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January 14, 2000

The Honorable John Comyn
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

1268

FILE # ML-41232-00
I.D. # 41232

RE: Request for Attorney General's Opinion Regarding the Notice Requirement of The Underground Facility Damage Prevention and Safety Act.

Dear General Comyn:

In 1999, the 76th Legislature repealed Article 9033 of the Revised Texas Civil Statutes known as the Underground Facility Damage Prevention and Safety Act and re-codified the article as Title 5 of the Texas Utilities Code. Tex. Util. Code Ann. §§ 251.001-251.203 (West 1999). The Underground Facility Damage Prevention and Safety Act, which is also commonly referred to as the One Call Statute, was enacted to simplify the procedures that excavators must follow before they commence excavation and to prevent damage to underground facilities such as electric, natural gas, petroleum, cable, and telephone lines.

The Underground Facility Damage Prevention and Safety Act created the non-profit Texas Underground Facility Notification Corporation that was charged with the establishment of notification centers known as "One Call Centers." Underground facility owners are required to participate in the notification centers by providing map and grid locations of the operator's underground facilities, the names of contact persons, and updates on changes in the operator's maps and grid locations. Excavators are also required to provide notice to the notification centers of their proposed excavation location within specified time periods.

The underground facility owners have interpreted Section 251.151 of the Utilities Code to require excavators to provide a new notice or a statement that excavations are continuing every ten days. Tex. Util. Code Ann § 251.151 (West 1999). The statute is silent as to subsequent notices. Section 251.151 of the Texas Utilities Code provides, in pertinent part, that:

- (a) Except as provided by Sections 251.155 and 251.156, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays.

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According to contractors and excavators, clarification is needed to determine if subsequent notices are required of excavators under Section 251.151 of the Texas Utilities Code when proper initial notice has been given. The excavators assert that the notification centers require subsequent notices every ten days even though the location of the excavation has not changed from the location stated in the initial notice. The excavators argue that the subsequent notice requirement has increased the number of calls to the notification centers to such a level that the notification centers are not able to adequately meet the demand. The end result, the excavators claim, is that many requests have not been responded to in a timely manner or go unanswered.

The underground facility owners contend that the subsequent notice requirement is necessary to ensure that underground facility lines remain marked at all times. The underground facility owners claim that lines clearly marked after the initial notice by excavators disappear or are erased due to the changing conditions, both natural and man-made, at the excavation location.

Based on the foregoing, I respectfully submit the following for your opinion:

Are excavators, who have given proper initial notice, required to give subsequent notices to notification centers when the current location of the excavation has not changed from the location stated in the initial notice?

Your prompt opinion on this issue would be greatly appreciated.

Sincerely,



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