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**OPINION COMMITTEE**

July 24, 2007

FILE # ML-45286-07  
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**Via Certified Mail, Return Receipt Requested**  
**No. 7099 3220 0001 2362 5544**

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

**RQ-0609-GA**

Re: **Opinion Request: Whether Section 11.168 of the Texas Education Code applies retrospectively to an agreement entered before the effective date of Section 11.168, where the agreement calls for the use of school district resources for improvements to real property not owned or leased by the school district, and where such use of school district resources will continue under the terms of the agreement after the effective date of Section 11.168?**

Dear Honorable Attorney General Abbott:

Please accept this as a request pursuant to Texas Government Code Section 402.042 for an opinion from your office clarifying the operation of Section 11.168 of the Texas Education Code. I submit background information on the promulgation of Section 11.168, and, additionally, an interpretation for your consideration on the appropriate operation of Section 11.168.

The 79<sup>th</sup> Texas Legislature, Regular Session, promulgated Section 11.168 of the Texas Education Code, entitled "Use of District Resources Prohibited for Certain Purposes," via House Bill 1826. Section 11.168 provides as follows:

The board of trustees of a school district may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

This provision became effective June 18, 2005.

House Bill 1826 did not call for a retrospective application of Section 11.168. Therefore, it is presumed Section 11.168 is to be prospective in its operation. Texas Government Code §311.022; *Ex parte Abell*, 613 S.W.2d 255 (Tex.1981)(A substantive act will be applied only prospectively unless it appears by fair implication from the language used that it was the intent of the legislature to make it applicable to both past and future transactions.).

Section 311.022 of the Code Construction Act states:

A statute is presumed to be prospective in its operation unless expressly made retrospective.

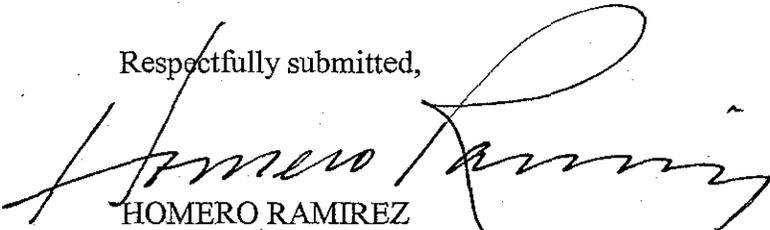
Thus, given the foregoing rule for construction and the absence of legislative intent for retrospective application, Section 11.168 operates prospectively to prohibit the board of trustees of a school district from entering into an agreement on or after June 18, 2005, which would authorize the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district. Accordingly, an agreement entered into before June 18, 2005, by a school district board of trustees authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district, would not be prohibited by Section 11.168, and would have continued valid effect under the terms of said agreement.

Moreover, the prospective operation of Section 11.168 should not prohibit the continued validity and implementation of such an agreement entered into before the effective date of Section 11.168, because a school district's rights in bargaining its resources to improve real property not owned or leased by it for other valuable consideration became vested under the agreement and may not be impaired by retrospective operation of law. Texas Constitution, Article I, §16; *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1 (Tex.1999); *Ex parte Abell*, 613 S.W.2d 255, 261 (Tex.1981)(A right cannot be considered a vested right unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable to the present or future enjoyment of a demand or a legal exemption from the demand made by another.); *Grocers Supply Co., Inc. v. Sharp*, 978 S.W.2d 638 (Tex.App.-Austin 1998, pet. denied).

Finally, it is presumed that in enacting Section 11.168, a just and reasonable result is intended. Texas Government Code §311.021. The foregoing interpretation on the operation of Section 11.168 prevents interference with vested rights and the deleterious effects of invalidating or modifying agreements entered before promulgation of Section 11.168.

Thank you for your consideration.

Respectfully submitted,



HOMERO RAMIREZ  
WEBB COUNTY ATTORNEY

cc: Juan J. Cruz  
Kenny Valls  
Roberto J. Santos