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Senate of Texas
Committee of the Whole on
Legislative and Congressional Redistricting

GOVERNMENTAL INQUIRY
UNIT

GONZALO BARRIENTOS
Chairman

J.E. "BUSTER" BROWN
Vice-Chairman

February 6, 1998

FILE # ML-40072-98
I.D. # 40072

The Honorable Dan Morales
Attorney General of the State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

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RQ-1082

Opinion Committee

Dear General Morales:

At the request of some constituents I respectfully request your opinion on the following issue:

"Is the "Texas Crime Stoppers Advisory Council" an "advisory committee", as defined by Section 2110.001 of the *Texas Government Code*, which is subject to the procedures of Chapter 2110 of the *Texas Government Code* for abolishing an "advisory committee" that "has as its primary function advising a state agency"?

The *Texas Crime Stoppers Advisory Council*, a five-member council within the Criminal Justice Division of the Governor's Office, appointed by the Governor with the advice and consent of the Senate, was created by H.B. 1681, signed by Governor William P. Clements, Jr., on June 10, 1981, and effective September 1, 1981. House Bill 1681 has since been codified into what is now Chapter 414 of the *Texas Government Code*. The laws creating the *Texas Crime Stoppers Advisory Council* and defining the *Council's* duty has been amended on several occasions since 1981. If Chapter 2110 of the *Texas Government Code* is applicable to the *Texas Crime Stoppers Advisory Council*, then it is arguable that the *Council* was abolished by operation of law on September 1, 1997, i.e. on the fourth anniversary of the state agency advisory committee statute's enactment.

In arriving at a decision and rendering your Opinion as to whether or not Chapter 2110 of the *Texas Government Code* is applicable to the *Texas Crime Stoppers Advisory Council*, I would submit that the following statutory duties go far beyond merely "advising a state agency", and thus take the *Council* out of the scope of the abolition provisions of Chapter 2110:



1. Section 414.003 of the *Texas Government Code* anticipates that the council members will be "performing duties" for which they will be entitled to a per diem and reimbursement.
2. Section 414.004 of the *Texas Government Code*, by legislating that "The council shall employ a person or designate" a director, imposes a duty upon the *Council*.
3. Section 414.004 of the *Texas Government Code*, by stating that "The Council shall define the director's authority and responsibilities" imposes a duty upon the *Council* which is not "advisory" but solely within the authority of the *Council* and not subject to review or amendment by any authority other than the *Council* itself.
4. Section 414.005(1) of the *Texas Government Code* gives the *Council* the duty not only to "advise" but to "assist in the creation of crime stoppers organizations".
5. Section 414.005(2) of the *Texas Government Code* gives the *Council* the duty to "foster the detection of crime..."
6. Section 414.005(2) of the *Texas Government Code* gives the *Council* the duty to "encourage persons to report information about criminal acts."
7. Section 414.005(3) of the *Texas Government Code* gives the *Council* the duty to "encourage news and other media to promote crime stoppers organizations."
8. Section 414.005(3) of the *Texas Government Code* gives the *Council* the duty "to inform the public of the functions of the council."
9. Section 414.005(4) of the *Texas Government Code* gives the *Council* the duty to "assist crime stoppers organizations in forwarding information about criminal acts to the appropriate law enforcement agencies."
10. Section 414.005(5) of the *Texas Government Code* gives the *Council* the duty to "help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies."
11. Section 414.006 of the *Texas Government Code* gives the *Council* the discretionary authority to "adopt rule to carry out its functions under this chapter."
12. Section 414.007 of the *Texas Government Code* provides that "*Council* records relating to reports of criminal acts are confidential." It is implicit that the *Council* must act to see that the records and reports are treated as confidential and that the confidentiality is not breached.

13. Section 414.008(a) of the *Texas Government Code* reflects that the *Council* is to receive communications.
14. Section 414.008(b) of the *Texas Government Code* refers to "Records of the *Council*", thus indicating a duty of the *Council* to keep records concerning reports of criminal activity.
15. Section 414.008(e) of the *Texas Government Code* creates a duty for the *Council* to receive from the court "materials that are produced under this section but not disclosed to the defendant."
16. Section 414.008(e) of the *Texas Government Code* places an affirmative duty by requiring that "The *Council*...shall store the materials until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case." The act of safekeeping confidential materials at the direction of a criminal court is certainly not an "advisory" function, but rather an important and on-going responsibility.
17. Section 414.009(a) of the *Texas Government Code* reflects that the *Council* may have employees which the *Council* must see do not improperly or unlawfully divulge certain information.
18. Section 414.010(a) of the *Texas Government Code* refers to the duty of the *Council* to certify crime stoppers organizations.
19. Section 414.010(a) of the *Texas Government Code* indicates a duty of the *Council* to receive "a detailed report" which must be filed with the *Council* by crime stoppers organizations.
20. Section 414.011(a) of the *Texas Government Code* creates the mandatory duty for the *Council* to "determine whether the organization is qualified to receive repayments of rewards under the Articles 37.073 and 42.152, *Code of Criminal Procedure*, or payments from a defendant under Article 42.12, *Code of Criminal Procedure*."
21. Section 414.011(a) of the *Texas Government Code* places yet another duty upon the *Council* by the language: "The council shall certify a crime stoppers organization to receive those repayments or payments, if considering the organization, continuity, leadership, community support, and general conduct of the crime stoppers organization, the council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization."
22. Section 414.011(b) of the *Texas Government Code* requires the *Council* to "review" the "annual audit" of crime stoppers organizations. To perform a review of an annual audit prepared by "an independent accounting firm" entails much more than merely "advising a state agency".

23. Section 414.011(c) of the *Texas Government Code* give the *Council* discretionary authority to "approve a crime stoppers organization" even in the absence of a request from a judge.
24. Section 414.012 of the *Texas Government Code* creates a duty of the *Council* to "establish and operate a toll-free telephone service and make the service accessible to persons residing in areas of the state not served by a crime stoppers organization for reporting to the council information about criminal acts." Certainly the establishment and operation of a telephone service is an affirmative act that is clearly distinguishable from merely "advising an agency".
25. Section 414.012 of the *Texas Government Code* give the *Council* another duty relating to the toll-free telephone service by providing that: "The council shall forward the information received to appropriate law enforcement agencies or crime stoppers organizations."

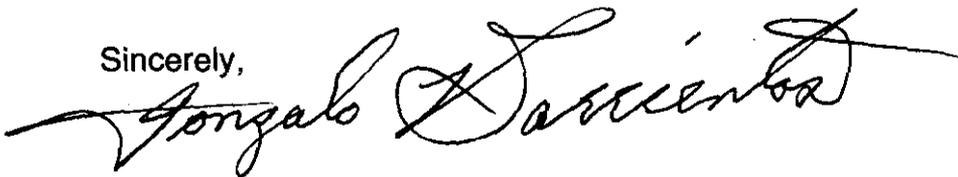
It is furthermore submitted that the Texas Legislature specifically repealed former Section 414.002(e) of the *Texas Government Code*, effective September 1, 1987, thus removing the *Council* from the "Texas Sunset Act". Such a decision was made in recognition of the significant work of the *Council* and the importance of its continued existence.

The *Texas Crime Stoppers Advisory Council* is an integral part of Chapter 414 of the *Texas Government Code*, and without the continued existence of the *Council* and other provisions of the *Texas Government Code*, *Texas Code of Criminal Procedure*, and other laws, will be rendered meaningless and non-functional.

The *Crime Stoppers* program is an important part of combating crime in the State of Texas. The *Texas Crime Stoppers Advisory Council* is alive and healthy.

Considering the importance of the Texas Crime Stoppers Advisory Council, I ask that you give this request for an attorney general's opinion your top priority.

Sincerely,



Gonzalo Barrientos
State Senator

GB/yv