

STATE REPRESENTATIVE
DAVID SWINFORD



CARSON • MOORE • POTTER • SHERMAN COUNTIES • DISTRICT 87

CHAIRMAN, House Committee on State Affairs

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ACTION BY Nancy Fuller
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OPINION COMMITTEE

December 16, 2005

RQ-0424-GA

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

FILE # ML-44529-05

I.D. # 44529

Dear General Abbott:

It has come to my attention that the Office of the Texas Comptroller of Public Accounts (the "Comptroller") has, over the last several months, been conducting a full-scale investigation into the operations of the Texas Residential Construction Commission (the "Commission"). It has also come to my attention that the Comptroller began this investigation into the Commission because a colleague of mine - State Representative Todd Smith - simply wrote her a letter in August of this year in which he asked her to "research, analyze and report on the Texas Residential Construction Commission Act and its impact on Texas homeowners and the Texas economy." For your convenience, I have attached to this letter a copy of the one that Representative Smith sent to the Comptroller.

As you are well aware, I am the Chairman of the House Committee on State Affairs, which is the standing committee in the Texas House of Representatives that has oversight and jurisdiction over (among other things) the Commission. As Chairman of the House Committee on State Affairs, I would like to take this opportunity to respectfully request your opinion on two issues that pertain to this particular investigation, which has been ongoing now for several months and which appears to have been initiated solely as a result of State Representative Smith's letter:

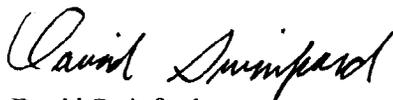
First, does the Comptroller have the constitutional and/or statutory authority to "research, analyze and report" on the enabling legislation of a state agency such as the Commission? Second, assuming that the Comptroller does have any such constitutional and/or statutory authority, has either the Texas Constitution or the Texas Legislature (through statute) directed the Comptroller, when conducting such an investigation, to focus her efforts, analysis or resources solely into areas that fall within her office's particular areas of expertise (i.e. a state agency's expenditures, revenues and operations), or, does her office have the statutory authority to perform, at taxpayer expense, an all encompassing review of all aspects of this or any particular agency? Put another way, what, if any, is the statutorily authorized scope of the Comptroller's review of the Commission or any other particular state agency when conducting "performance audits" or other reviews of state agencies?

It seems to me that the Comptroller, as the State's chief financial officer, should be primarily (if not exclusively) concerned with the "dollars and cents" side of a state agency's operations. Is the agency operating within its budget? Is the agency generating sufficient revenue given its statutory mission and/or directives? Is there a way that the agency could be run in a more efficient or cost-effective manner? These questions, and others, are the very issues that the Office of the Comptroller appears designed to answer. However, from what I understand, the Comptroller's review of the Commission seems to be primarily concerned with issues such as whether this particular state agency should exist, how much statutory authority this state agency should be delegated, and how much state regulation over the residential construction industry is "enough." These questions and others that apparently are being raised, by their very nature, have nothing to do with the efficient implementation or administration of state government; they are, quite simply, legislative questions that are rooted in the field of public policy.

As such, they appear to be exclusively within the purview of the Legislative, and not the Executive, branch of government. Put another way, the Office of the Texas Comptroller of Public Accounts is not, and should not be, a second version of the Texas Sunset Commission or a Texas House or Senate legislative oversight committee. This fact should be obvious as the Comptroller is not a state policy making office, as is the Legislature, but is located within the Executive Branch of state government. Unfortunately, it appears the real focus of the Comptroller and her staff investigation into the Commission is more concerned with questions of public policy that should be decided by the elected representatives of the people of Texas serving in the Legislature than they are with monitoring and reporting on the efficient utilization of state resources.

While oversight of the Commission or any other state agency is necessary and appropriate when conducted by those authorized to do so, I am most concerned over the utilization of state resources by the Comptroller and the expenditure of time and resources by the Commission to respond to inquiries that might not be legally permitted under state law. Your opinion on these matters would be most appreciated. Thank you for your timely consideration of these issues.

Sincerely,



David Swinford
State Representative
District 87

attachment

STATE of TEXAS
HOUSE of REPRESENTATIVES

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TODD SMITH
DISTRICT 92

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AUG 24 2005

EXEC. ADJ. 3
CORRESPONDENCE

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2725-A Central Drive
Bedford, Texas 76021
(817) 283-3131
FAX: 817-283-0003

August 16, 2005

Honorable Carole Keeton Strayhorn
Texas Comptroller of Public Accounts
Post Office Box 13528, Capitol Station
Austin, Texas 78711-3528

Re: Request for Report on the Texas Residential Construction Commission

Dear Comptroller Strayhorn:

Pursuant to your office's constitutional and statutory authority, I respectfully request that the Texas Comptroller of Public Accounts research, analyze and report on the Texas Residential Construction Commission Act (the Act) and its impact on Texas homeowners and the Texas economy. I am concerned that Texas homeowners may not be treated fairly under the Act or by the Texas Residential Construction Commission (TRCC). As a result, I fear homeowners in Texas may be discouraged from purchasing new homes and renovating older homes, harming not only their dreams but the Texas economy.

In particular, I would request that your office make an independent assessment of whether: (1) Texas homeowners who have filed claims with the TRCC are satisfied with the agency and its claims process, and whether the TRCC has processed their claims fairly; (2) the TRCC has allocated appropriate personnel and funds to process claims appropriately and promptly; (3) the Act and the TRCC process provides disincentives for good building, which in the long-term may discourage homeownership and increase foreclosures in Texas as well as decrease economic growth and state revenues; (4) the TRCC's state mandated warranty is unfair to Texas homeowners and will discourage in the long-term home purchases and economic development; (5) the TRCC's claims process and Texas homeowners' rights compare unfavorably to those in other states; and (6) the board of the TRCC, in particular its ratio of public to homebuilder members, as well as the restrictions on who can serve as a public member, compares unfavorably to those of similar agencies in Texas or other states.

Committees:

Appropriations; Appropriations Subcommittee on Education;
Appropriations Subcommittee on Government Efficiency and Operations; Elections CBO

Homeownership is critical to Texas families and the state's economy. Thank you for your time and consideration of this request.

Yours truly,

A handwritten signature in black ink, appearing to be 'Todd Smith', written over a horizontal line.

Todd Smith

TS:nc

cc:

Timothy Mashburn, General Counsel