



Douglas B. Foster  
Interim Commissioner

TEXAS SAVINGS and  
LOAN DEPARTMENT

RQ-0117-GA

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OPINION COMMITTEE

October 10, 2003

FILE # ML-43292-03  
I.D. # 43292

Greg Abbott, Attorney General of Texas  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

Re: Request for an opinion from the Attorney General of Texas

Dear Sir:

This is a request for an opinion from you regarding the proper statutory construction of section 156.209(c) of Chapter 156 of the Texas Finance Code, entitled the Texas Mortgage Broker License Act (the MBLAct). Specifically, I request an opinion as to whether the words "not later than" modify "shall set" or "hearing", as found in the first sentence of section 156.209(c) of the MBLAct. Both statutory constructions appear to be valid; however, these constructions may not operate simultaneously, and one must give way to the proper interpretation. Because of the ambiguity present in this statute, an opinion from you would clarify the proper statutory construction and duty imposed upon public officers.

Please be advised that since the enactment of section 156.209(c) of the MBLAct, the Texas Savings and Loan Department (the Department) has construed and consistently applied this statute to require the designated hearings officer to set a hearing to be conducted within thirty days of the Department's receipt of a request for an appeal of a license application denial, as though the words "not later than" modify "hearing", as found in the first sentence of section 156.209(c) of the MBLAct. However, if the words "not later than" properly modify "shall set", instead of "hearing", the Department would construe this statute as imposing a duty to set a hearing before the thirtieth day of the Department's receipt of a request for an appeal of a license application denial, without regard to the date on which the hearing would be held.

Thank you in advance for you assistance and prompt response to this request. Please contact me with any questions you may have.

Sincerely,

Douglas B. Foster  
Interim Texas Savings and Loan Commissioner