



# TEXAS EDUCATION AGENCY

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Jim Nelson  
Commissioner of Education

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OCT 15 2001

OPINION COMMITTEE

October 9, 2001

The Honorable John Cornyn  
Attorney General  
P.O. Box 12548  
Austin, Texas 78711

RQ-0453-9C

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OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE SECRETARIAT

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FILE # ML-42232-01  
I.D. # 42232

Dear General Cornyn:

This letter is to request your opinion concerning the ability of school districts to utilize the services of a "Utility Aggregator" for the purchase of electricity<sup>1</sup>. As you know, school districts are required to follow certain procedures for purchasing under Subchapter B, Chapter 44, Texas Education Code. The Texas Utility Code recognizes "registered political subdivision aggregators" under Section 39.3545<sup>2</sup>. My questions involve the applicability, if any, of Chapter 44 of the Education Code to the aggregation process authorized under the Utility Code.

Specifically:

1. May the board of trustees of a school district authorize a registered political subdivision aggregator under Section 39.3545, Texas Utility Code, to negotiate on its behalf and enter into a contract for electricity or other utility services? Please comment on the applicability, if any, of Attorney General Opinions DM-14 (1991) and JC-205 (2000).
2. If your answer to question 1 is "yes", must the registered political subdivision aggregator acting on behalf of the school district comply with the minimum purchasing requirements under Subchapter B, Chapter 44, Texas Education Code?

<sup>1</sup> Attached is a contract provided us by a school district that includes a power of attorney delegating to a private corporation the authority to negotiate and execute contracts to obtain electric power.

<sup>2</sup> The Texas Local Government Code authorizes "political subdivision corporations" to perform similar functions in Chapter 303. Our assumption has been that as separate legal entities, political subdivision corporations are not required to comply with the bidding requirements applicable to school districts under Chapter 44 of the Education Code. Attached to this request is a brief on that subject we received from counsel to the Texas Council of Urban Counties dated July 24, 2001.

Thank you for your assistance with this request. As many school districts are considering contracts of this nature, we would appreciate your response as soon as possible. Should you have any questions concerning this request, please feel free to contact David Anderson, General Counsel, at (512) 463-9720.

Sincerely,

A handwritten signature in cursive script that reads "Jim Nelson". The signature is written in black ink and includes a long horizontal flourish at the end.

James Nelson  
Commissioner of Education