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Opinion Committee

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Cornyn:

I respectfully request your legal opinion on the following question:

Could the Legislature constitutionally exclude, expressly or by definition, home schools from a voucher system for private and parochial schools?

The Texas Supreme Court has upheld a declaration that the term private school includes a home school. Education Agency et al. v. Gary W. Leeper et ux. et al., 893 S.W.2d 432 (Tex. 1994). The question in Leeper involved the legislative intent behind Section 21.033(a)(1) of the Education Code. (This section detailing the allowed exemptions from the requirements of compulsory school attendance has since been moved to Section 25.086 of the Education Code.) The Court upheld the district court's ruling that "homes in which children are taught in a bona fide manner from a curriculum designed to meet basic education goals" fall within the exemptions from compulsory school attendance contained in the former Section 21.033 (now Section 25.086). Id. at 443.

The Court noted that although the Legislature had not clarified the exemptions contained in the former Section 21.033, "[t]he Legislature has indicated, however, that it considers home schools to fall within the exemption [in Section 21.033(a)(1) of the Education Code]." Id. at 444. The Court also noted the Legislature's following statement in a 1989 amendment of certain Education Code provisions:

"Nothing in this Act applies to students in attendance upon a private or parochial school, which includes home schools, in accordance with Section 21.033, Education Code."

Acts 1989, 71st Leg., R.S., Ch. 658, §11, 1989 Tex.Gen.Laws 2165, 2168.

Although the Leeper case deals with specific legislative intent, I believe it could raise serious debate about the definition of "private or parochial school" to be used in any voucher legislation and

how far that definition must extend under the Constitution. I therefore respectfully request your opinion on the question posed above.

Thank you in advance for your consideration of this issue.

Yours very truly,

A handwritten signature in black ink, appearing to read "Bill Ratliff". The signature is written in a cursive style with a large, prominent initial "B".

William R. Ratliff
State Senator