

TEXAS HOUSE OF REPRESENTATIVES

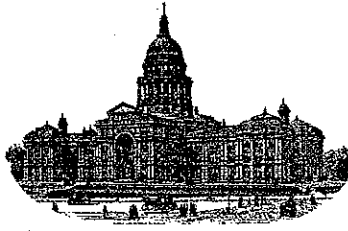
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OPINION COMMITTEE



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The Honorable Greg Abbott
Attorney General
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FRANK J. CORTE JR.

FILE # ML-45786-08
I.D. # 45786

RQ-0733-GA

Dear General Abbott:

"Sanctuary cities" advocate policies which are favorable to illegal immigrants but contravene federal immigration law. Sanctuary city policies often prohibit local law enforcement from inquiring about a person's immigrant status. The policies also prohibit local agencies from sharing information regarding immigrant status with the federal government.

Under section 1373(c) of the federal Immigration and Nationality Act, it is unlawful for a provision of a federal, state, or local law, or an official, to "prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [Immigration and Customs Enforcement] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. §1373(c).

Section 1644 of the Immigration and Nationality Act provides the following:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. 8 U.S.C. §1644.

Although federal law expressly forbids local policies that prohibit or restrict information regarding immigrant status, sanctuary cities continue to support such policies.

The federal government has provided ways for state and local government agencies to assist rather than obstruct the enforcement of federal immigration laws. One way for state or local entities to achieve authorization for state immigration enforcement is the 287(g) training program, established by the U.S. Immigration and Customs Enforcement agency (ICE). According to ICE, as of April 28, 2008, forty-seven 287(g) Memorandum of Agreements were active, nearly 700 officers had been trained and certified through the 287(g) program, and there were 90 pending requests for 287(g) programs.



DISTRICT 122

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State agencies approved for 287(g) programs include Alabama State Police, Arizona Department of Public Safety, Colorado Department of Public Safety, Florida Department of Law Enforcement, Georgia Department of Public Safety, and New Mexico Corrections Department.

A key example of state legislative immigration action is the Oklahoma Taxpayer and Citizen Protection Act of 2007. The provision in that legislation which prohibits sanctuary cities is similar to sections 1373(c) and 1644 of the Immigration and Nationality Act. The Oklahoma legislation bars local entities from creating policies to limit or prevent local officers from communicating or cooperating with federal officials on the immigration status of any person within the state.

Oklahoma's anti-sanctuary city provision also includes a reference to section 1357(g) of the Immigration and Nationality Act, which authorizes state officers to perform federal immigration officer functions upon training and approval by the federal government. 8 U.S.C. §1357(g). Section 1357(g) allows for a state to enter into a Memorandum of Agreement or Understanding with the U.S. Department of Justice or Department of Homeland Security relating to state enforcement of federal immigration laws. The U.S. Attorney General must determine an officer or employee of the state qualified to perform the functions of an immigration officer "in relation to the investigation, apprehension, or detention of aliens in the United States." Upon receiving training, a qualified state officer or employee may carry out the approved functions of a federal immigration officer.

Oklahoma's legislation provides for the entry of a Memorandum of Agreement (MOA) between the State of Oklahoma and the U.S. Department of Justice or the Department of Homeland Security. The MOA's purpose under the legislation is to authorize state immigration action. Because the authorization of state immigration action would be inconsistent with a local policy prohibiting officers or employees from sharing a person's immigration status with the proper authorities, the legislation prohibits any local government from enacting any such inconsistent policies.

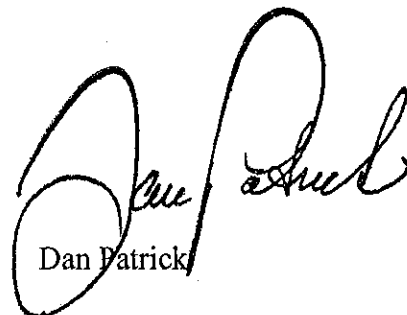
Does the Texas Legislature, similar to Oklahoma, have the authority to deter local governments from adopting policies, or invalidate existing policies, which would hinder state enforcement of the federal immigration laws? Policies hindering state enforcement would include those that prevent local citizens, officials, or law enforcement agencies from cooperating with the federal government regarding a person's immigration status.

We appreciate your consideration of this matter.

Sincerely,



Frank J. Corte, Jr.



Dan Patrick