



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 29, 1996

The Honorable Steven C. Hilbig
Bexar County Criminal District Attorney
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

Letter Opinion No. 96-037

Re: Whether the Texas Department of Protective and Regulatory Services is responsible for the burial expenses of children for whom the department has been named the permanent managing conservator upon termination of parental rights (RQ-830)

Dear Mr. Hilbig:

You ask: "Does the Texas Department of Protective & Regulatory Services (PRS) bear legal and financial responsibility for the burial expenses of children for whom PRS has been named the permanent managing conservator after all parental rights have been terminated?" Section 153.371 of the Family Code provides for the rights and duties of a nonparent, including an "authorized agency," appointed as sole managing conservator of a child. *See also* Fam. Code § 101.002 (defining "authorized agency" to include PRS). While PRS, as managing conservator under section 153.371, would have the "duty to provide the child with clothing, food, shelter, and education" as well as the "duty of care, control, protection, and reasonable discipline," nothing in the section specifically makes PRS responsible for the burial expenses you ask about. Nor do we find any other provision, including the appropriations act provisions appropriating funds for the department's carrying out its legal duties, indicating that PRS is responsible for these expenses. *See* General Appropriations Act, 74th Leg., R.S., ch. 1063, art. II, § 1, 1995 Tex. Sess. Law Serv. 5242, 5428-35 (1995 provisions pertaining to PRS). In our opinion, if the legislature had intended PRS to be responsible for such expenses, it would have affirmatively so indicated.¹ *See* Health & Safety Code § 35.003(d)(2) (payment under Chronically Ill and Disabled Children's Act of costs of transporting remains of child who dies in approved facility outside child's municipality of residence to burial place). We answer your question in the negative.

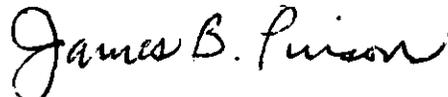
¹Section 48.0215 of the Health and Safety Code provides that PRS is not liable for burial expenses of elderly and disabled persons who have become its wards. The fiscal note prepared for the bill that adopted section 48.0215 found that no fiscal implication to the state or units of local government was anticipated. House Comm. on Human Services, Bill Analysis, H.B. 1111, 74th Leg., R.S. (1995). Thus, the provision may have been adopted to codify the existing practice, and not to change it.

Resolution of the issue of who is responsible for such burial expenses will depend on the facts of the particular case. *See id.* § 711.002(a), (d) (decedent's surviving spouse, adult children, parents, adult siblings, and next adult in order of inheritance are liable in that order for costs of disposition of remains, but only if "there is no person in a priority listed before the person"). In the absence of a survivor who is statutorily responsible for burial, *see id.*, the county in which the death occurred must inter the remains unless an inquest is held, in which case the person conducting the inquest must inter the remains, *id.* § 711.002(e). In either event, the commissioners court is responsible for paying the burial expenses if the child is a pauper. *See id.* § 694.002; *see also* Fam. Code § 161.206 (court order terminating parent-child relationship "divests the parent and the child of all legal rights and duties with respect to each other," except child retains right to inherit unless court otherwise provides); *Glover v. Elliston*, 529 S.W.2d 119 (Tex. Civ. App.--Eastland 1975, no writ) (citing authorities indicating that person listed in provisions now in Health & Safety Code § 711.002 may be liable even when "the estate might also be liable").

S U M M A R Y

The Texas Department of Protective and Regulatory Services is not responsible for the burial expenses of children for whom the department has been named the permanent managing conservator upon termination of parental rights.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee