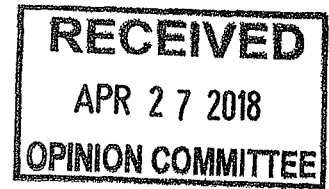




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April 27, 2018

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548 | Austin, TX 78711-2548
via email to opinion.committee@oag.texas.gov

FILE # ML-48348-18
I.D. # 48348
RQ-0226-KP

re: Request for opinion on removal of “Children of the Confederacy Creed” plaque

Dear General Paxton:

I write on behalf of a committee of a house of the Legislature to request a written opinion on several questions affecting the public interest.

Background

As you may know, the “Children of the Confederacy Creed” plaque (the “Plaque”) has been displayed in the Texas Capitol Complex since August 7, 1959. Its stated purpose is to “perpetuate, in love and honor, the heroic deeds of those who enlisted in the Confederate Army,” and the installation proclaims the “truths of history (one of the most important of which is, that the war between the states was not a rebellion, nor was its underlying cause to sustain slavery).”

The Plaque is displayed near the office of State Representative Eric Johnson. On August 16, 2017, Representative Johnson delivered a letter to the State Preservation Board—copied to the offices of the governor, lieutenant governor, and speaker of the house—calling for the removal of the Plaque as offensive and historically inaccurate. Speaker Straus soon joined in urging removal of the Plaque on September 19, 2017.

Representative Johnson then submitted a formal building change request form on October 23, 2017 and met with Governor Abbott personally about the issue several days later. No response to the request has been issued and no official action has been taken since.

Applicable Legal Standards

The State Preservation Board consists of “the governor, lieutenant governor, speaker of the house” and appointees from each of those officials. TEX. GOV’T CODE ANN. § 443.003 (West 2012). “The governor is the chairman of the board,” which may meet at the call of the governor. *Id.* § 443.004. The board’s charge is to “preserve, maintain, and restore the Capitol,” including its “contents [and] grounds,” as well as to “approve all changes to the buildings and their grounds . . . and any transfers . . . of objects under the curator of the Capitol’s care.” *Id.* § 443.007 (a)(1) & (4).

The curator of the Capitol is a board employee tasked with oversight of the historical objects and artwork within the Capitol Complex. *Id.* § 443.006. The board is also guided by the Historical Representation Advisory Committee, which is tasked with “ensur[ing] that the diverse history of Texas is accurately represented in the Capitol Complex,” particularly in the “historical accuracy of any proposed monument,” which should reflect the “equitable



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representation of all Texans, including African slaves [and] African Americans." *Id.* § 443.0081 (a) & (k)(2).

The board has adopted administrative rules which govern changes to the Capitol Complex, including to historical artwork. *See generally* 13 TEX. ADMIN. CODE § 111.16 (1988) (State Preserv. Bd., Changes to the Capitol Building, Capitol Extension Building, General Land Office Building, and Grounds). Change requests "shall be approved in writing," but if a request from a state legislator is denied, the lawmaker "may bring their request before the board at the next open meeting for a final ruling." *Id.* (b)(1) & (5). More specifically, changes to historical artwork "must be approved by the curator of the Capitol." *Id.* (c)(2).

Questions Posed

In light of that background and the broad nature of the relevant statutes and rules, I am asking the Office of the Attorney General for an opinion on the following questions:

1. Which officials or entities have the legal authority to remove or relocate (or order the removal or relocation of) the Plaque?
2. With respect to each of those officials or entities identified in response to question 1, what is the process for removing or relocating the Plaque?
3. May any official or entity, including but not limited to the governor in his capacity as chair of the State Preservation Board, the executive director of the board, and the curator of the Capitol, be compelled through a writ of mandamus or other legal mechanism to (a) respond to a written change request for the Plaque's removal or relocation (such as the one submitted by Representative Johnson), (b) call a meeting of the State Preservation Board, or (c) take any other action related to the Plaque?

I appreciate your thoughtful consideration and look forward to your opinion. Please do not hesitate to contact me if I can be of any further assistance in answering this request.

Respectfully,

JOE MOODY
Chair, Committee on Criminal Jurisprudence

cc: The Honorable Eric Johnson
The Honorable Greg Abbott
The Honorable Dan Patrick
The Honorable Joe Straus
State Preservation Board