



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 3, 1988

Honorable Jim Hightower
Commissioner
Texas Department of Agriculture
P. O. Box 12847
Austin, Texas 78711

Re: LO-88-65

Dear Commissioner Hightower:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X
Attorney General of Texas

JAM/er
Enclosure



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P. O. Box 12847
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LO-88-65

Dear Commissioner Hightower:

You ask about the authority of the deputy commissioner of agriculture to sit in the commissioner's absence as a voting member of the Texas Agricultural Finance Authority.

In Attorney General Opinion JM-903 (1988) we considered whether the chief clerk of the comptroller of public accounts could sit in the comptroller's absence as a voting member of the Racing Commission. Section 403.003 of the Government Code provides that the comptroller's chief clerk shall perform the comptroller's duties when the comptroller is unavoidably absent or is incapable of discharging those duties. Because the comptroller's duty to sit as a member of the Racing Commission attaches to the office of comptroller, not to the comptroller personally, we concluded that the commissioner's chief clerk is authorized to perform the comptroller's duty to sit and to vote as a member of the Racing Commission when the comptroller is unavoidably absent or is incapable of performing his duties as a member of the Racing Commission. See Pfeffer v. Mahnke, 260 S.W. 1031 (Tex. Comm'n App. 1924, opinion adopted).

The commissioner of agriculture is required to appoint a deputy commissioner who has "practical knowledge of agriculture, horticulture, manufacturing, and related industries and of the proper method of marketing the products of those industries." Agric. Code § 11.007(a). The deputy commissioner is to perform duties assigned by the commissioner as well as "the duties assigned by law to the commissioner during a necessary and unavoidable absence of the commissioner or during the commissioner's inability to act." Agric. Code § 11.007(c).

The Agricultural Finance Authority is part of the Department of Agriculture. Agric. Code § 58.011(a). "The authority is governed by a board of directors composed of the commissioner of agriculture, the director of the Institute for International Agribusiness Studies at Prairie View A&M University, and four members appointed by the governor with the advice and consent of the senate." Agric. Code § 58.012(a). See generally Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, § 1 at 112 (constitutional amendment proposed by H.J.R. No. 4, 70th Leg. disapproved by voters; therefore, provisions authorizing board of Agricultural Finance Authority to issue bonds are ineffective). The duty of the commissioner of agriculture to sit as a member of the board of the Agricultural Finance Authority, like the duty of the comptroller to sit as a member of the Racing Commission, attaches to the office of commissioner of agriculture, not to an individual. See Pfeffer v. Mahnke, 260 S.W. at 1033-34. Therefore, when the commissioner of agriculture is unavoidably absent or is unable to act, the deputy commissioner is authorized to perform the commissioner's duty to sit as a member of the board of the Agricultural Finance Authority. See Attorney General Opinion JM-903 (1988).

You also ask whether the deputy commissioner may perform all of the commissioner's duties as a member of the board of the Agricultural Finance Authority. Section 11.007 of the Agriculture Code is a nonsubstantive recodification of former articles 49 and 50, V.T.C.S. see Agric. Code § 1.001. Article 50, V.T.C.S., provided:

The chief clerk shall possess all the powers and perform such duties as may be prescribed by the commissioner, and all duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act for any cause. (Emphasis added.)

Apparently the revisor who drafted section 11.007 of the Agriculture Code considered the word "all" to be superfluous. In any case, it is clear that during the commissioner's absence or inability to act, the deputy is authorized to perform all duties that attach to the commissioner's position as a member of the board of the Agricultural Finance Authority. During the commissioner's absence or inability to act, the deputy commissioner has the

Honorable Jim Hightower
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same authority to perform the duties of the commissioner
that the commissioner has at other times. Pfeffer v.
Mahnke, 260 S.W. at 1034.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/bc

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