.
- (3) Does the County of Dimmit have the authority under Chapter 694 of the Health and Safety Code to establish an Indigent Program or Pauper's Burial Association to continue to open and close graves in Dimmit County, which are owned by private cemetery associations?
- (4) May the County of Dimmit establish a perpetual trust fund to provide for the digging and closing of graves pursuant to Section 713.021 of the Texas Health and Safety Code Section 713.021, which appears to be prohibited by Sections 713.026 and 713.028 of the Texas Health and Safety Code?

Accordingly, we respectfully request the opinion of the Attorney General as to whether the County of Dimmit and other Counties throughout the State Texas can continue to dig and open graves pursuant to Chapter 791 of the Texas Government Code, Chapter 694 of the Health and

Safety Code or Chapter 713 of the Health and Safety Code. It is my understanding that the County of Dimmit is not the only rural County struggling with this issue.

Please contact me if you require additional information with regard to this request for an opinion. I thank you for your prompt and courteous attention to this matter

Sincerely,



Daniel Gonzalez
Dimmit County Attorney

Enc. **Exhibit A** – Minutes for Special Meeting dated April 22, 2024
Exhibit B- Copy of Cease-and-Desist Letter, with AG Opinion JC-0329
Exhibit C- AG Opinion No. JC-0113
Government Code, Title 7. Chapter 791: Interlocal Cooperation Contracts
Health And Safety Code, Title 8. Chapter 694: Burial
Health And Safety Code, Title 8. Chapter 713: Local Regulation of Cemeteries

cc: **Via Regular Mail (Letter Only)**
Martha Alicia Gomez-Ponce
212 N 4th ST.
Carrizo Springs, TX 78834
Without enclosures

ON THIS THE 22ND DAY OF APRIL 2024, THE HONORABLE DIMMIT COUNTY COMMISSIONERS COURT CONVENED IN SPECIAL SESSION, AT THE DIMMIT COUNTY COURTHOUSE "ANNEX", 212 N. 4th St., CARRIZO SPRINGS, TEXAS, WITH MEMBERS PRESENT TO-WIT :

MARTHA ALICIA GOMEZ PONCE
COUNTY JUDGE

JOSE A. URENDA
COMMISSIONER PCT. 1

JUAN R. CARMONA
COMMISSIONER PCT. 3



ALONSO G. CARMONA
COMMISSIONER PCT. 2

VALERIE RUBULCABA
COMMISSIONER PCT. 4

MARIO Z. GARCIA
COUNTY CLERK & EX-OFFICIO CLERK
OF COMMISSIONERS COURT

VISITORS SIGNED-IN: Claudia McDaniel Daniel M. Gonzalez Mary Sandoval Noel Galvan Laura Carmona Andrea Carmona Isabella Carmona Oscar Ortiz Robert Balderas Rodolfo Lopez Melissa Medina Carlos Pereda Maricela Gonzalez Joann Perales

OTHER VISITORS: Mirtha Hernandez Bert Bell Marcos Mendez Valerie Talamantes

<><><> THE FOLLOWING SUBJECTS DISCUSSED, CONSIDERED, PASSED OR ADOPTED TO-WIT : <><><>

- 1. ADMINISTRATIVE
 - 1.1 CALL MEETING TO ORDER
 - 1.2 ROLL CALL
 - 1.3 PLEDGE OF ALLEGIANCE AND SALUTE TO THE TEXAS FLAG
 - 1.4 TESTIMONIAL OATH OF PRESENTERS

County Judge **Martha Alicia Gomez Ponce** Called the Meeting to Order [3:00 PM]; County Clerk **Mario Z Garcia** conducted Roll Call of Court Members with a Full Quorum present and so duly noted for the Record. Court Members led the Pledge of Allegiance and Salute to The Texas Flag. Presenters addressing the Court acknowledged the Testimonial Oath.

1.5 PUBLIC COMMENT [NO RESPONSE]

2. PERSONNEL & POLICY

2.1 DISCUSSION AND APPROPRIATE ACTION : REGARDING COMMISSIONERS AUTHORITY TO ASSIST IN DIGGING GRAVES

2.1 [RE:--Meeting today stems from Letter of Complaint, dated April 11, 2024 from County Attorney to County Judge regarding the use of county equipment/county labor on private property, i.e., at Mt. Hope Cemetery (Carrizo Springs) .
---Comsr. **Juan Carmona** proposed to discuss this matter in Executive Session to which **CA Gonzalez** opposed citing the court denying his Rights to an Open Meeting and discuss his supporting Exhibit Contents submitted to Court Members.
--Court proceeded to enter into Executive Session [3:11 PM]
--Court reconvened into Open Session [4:10 PM]

MOTION: Juan Carmona SECOND: Alonso Carmona THAT THE COMMISSIONERS COURT APPROVE :
Request from County Attorney Daniel Gonzalez to obtain Attorney General Opinion regarding the county, 1) entering into an Interlocal Agreement with Privately-owned Cemeteries, 2) applying a nominal charge/fee for the opening of (digging) and closing of gravesites and 3) Authorize County Judge (Martha Alicia Gomez Ponce) to open negotiations with local Funeral Home and Private Cemetery Associations for County Commissioners to enter cemetery(s) for the opening of and closing of gravesites and Quote/ [sic] Judge Ponce ..therefore with extreme sadness that at this time Commissioners will not be allowed to continue this Service that is desist, as of today, to Open, Close Gravesites and Furthermore to redact/remove Section 5 and Section 6 from said County Attorney Exhibit Contents as presented .

FOR : **Martha Alicia Gomez Ponce, Jose Urenda, Alonso Carmona, Juan Carmona, Valerie Rubalcaba**
AGAINST: None MOTION CARRIED.

3. FINANCIAL

3.1 CLAIM DOCKET

[NON-ACTION ITEM]

4. EXECUTIVE SESSION

[RE: --see Agenda Item 2.1, this Meeting To-Date]

5. ADJOURNMENT

MOTION: Alonso Carmona SECOND: Jose Urenda

THAT THE COMMISSIONERS COURT **APPROVE TO :**

Adjourn Meeting [4:26 PM] .

APPROVED:

MARTHA ALICIA GOMEZ PONCE, COUNTY JUDGE

ATTEST:

SEAL :

MARIO ZUVIA GARCIA, COUNTY CLERK



January 12, 2001

The Honorable Chris D. Prentice
Hale County Attorney
Hale County Attorney's Office
500 Broadway, Suite 80
Plainview, Texas 79072

Opinion No. JC-0329

Re: Whether a county commissioner may use
county property to open and close graves in a
private cemetery (RQ-0275-JC)

Dear Mr. Prentice:

You ask this office whether a county commissioner may use county property to open and close graves in a private cemetery within his precinct at no charge.¹ We conclude that he may not.

As you explain the matter, for more than fifty years a county commissioner in Hale County has used county labor and equipment to open and close graves in a private cemetery. *See* Request Letter, note 1, at 1. The grave digging process takes a total of one hour to open and close a grave using a county worker and the county backhoe. *See id.* at 3. You inform us that the county receives no compensation for this service. *See id.* According to your knowledge, the county commissioners court has not authorized the use of county labor and equipment for this purpose. *See id.* You have advised the county commissioner to cease grave digging. *See id.* at 1. We agree with your conclusion because a county commissioner is without authority to use public labor or equipment for a private purpose.

In essence, your question raises two issues. The first issue is whether a commissioners court may use public funds or public equipment for a private purpose. The second issue raised by your question is whether a county commissioner, acting apart from the commissioners court, may bind a county.

It is well established that public labor and materials may only be used for a public purpose. *See* TEX. CONST. art. III, § 52(a); *Ex parte Conger*, 357 S.W.2d 740, 742 (Tex. 1962) (prohibiting

¹See Letter from Honorable Chris D. Prentice, Hale County Attorney, to Chair, Opinion Committee, Office of the Attorney General at 1 (Aug. 24, 2000) (on file with Opinion Committee) [hereinafter Request Letter].

EXHIBIT B

county commissioners from using county equipment to clear brush from a private lot, benefitting the landowner); Tex. Att'y Gen. LO-89-005, at 1 (stating that "[c]ounty funds may only be spent for public purposes"). The Texas Constitution restricts a county's use of public funds, stating that:

(a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county . . . to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever

TEX. CONST. art. III, § 52(a); *see* Tex. Att'y Gen. Op. No. JC-0080 (1999) at 1 (stating that article III, section 52(a) "restricts the use of public money to the accomplishment of public purposes"). Generally, a public purpose benefits the local population, not merely a select group of persons. *See* 35 DAVID B. BROOKS, TEXAS PRACTICE: COUNTY AND SPECIAL DISTRICT LAW § 12.7 (1989). A commissioners court, as a body, must determine whether a particular use of county resources serves a public purpose. *See* TEX. CONST. art. V, § 18.

However, a county may use county resources for a private cemetery in limited circumstances. Section 713.028 of the Texas Health and Safety Code provides:

(a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, and county equipment to maintain a cemetery that has a grave marker more than 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

TEX. HEALTH & SAFETY CODE ANN. § 713.028(a), (b) (Vernon 1992). Section 713.028 of the Health and Safety Code is inapplicable here. Section 713.028 of the Health and Safety Code specifically addresses the "maintenance" of a cemetery, not the service of burying persons. *See id.* § 713.028(a). You inform us that the county commissioner uses county resources to open and close graves and does not provide any other maintenance or upkeep to the private cemetery. *See* Request Letter, *supra* note 1, at 1. We believe that the opening and closing of new graves does not, by itself, constitute the "maintenance" of a cemetery. *See* IX OXFORD ENGLISH DICTIONARY 225 (2d ed. 1989) (defining maintenance as "[t]he action of keeping in effective condition, in working order, in repair . . . ; the keeping up of"). Even assuming the statute were applicable, based on the information provided, the commissioners court has not authorized the use of county resources under this statute. Nor has it made a finding that the opening and closing of graves in a private cemetery constitutes a public purpose.

In addressing the second issue raised by your question, we note that apart from the commissioners court, an individual commissioner has no authority to bind a county. *See* Tex. Att'y Gen. Op. No. JM-1155 (1990) at 1. Article V, section 18 of the Texas Constitution provides the commissioners court with jurisdiction over all "county business as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed." A county may only act through its

commissioners court. *See* TEX. CONST. art. V, § 18 (granting the commissioners court jurisdiction over county business); *see also* *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993) (noting the authority of the commissioners court). An individual county commissioner, like other county officers, has only the powers expressly conferred by the Texas Constitution or statutes or necessarily implied therefrom. *See* Tex. Att'y Gen. Op. No. JC-0131 (1999) at 2. An individual commissioner may have certain powers as an ex officio road commissioner for his or her precinct. *See* TEX. TRANSP. CODE ANN. § 252.003 (Vernon 1999). "Under the direction of the commissioners court, an ex officio road commissioner is responsible for the vehicles, tools, and machinery belonging to the county and placed in the commissioner's control by the court." *Id.* § 252.006(a). However, the powers granted to a commissioner as an ex officio road commissioner pertain solely to laying out, construction, and building of roads and bridges. *See id.* § 252.006(b). These powers have no relationship to, and do not include the authority to use public equipment to dig or fill graves in a private cemetery. *See id.*

In sum, a commissioners court, as a body, may authorize the use of county labor and equipment solely for a public purpose. An individual commissioner, acting apart from the commissioners court, may not use county labor and equipment to open and close graves in a private cemetery.

S U M M A R Y

An individual county commissioner may not use county labor and equipment to open and close graves in a private cemetery. A commissioners court, acting on behalf of the county, may use county labor and equipment solely for a public purpose.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn", written over a horizontal line.

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

SUSAN D. GUSKY
Chair, Opinion Committee

Polly McCann Pruneda
Assistant Attorney General - Opinion Committee



September 22, 1999

The Honorable Barry B. Telford
Chair, Committee on Calendars
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Opinion No. JC-0113

Re: Whether article III, section 52 of the
Texas Constitution precludes a school district
from participating in "Texas Safe Sports
Week" (RQ-0056)

Dear Representative Telford:

You ask whether article III, section 52 of the Texas Constitution precludes a school district from participating in "Texas Safe Sports Week," a program sponsored by a private foundation. We conclude that article III, section 52 does not preclude a school district from expending school district funds or other resources on "Texas Safe Sports Week" activities if the school district board of trustees (i) determines that any expenditure in connection with the program serves a necessary school district purpose and (ii) places sufficient controls on such expenditures to ensure that the school district purpose is carried out.

With your request, you attach a letter from the Kent Waldrep National Paralysis Foundation (the "Foundation") explaining that the purpose of "Texas Safe Sports Week" is to "provide educational materials to school administrations [and] athletic staffs;" "to create a public awareness that there is a risk involved in all life activities" and of "the benefits of athletics in the educational setting;" and "to raise funds for research into the prevention and rehabilitation of athletic injury." Letter from Kent Waldrep, President and CEO, Kent Waldrep National Paralysis Foundation, to Honorable John Cornyn, Attorney General (Apr. 1, 1999) (on file with Opinion Committee). Your request letter indicates that the Foundation is particularly concerned about Attorney General Opinion JM-431, a 1986 opinion of this office that concludes that article III, section 52 precludes a county commissioner from using county funds or personnel to collect funds for the American Red Cross for earthquake victims. *See* Tex. Att'y Gen. Op. No. JM-431 (1986) at 2-3. It also concludes, however, that incidental use of space in the county courthouse for aid collection efforts does not violate article III, section 52. *See id.* at 4. Based on the description of "Texas Safe Sports Week" and your reference to Attorney General Opinion JM-431, we gather that your primary concern is whether school districts may use school district funds and other resources, including personnel and property, to raise funds for the Foundation in light of article III, section 52.

Article III, section 52(a) prohibits the legislature from authorizing any political subdivision of the state "to lend its credit or to grant public money or thing of value in aid of, or to any

EXHIBIT C

individual, association or corporation whatsoever.” TEX. CONST. art. III, § 52(a). A similar provision in article III, section 51 states that “[t]he Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever.” *Id.* § 51. The purpose of article III, sections 51 and 52 is the same — to prevent the gratuitous application of public funds to private individuals or entities. *See Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928); *Graves v. Morales*, 923 S.W.2d 754, 757 (Tex. App.—Austin 1996, writ denied). But the constitution does not bar a governmental expenditure that benefits a private interest if it is made for the direct accomplishment of a legitimate public purpose. *See Byrd*, 6 S.W.2d at 740. “A transfer of funds for a public purpose, with a clear public benefit received in return, does not amount to a lending of credit or grant of public funds in violation of article III, sections 51 and 52.” *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995).

Attorneys General have long opined that sections 51 and 52 do not preclude the state or a political subdivision from making an expenditure of public money that benefits a private person or entity if the appropriate governing body (i) determines in good faith that the expenditure serves a public purpose and (ii) places sufficient controls on the transaction to ensure that the public purpose is carried out. *See, e.g.*, Tex. Att’y Gen. Op. Nos. DM-394 (1996), DM-256 (1993) at 2-3, JM-1146 (1990), JM-551 (1986), H-966 (1977). In the case of independent school districts, the board of trustees must determine that an expenditure serves a valid school district purpose, and must impose sufficient controls, subject to judicial review. *See Tex. Att’y Gen. Op. No. DM-256 (1993) at 2-3* (an independent school district board of trustees must determine in first instance that provision of assistance to nonprofit foundation serves a school district purpose under article III, section 52); Tex. Att’y Gen. LO-93-93, at 2-3 (an independent school district board of trustees must determine in first instance that the use of school district general funds to award college scholarships to high school graduates based on academic ranking serves a school district purpose under article III, section 52). In addition, a board of trustees is limited by statute to expending school district funds for “purposes necessary in the conduct of the public schools,” TEX. EDUC. CODE ANN. § 45.105(c) (Vernon Supp. 1999) (local school funds may be used for “purposes necessary in the conduct of the public schools determined by the board of trustees”); Tex. Att’y Gen. Op. No. JM-1265 (1990) at 3 (opining that term “necessary” in predecessor to section 45.105(c) of the Education Code “appears to mean appropriate or conducive to the conduct of a public school rather than indispensable thereto”), and must use school property for school purposes, *see Tex. Att’y Gen. Op. No. DM-256 (1993) at 3*.

Accordingly, we conclude that article III, section 52 does not preclude a school district from expending school district funds and other resources on “Texas Safe Sports Week” activities if the school district board of trustees (i) determines that any expenditure in connection with the program serves a necessary school district purpose and (ii) places sufficient controls on such expenditures to ensure that the school district purpose is carried out. We caution, however, that judicial and attorney general opinions construe article III, section 52 to preclude political subdivisions from making unconditional gifts or donations to private entities — expenditures which, by definition, lack sufficient controls to ensure that an authorized public purpose is achieved. *See, e.g., Kordus v. City of Garland*, 561 S.W.2d 260 (Tex. Civ. App.—Tyler 1978, writ ref’d n.r.e.) (holding that taxpayer

had standing to bring action against city to enjoin it from making donations to private corporation in violation of article III, section 52) (citing Tex. Att'y Gen. Op. No. H-397 (1974)); Tex. Atty Gen. Op. Nos. JM-431 (1986) (county may not donate funds or personnel to raise funds for American Red Cross for earthquake victims); MW-329 (1981) (concluding that because a county not authorized to provide assistance to the disabled and therefore could not contract for such services, a contribution to a nonprofit organization organized to provide such assistance would violate article III, section 52); H-1189 (1978) (unconditional grant of funds by county to private day care would constitute a donation of public funds in violation of article III, section 52); H-397 (1974) (county may not pay dues to chamber of commerce); M-661 (1970) (county may not offer grant of public funds to private religious charitable institutions); Tex. Att'y Gen. LO-96-035, at 2 (because article III, section 52 prohibits "outright gifts and donations to private entities," county may not donate county tax funds to nonprofit industrial development organization).¹ This construction is of long-standing. *See, e.g.*, Tex. Att'y Gen. Op. Nos. O-7197 (1946) (county may not donate county funds to the building within that county of a privately-chartered cooperative hospital); O-5563 (1943) (county may not contribute to private charitable institutions, including homes for the elderly and homes for impoverished children); O-1001 (1939) (county may not contribute public funds to Tuberculosis Association, American National Red Cross or to any other private charitable organization). Thus, article III, section 52 prohibits school districts from donating school district funds or other resources to the Foundation. But a school district may expend school district funds or other resources in connection with the fund raising activities of the Foundation if the board of trustees (i) determines that the activities serve a necessary school district purpose, such as student education or instruction, and (ii) imposes sufficient controls to ensure that the school district purpose is achieved.

¹See also Tex. Att'y Gen. LO-96-035, at 2 n.1 (noting that while some attorney general opinions have concluded that certain types of "donations" are permissible under article III, section 52, use of the term "donation" in connection with those expenditures is a misnomer given that the opinions require those expenditures to serve a public purpose and to include sufficient controls to ensure public purpose is achieved).

S U M M A R Y

Article III, section 52 of the Texas Constitution does not preclude a school district from expending school district funds or other resources on "Texas Safe Sports Week" activities if the school district board of trustees (i) determines that any expenditure in connection with the program serves a necessary school district purpose and (ii) places sufficient controls on such expenditures to ensure that the school district purpose is carried out.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

Mary R. Crouter
Assistant Attorney General - Opinion Committee

GOVERNMENT CODE

TITLE 7. INTERGOVERNMENTAL RELATIONS

CHAPTER 791. INTERLOCAL COOPERATION CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 791.001. PURPOSE. The purpose of this chapter is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.002. SHORT TITLE. This chapter may be cited as the Interlocal Cooperation Act.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.003. DEFINITIONS. In this chapter:

(1) "Administrative functions" means functions normally associated with the routine operation of government, including tax assessment and collection, personnel services, purchasing, records management services, data processing, warehousing, equipment repair, and printing.

(2) "Interlocal contract" means a contract or agreement made under this chapter.

(3) "Governmental functions and services" means all or part of a function or service in any of the following areas:

- (A) police protection and detention services;
- (B) fire protection;
- (C) streets, roads, and drainage;
- (D) public health and welfare;
- (E) parks and recreation;
- (F) library and museum services;
- (G) records center services;
- (H) waste disposal;
- (I) planning;
- (J) engineering;
- (K) administrative functions;

(L) public funds investment;

(M) comprehensive health care and hospital services; or

(N) other governmental functions in which the contracting parties are mutually interested.

(4) "Local government" means a:

(A) county, municipality, special district, junior college district, or other political subdivision of this state or another state;

(B) local government corporation created under Subchapter D, Chapter 431, Transportation Code;

(C) political subdivision corporation created under Chapter 304, Local Government Code;

(D) local workforce development board created under Section 2308.253; or

(E) combination of two or more entities described by Paragraph (A), (B), (C), or (D).

(5) "Political subdivision" includes any corporate and political entity organized under state law.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 823, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 98, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 301, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1317 (H.B. 3384), Sec. 1, eff. June 18, 2005.

Sec. 791.004. INTERLOCAL CONTRACT; DUAL OFFICE HOLDING. A person acting under an interlocal contract does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.005. EFFECT OF CHAPTER. This chapter does not affect an act done or a right, duty, or penalty existing before May 31, 1971.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.006. LIABILITY IN FIRE PROTECTION CONTRACT OR PROVISION OF LAW ENFORCEMENT SERVICES. (a) If governmental units contract under this chapter to furnish or obtain services of a fire department, such as training, fire suppression, fire fighting, ambulance services, hazardous materials response services, fire and rescue services, or paramedic services, the governmental unit that would have been responsible for furnishing the services in the absence of the contract is responsible for any civil liability that arises from the furnishing of those services.

(a-1) Notwithstanding Subsection (a), if a municipality, county, rural fire prevention district, emergency services district, fire protection agency, regional planning commission, or joint board enters into a contract with a governmental unit under this chapter to furnish or obtain fire or emergency services, the parties to the contract may agree to assign responsibility for civil liability that arises from the furnishing or obtaining of services under the contract in any manner agreed to by the parties. To assign responsibility for civil liability under this subsection, the parties to the contract must assign responsibility in a written provision of the contract that specifically references this subsection and states that the assignment of liability is intended to be different than liability otherwise assigned under Subsection (a).

(b) In the absence of a contract, if a municipality or county furnishes law enforcement services to another municipality or county, the governmental unit that requests and obtains the services is responsible for any civil liability that arises from the furnishing of those services.

(c) Nothing in this section adds to or changes the liability limits and immunities for a governmental unit provided by the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, or other law.

(d) Notwithstanding any other provision of this chapter, a contract under this chapter is not a joint enterprise for the purpose of assigning or determining liability.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 811, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 16, eff. June 18, 2005.

SUBCHAPTER B. GENERAL INTERLOCAL CONTRACTING AUTHORITY

Sec. 791.011. CONTRACTING AUTHORITY; TERMS. (a) A local government may contract or agree with another local government or a federally recognized Indian tribe, as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with this chapter.

(b) A party to an interlocal contract may contract with a:

- (1) state agency, as that term is defined by Section 771.002; or
- (2) similar agency of another state.

(b-1) A local government that is authorized to enter into an interlocal contract under this section may not contract with an Indian tribe that is not federally recognized or whose reservation is not located within the boundaries of this state.

(c) An interlocal contract may be to:

- (1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or
- (2) provide a governmental function or service that each party to the contract is authorized to perform individually.

(d) An interlocal contract must:

- (1) be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body;
- (2) state the purpose, terms, rights, and duties of the contracting parties; and

(3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

(e) An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.

(f) An interlocal contract may be renewed.

(g) A governmental entity of this state or another state that makes purchases or provides purchasing services under an interlocal contract for a state agency, as that term is defined by Section 771.002, must comply with Chapter 2161 in making the purchases or providing the services.

(h) An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase engineering or architectural services.

(i) Notwithstanding Subsection (d), an interlocal contract may have a specified term of years.

(j) For the purposes of this subsection, the term "purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors. A local government may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under this chapter in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that:

(1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or

(2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 405, Sec. 47, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 98, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 257 (H.B. 1562), Sec. 1, eff. May 30, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 12, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1065 (S.B. 760), Sec. 1.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 1, eff. September 1, 2013.

Sec. 791.012. LAW APPLICABLE TO CONTRACTING PARTIES. Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the law applicable to a party as agreed by the parties.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 176, Sec. 1, eff. May 21, 1997.

Sec. 791.013. CONTRACT SUPERVISION AND ADMINISTRATION. (a) To supervise the performance of an interlocal contract, the parties to the contract may:

- (1) create an administrative agency;
- (2) designate an existing local government; or
- (3) contract with an organization that qualifies for exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended, that provides services on behalf of political subdivisions or combinations of political subdivisions and derives more than 50 percent of its gross revenues from grants, funding, or other income from political subdivisions or combinations of subdivisions.

(b) The agency, designated local government, or organization described by Subsection (a)(3) may employ personnel, perform administrative activities, and provide administrative services necessary to perform the interlocal contract.

(c) All property that is held and used for a public purpose by the administrative agency or designated local government is exempt from or subject to taxation in the same manner as if the property were held and used by the participating political subdivisions.

(d) An administrative agency created under this section may acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or

any other nation:

(1) a patent for the invention or discovery of:

(A) any new and useful process, machine, manufacture, composition of matter, art, or method;

(B) any new use of a known process, machine, manufacture, composition of matter, art, or method; or

(C) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(2) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(3) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the agency uses to identify and distinguish the agency's goods and services from other goods and services; and

(4) other evidence of protection of exclusivity issued for intellectual property.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 481, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 301, Sec. 3, eff. Sept. 1, 2003.

Sec. 791.014. APPROVAL REQUIREMENT FOR COUNTIES. (a)

Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.

(b) The approval must:

(1) be given in a document other than the interlocal contract;

(2) describe the type of project to be undertaken; and

(3) identify the project's location.

(c) The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.

(d) A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:

(1) the county begins the project without the approval required by this section; and

(2) the local government makes the payment before the project is begun by the county.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.015. SUBMISSION OF DISPUTES TO ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. Local governments that are parties to an interlocal contract may provide in the contract for the submission of disputes arising under the contract to the alternative dispute resolution procedures authorized by Chapter 2009.

Added by Acts 2001, 77th Leg., ch. 666, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. SPECIFIC INTERLOCAL CONTRACTING AUTHORITY

Sec. 791.021. CONTRACTS FOR REGIONAL CORRECTIONAL FACILITIES. The parties to an interlocal contract may contract with the Texas Department of Criminal Justice for the construction, operation, and maintenance of a regional correctional facility if:

(1) title to the land on which the facility is to be constructed is deeded to the department; and

(2) the parties execute a contract relating to the payment of costs for housing, maintenance, and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the department.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.080, eff. September 1, 2009.

Sec. 791.022. CONTRACTS FOR REGIONAL JAIL FACILITIES. (a)
In this section:

(1) "Facility" means a regional jail facility

constructed or acquired under this section.

(2) "Jailer" means a person with authority to supervise the operation and maintenance of a facility as provided by this section.

(b) A political subdivision of the state, by resolution of its governing body, may contract with one or more political subdivisions of the state to participate in the ownership, construction, and operation of a regional jail facility.

(c) The facility must be located within the geographic boundaries of one of the participating political subdivisions. The facility is not required to be located in a county seat.

(d) Before acquiring and constructing the facility, the participating political subdivisions shall issue bonds to finance the facility's acquisition and construction. The bonds must be issued in the manner prescribed by law for issuance of permanent improvement bonds.

(e) To supervise the operation and maintenance of a facility, the participating political subdivisions may agree to:

(1) appoint as jailer of the facility the police chief or sheriff of the political subdivision in which the facility is located;

(2) form a committee composed of the sheriff or police chief of each participating political subdivision to appoint a jailer of the facility; or

(3) authorize the police chief or sheriff of each participating political subdivision to continue to supervise and manage those prisoners incarcerated in the facility under the authority of that officer.

(f) If participating political subdivisions provide for facility supervision under Subsection (e), the person designated to supervise operation and maintenance of the facility shall supervise the prisoners incarcerated in the facility.

(g) When a prisoner is transferred from the facility to the originating political subdivision, the appropriate law enforcement officer of the originating political subdivision shall assume supervision and responsibility for the prisoner.

(h) While a prisoner is incarcerated in a facility, a police

chief or sheriff not assigned to supervise the facility is not liable for the escape of the prisoner or for any injury or damage caused by or to the prisoner unless the escape, injury, or damage is directly caused by the police chief or sheriff.

(i) The political subdivisions may employ or authorize the jailer of the facility to employ personnel necessary to operate and maintain the facility.

(j) The jailer of the facility and any assistant jailers must be commissioned peace officers.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.023. CONTRACTS FOR STATE CRIMINAL JUSTICE FACILITIES. The state or an agency of the state may contract with one or more entities to finance, construct, operate, maintain, or manage a criminal justice facility provided, in the exercise of the governmental power, for the benefit of the state in accordance with this chapter and:

(1) Subchapter A, Chapter 494, Government Code;

(2) Subchapter D, Chapter 361, Local Government Code;

or

(3) the Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271, Local Government Code).

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.024. CONTRACTS FOR COMMUNITY CORRECTIONS FACILITIES. A community supervision and corrections department established under Section 76.002 may agree with the state, an agency of the state, or a local government to finance, construct, operate, maintain, or manage a community corrections facility under Section 76.010(b) or a county correctional center under Subchapter H, Chapter 351, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 7.18, eff. Sept. 1, 1995.

Sec. 791.025. CONTRACTS FOR PURCHASES. (a) A local government, including a council of governments, may agree with

another local government or with the state or a state agency, including the comptroller, to purchase goods and services.

(b) A local government, including a council of governments, may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This subsection does not apply to services provided by firefighters, police officers, or emergency medical personnel.

(c) A local government that purchases goods and services under this section satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and services.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 28, Sec. 1, eff. April 27, 1995; Acts 1997, 75th Leg., ch. 826, Sec. 1, eff. June 18, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.62, eff. September 1, 2007.

Sec. 791.026. CONTRACTS FOR WATER SUPPLY AND WASTEWATER TREATMENT FACILITIES. (a) A municipality, district, or river authority of this state may contract with another municipality, district, or river authority of this state to obtain or provide part or all of:

(1) water supply or wastewater treatment facilities;
or

(2) a lease or operation of water supply facilities or wastewater treatment facilities.

(b) The contract may provide that the municipality, district, or river authority obtaining one of the services may not obtain those services from a source other than a contracting party,

except as provided by the contract.

(c) If a contract includes a term described by Subsection (b), payments made under the contract are the paying party's operating expenses for its water supply system, wastewater treatment facilities, or both.

(d) The contract may:

(1) contain terms and extend for any period on which the parties agree;

(2) require the purchaser to develop alternative or replacement supplies prior to the expiration date of the contract and may provide for enforcement of such terms by court order; and

(3) provide that it will continue in effect until bonds specified by the contract and any refunding bonds issued to pay those bonds are paid.

(e) Where a contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.

(f) Tax revenue may not be pledged to the payment of amounts agreed to be paid under the contract.

(g) The powers granted by this section prevail over a limitation contained in another law.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 791.027. EMERGENCY ASSISTANCE. (a) A local government may provide emergency assistance to another local government, whether or not the local governments have previously agreed or contracted to provide that kind of assistance, if:

(1) in the opinion of the presiding officer of the governing body of the local government desiring emergency assistance, a state of civil emergency exists in the local government that requires assistance from another local government and the presiding officer requests the assistance; and

(2) before the emergency assistance is provided, the governing body of the local government that is to provide the assistance authorizes that local government to provide the

assistance by resolution or other official action.

(b) This section does not apply to emergency assistance provided by law enforcement officers under Chapter 362, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.028. CONTRACTS FOR JOINT PAYMENT OF ROAD CONSTRUCTION AND IMPROVEMENTS. (a) In this section:

(1) "Highway project" means the acquisition, design, construction, improvement, or beautification of a state or local highway, turnpike, or road project.

(2) "Transportation corporation" means a corporation created under Chapter 431, Transportation Code.

(b) A local government may contract with another local government, a state agency, or a transportation corporation to pay jointly all or part of the costs of a highway project, including the cost of an easement or interest in land required for or beneficial to the project.

(c) A local government and a transportation corporation, in accordance with a contract executed under this section, may:

(1) jointly undertake a highway project;

(2) acquire an easement, land, or an interest in land, in or outside a right-of-way of a highway project, as necessary for or beneficial to a highway project; or

(3) adjust utilities for the project.

(d) If a contract under this section provides for payments over a term of years, a local government may levy ad valorem taxes in an amount necessary to make the payments required by the contract as they become due.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.196, eff. Sept. 1, 1997.

Sec. 791.029. CONTRACTS FOR REGIONAL RECORDS CENTERS. (a) By resolution of its governing body, a political subdivision of the state may contract with another political subdivision of the state to participate in the ownership, construction, and operation of a

regional records center.

(b) Before acquiring or constructing the records center, a participating political subdivision may issue bonds to finance the acquisition and construction of the records center in the manner prescribed by law for the issuance of permanent improvement bonds.

(c) The records center may not be used to store a record whose retention period is listed as permanent on a records retention schedule issued by the Texas State Library and Archives Commission under Section 441.158, unless the center meets standards for the care and storage of records of permanent value established by rules adopted by the commission under Section 203.048, Local Government Code.

(d) The Texas State Library and Archives Commission shall provide assistance and advice to local governments in the establishment and design of regional records centers.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 791.030. HEALTH CARE AND HOSPITAL SERVICES. A local government may contract with another local government authorized to provide health care and hospital services to provide those services for the local government's officers and employees and their dependents.

Added by Acts 1993, 73rd Leg., ch. 823, Sec. 2, eff. Sept. 1, 1993.

Sec. 791.031. TRANSPORTATION INFRASTRUCTURE. (a) This section applies only to a local government, other than a school district, that is authorized to impose ad valorem taxes on real property.

(b) The Texas Department of Transportation may enter into an interlocal contract with a local government for the financing of transportation infrastructure that is constructed or that is to be constructed in the territory of the local government by the department in a corridor of land on which no existing state or federal highway is located.

(c) The agreement must include:

(1) the duration of the agreement, which may not exceed 12 years;

(2) a description of each transportation infrastructure project or proposed project;

(3) a map showing the location of each project and property included in the contract; and

(4) an estimate of the cost of each project.

(d) The agreement may establish one or more transportation infrastructure zones. The Texas Department of Transportation and the local government may agree that at one or more specified times, the local government will pay to the Texas Department of Transportation an amount that is calculated on the basis of increased ad valorem tax collections in a zone that are attributable to increased values of property located in the zone resulting from an infrastructure project. The amount may not exceed an amount that is equal to 30 percent of the increase in ad valorem tax collections for the specified period.

(e) Money received by the Texas Department of Transportation under this section may be used:

(1) to provide a local match for the acquisition of right-of-way in the territory of the local government; or

(2) for design, construction, operation, or maintenance of transportation facilities in the territory of the local government.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.33, eff. Sept. 1, 1997.

Sec. 791.032. CONSTRUCTION, IMPROVEMENT, AND REPAIR OF STREETS IN MUNICIPALITIES. With the approval of the governing body of a municipality, a local government may enter into an interlocal contract with the municipality to finance the construction, improvement, maintenance, or repair of streets or alleys in the municipality, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways.

Added by Acts 1999, 76th Leg., ch. 671, Sec. 1, eff. Sept. 1, 1999.

Sec. 791.033. CONTRACTS TO CONSTRUCT, MAINTAIN, OR OPERATE FACILITIES ON STATE HIGHWAY SYSTEM. (a) In this section, "state

highway system" means the highways in this state included in the plan providing for a system of state highways prepared under Section 201.103, Transportation Code.

(b) A local government may enter into and make payments under an agreement with another local government for the design, development, financing, construction, maintenance, operation, extension, expansion, or improvement of a toll or nontoll project or facility on the state highway system located within the boundaries of the local government or, as a continuation of the project or facility, within the boundaries of an adjacent local government.

(c) An agreement under this section must be approved by the Texas Department of Transportation.

(d) Notwithstanding Section 791.011(d), to make payments under an agreement under this section, a local government may:

(1) pledge revenue from any available source, including payments received under an agreement with the Texas Department of Transportation under Section 222.104, Transportation Code;

(2) pledge, levy, and collect taxes to the extent permitted by law; or

(3) provide for a combination of Subdivisions (1) and (2).

(e) The term of an agreement under this section may not exceed 40 years.

(f) Any election required to permit action under this section must be held in conformance with the Election Code or other law applicable to the local government.

(g) In connection with an agreement under this section, a county or municipality may exercise any of the rights and powers granted to the governing body of an issuer under Chapter 1371.

(h) This section is wholly sufficient authority for the execution of agreements, the pledge of revenues, taxes, or any combination of revenues and taxes, and the performance of other acts and procedures authorized by this section by a local government without reference to any other provision of law or any restriction or limitation contained in those provisions, except as

specifically provided by this section. To the extent of any conflict or inconsistency between this section and any other law, this section shall prevail and control. A local government may use any law not in conflict with this section to the extent convenient or necessary to carry out any power or authority, expressed or implied, granted by this section.

Added by Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.89, eff. June 14, 2005.

Sec. 791.034. INTERLOCAL CONTRACT FOR RELIEF HIGHWAY ROUTE AROUND CERTAIN MUNICIPALITIES. (a) The governing body of a municipality located in a county in which is located a facility licensed to dispose of low-level radioactive waste under Chapter 401, Health and Safety Code, may enter into an interlocal contract with the county for the construction and maintenance of a relief highway route around and outside the boundaries of the municipality that the governing body determines will serve a public purpose of the municipality.

(b) The municipality may expend municipal funds and may issue certificates of obligation or bonds to pay for expenses associated with a relief highway route under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 357 (H.B. 1255), Sec. 1, eff. June 19, 2009.

Sec. 791.035. CONTRACTS WITH INSTITUTIONS OF HIGHER EDUCATION OR UNIVERSITY SYSTEMS. (a) A local government and an institution of higher education or university system may contract with one another to perform any governmental functions and services. If the terms of the contract provide for payment based on cost recovery, any law otherwise requiring competitive procurement does not apply to the functions and services covered by the contract.

(b) In this section, "institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 2.05, eff. June 17, 2011.

Sec. 791.036. REGULATION OF TRAFFIC IN SPECIAL DISTRICTS. The commissioners court of a county may enter into an interlocal contract with the board of a special district for the county to:

(1) apply the county's traffic regulations to a public road in the county that is owned, operated, and maintained by the district if the commissioners court finds that it is in the county's interest to regulate traffic on the public road; and

(2) enforce the regulations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1211 (S.B. 1411), Sec. 1, eff. June 14, 2013.

Redesignated from Government Code, Section 791.035 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(28), eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 119 (S.B. 2245), Sec. 1, eff. May 22, 2019.

Sec. 791.037. SOLID WASTE DISPOSAL SERVICES IN CERTAIN COUNTIES. (a) In this section, "solid waste" has the meaning assigned by Section 361.003, Health and Safety Code.

(b) This section applies only to a county with a population of more than 1.7 million in which more than 70 percent of the population resides in a single municipality.

(c) A county may contract with a municipality to provide, directly or through a contract with another entity, a mandatory program under Section 364.034, Health and Safety Code, for solid waste disposal services in an area of the county located within the extraterritorial jurisdiction of the municipality if the municipality does not provide solid waste disposal services in that area.

(d) A contract under this section must include provisions regarding the termination of the county's provision of service on the occurrence of certain contingencies, including the annexation of the area covered by the contract by the municipality or the provision of service to the area by the municipality.

Added by Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 4,
eff. May 22, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 46, eff.
September 1, 2023.

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE B. DISPOSITION OF THE BODY

CHAPTER 694. BURIAL

Sec. 694.001. DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES. The Department of State Health Services shall regulate the disposal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1506, eff. April 2, 2015.

Sec. 694.002. DUTY OF COMMISSIONERS COURT CONCERNING DISPOSITION OF BODY OF DECEASED PAUPERS. (a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. The commissioners court may adopt rules to implement this section.

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

(c) If a county discovers cash in the possession of a deceased pauper, a county may use the cash to pay the actual costs incurred by the county in disposing of the pauper's body.

(d) If any cash remains after the county has paid the costs of disposing of the body under Subsection (c), the county shall place the cash in trust. A person having a claim to the money in trust must exercise the right to collect the money not later than the first anniversary of the date of disposition of the pauper's body.

(e) A county may create a fund to be used by the county to pay the costs incurred in disposing of the bodies of deceased paupers and administering the county's body disposition activities. If money placed in a trust under Subsection (d) is not claimed by the first anniversary of the date of disposition of the

pauper's body, the county may transfer the money to the fund created under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 211, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 929, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 404 (H.B. 1843), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 480 (S.B. 530), Sec. 1, eff. June 19, 2009.

Sec. 694.003. POWER OF GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING BURIAL. The governing body of a Type A general-law municipality may regulate the burial of the dead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

HEALTH AND SAFETY CODE
TITLE 8. DEATH AND DISPOSITION OF THE BODY
SUBTITLE C. CEMETERIES AND CREMATORIES
CHAPTER 713. LOCAL REGULATION OF CEMETERIES

SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a municipality may:

- (1) purchase, establish, and regulate a cemetery; and
- (2) enclose and improve a cemetery owned by the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 47, eff. Sept. 1, 1993.

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a

perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

- (1) the depositor's name;
- (2) the amount and purpose of the deposit;
- (3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and
- (4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.004. USE OF FUNDS. (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.005. DEPOSIT RECORDS. (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

- (1) the name of the depositor, listed in alphabetical order;
- (2) the purpose and amount of the deposit;

(3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;

(4) the condition and status of the trust imposed; and

(5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.006. TAX. (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each \$100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE. The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

(1) the occasion demands the appointment; or

(2) a vacancy occurs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 310

(H.B. 2198), Sec. 1

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch.

855 (H.B. 2812), Sec. 1, see other Sec. 713.008.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. (a) The governing body of a municipality in a

county with a population of at least 128,000 but not more than 300,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

(b) The governing body of a municipality in a county with a population of at least 40,000 but not more than 80,000 and that contains a portion of the Angelina National Forest may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery. Termination of a trust fund under this subsection does not constitute renouncement of a trust or failure to act as its trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. 1103), Sec. 1, eff. May 23, 2009.

Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1, eff. September 1, 2019.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 855
(H.B. 2812), Sec. 1

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch.
310 (H.B. 2198), Sec. 1, see other Sec. 713.008.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. (a) This section applies to the governing body of a municipality in a county with a population of:

- (1) at least 128,000 but not more than 300,000; or
- (2) at least 20,000 but not more than 21,000.

(b) The governing body of a municipality to which this section applies may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts

1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. 1103), Sec. 1, eff. May 23, 2009.

Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1, eff. September 1, 2019.

Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY. (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare. The district court and the nonprofit corporation must comply with the requirements of Chapter 715 in assuming responsibility for the cemetery.

(c) In accordance with Chapter 715, a district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to

take possession and control, the municipality or corporation, as appropriate, shall present a plan to:

(1) remove or repair any fences, walls, or other improvements;

(2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and

(3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, to the Texas Historical Commission, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale, except as provided by Subsection (f-1).

(f-1) A municipality that has taken possession and control of a cemetery under this section for at least 25 years may sell additional burial spaces in the cemetery if, after a public hearing, the governing body of the municipality by official action finds that:

(1) the cemetery has been consistently maintained in accordance with Section 713.011; and

(2) the sale and use of additional burial spaces in the cemetery will not endanger the public health, safety, comfort, or welfare.

(f-2) A municipality shall provide written notice of a public hearing required under Subsection (f-1). The notice must:

(1) describe the municipality's proposed action;

(2) identify the cemetery that is the subject of the hearing by name and location;

(3) be published in a newspaper of general circulation:

(A) once a week for three consecutive weeks:

(i) in a county in which the cemetery is located; or

(ii) in the absence of a newspaper in that county, in the neighboring county nearest to the cemetery that has a newspaper of general circulation; and

(B) with a final date of publication that is not less than one week and not more than two weeks before the date of the hearing; and

(4) be mailed to the Texas Historical Commission not less than one week before the date of the hearing.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 12, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 1, eff. September 1, 2023.

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 33, eff. Aug. 26, 1991; Acts

1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 13, eff. September 1, 2009.

Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) A municipality's responsibility to maintain a cemetery under this section includes:

(1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;

(2) leveling or straightening markers or memorials;

(3) properly maintaining lawns, shrubbery, and other plants;

(4) removing debris, including dead flowers and deteriorated plastic ornaments; and

(5) promptly restoring gravesites following an interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 14, eff. September 1, 2009.

Sec. 713.012. ABANDONED PLOTS IN CERTAIN CEMETERIES IN MUNICIPAL POSSESSION AND CONTROL. (a) This section applies only to a cemetery for which the governing body of a municipality by official action issues the findings described by Section 713.009(f-1).

(b) After notice provided in accordance with Subsection (c) and a public hearing, the governing body of a municipality may by official action declare a plot in a cemetery subject to this section as presumed abandoned if:

(1) the municipality does not have any record of ownership or sale of the plot;

(2) the plot has not been used for interment; and

(3) the plot is not within a family enclosure or area of plots of related persons.

(c) A municipality shall provide written notice of the public hearing required under Subsection (b) that satisfies the notice requirements described by Section 713.009(f-2).

(d) The municipality may combine the notice and hearing required under this section with the notice and hearing required under Sections 713.009(f-1) and (f-2).

(e) A municipality has the exclusive right of sepulture in an abandoned plot in a cemetery subject to this section and may convey that right in the plot.

(f) A person may rebut the presumption of abandonment by submitting to the municipality a deed, certificate of ownership, bill of sale, receipt, instrument of conveyance, or other evidence of ownership under which the person may claim the exclusive right of sepulture in the plot in accordance with Section 711.039.

Added by Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 2, eff. September 1, 2023.

Sec. 713.013. APPEAL OF FINDING OF ABANDONMENT. (a) Not later than the 10th day after the date the governing body of a municipality declares a plot abandoned under Section 713.012, a person aggrieved by the declaration or a taxpayer residing in the municipality may file with a district court, county court, or county court at law of the county in which the cemetery is located a verified petition that states the decision is wholly or partly illegal and the grounds of the illegality.

(b) On the filing of the petition, the court may grant a writ of certiorari directed to the governing body to review the governing body's decision. The writ must require the governing body's return to be made and served on the petitioner not later than the 10th day after the date the writ is issued, unless otherwise extended by the court. Granting of the writ does not stay the proceedings on appeal, but on application and after notice to the governing body, the court may grant a restraining order.

(c) The governing body's return must be verified and concisely state any pertinent facts that show the grounds of the decision under appeal. The governing body is not required to return the original documents on which the governing body acted but

may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(d) If a court determines at the hearing that testimony is necessary for proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court makes a decision.

(e) The court may wholly or partly reverse or affirm or modify the appealed decision. The court may not assess costs against the governing body unless the court determines that the governing body acted with gross negligence, bad faith, or malice in making the decision.

Added by Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The

certificate must state:

- (1) the amount and purpose of the gift; and
- (2) other information determined necessary by the trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.023. USE OF FUNDS. (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE. If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

- (1) has an interest in the grave or burial lot; or
- (2) is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 34, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 15, eff. September 1, 2009.

Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS. (a) Except as provided by Sections 713.027, 713.0271, and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 3, eff. June 7, 2019.

Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS.

(a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in

the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.0271. CEMETERY OWNED BY CERTAIN COUNTIES. A county with a population of more than 800,000 that borders a county with a population of more than 3.3 million may own, operate, and maintain a cemetery.

Added by Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 1, eff. June 7, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 101, eff. September 1, 2023.

Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS.

(a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that is at least 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1168, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 853 (S.B. 951), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1187 (H.B. 129), Sec. 2, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 2, eff.
June 7, 2019.

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS
FOR VETERANS. (a) A commissioners court may purchase burial
grounds to be used exclusively for the burial of honorably
discharged persons who:

(1) have served in the United States armed forces
during a war in which the United States participated; and

(2) die without leaving sufficient means to pay
funeral expenses.

(b) A commissioners court may not purchase burial grounds
under this section if there is a national military cemetery or other
military plot in the county in which honorably discharged veterans
of the United States armed forces may be buried free of charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.