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OPINION COMMITTEE

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August 21, 2002

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The Honorable John Cornyn
Attorney General
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FILE # ML-42761-02
I.D. # 42761

Dear General Cornyn:

This letter is to request an Attorney General Opinion as to the interpretation of the term "civil liability" in Section 791.006, "Liability in Fire Protection Contract or Provision of Law Enforcement Services" which states "if governmental units contract under this chapter to furnish or obtain the services of a fire department, the governmental unit that would have been responsible for furnishing the services in the absence of the contract is responsible for any **civil liability** that arises from the furnishing of those services."

BACKGROUND

In a letter dated November 29, 2001, the City of Fort Worth provided the cities in Tarrant County with its interpretation of how liability shall be apportioned between requesting and responding cities operating under mutual aid and automatic agreements. The City of Fort Worth interpreted Section 791.000(a) of the Texas Government Code, which addresses the liability responsibilities between cities arising out of mutual aid as follows; "Pursuant to the terms of Texas Government Code 791.006(a), any liability arising from the furnishing of fire protection services under this agreement, including that for personal injury, personnel and/or retirement benefits of the personnel of the responding city, and/or damage to any equipment furnished by the responding city, shall be borne by the requesting city." The City Attorney of Bedford, L. Stanton Lowry does not believe the term "civil liability" as used in Section 791.006(a) includes personal injury, personnel or the retirement benefits of the personnel of the responding city, and/or damage to any equipment furnished by the

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responding city. The City of Bedford believes the term "civil liability" does not contemplate the broader coverage of items, such as retirement benefits and workers compensation.

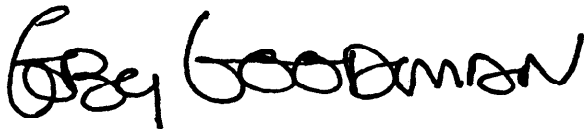
By way of example, if the City of Fort Worth requested mutual aid from the City of Bedford, Fort Worth's interpretation is that Fort Worth, as the "requestor", would pay all liability which might result if a firefighter were tragically killed. The City of Bedford believes that they, the "responding city", would bear all liability associated with the death of a firefighter. The City of Bedford believes that mutual aid is a necessity for small to midsize cities in order to provide coverage and services. Fort Worth's interpretation would cause severe restrictions on small communities ability to provide emergency services.

CONCLUSION

The interpretation of the term "civil liability" will have broad affect on the cities of Texas. The City of Fort Worth has made the assumption that under the definition of civil liability the "requesting city" would be responsible for liabilities that would have been limited under governmental immunity. The ability of cities to function within mutual aid agreements will greatly enhance the safety and welfare of all citizens. I appreciate your opinion on the interpretation of the term "civil liability" in Section 791.006(a) of the Texas Government Code.

If you have any questions, please don't hesitate to call my district office.

Sincerely,

A handwritten signature in black ink that reads "Toby Goodman". The signature is written in a cursive, slightly stylized font.

Toby Goodman
Chairman, House Committee on Juvenile Justice and Family Issues