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OPINION COMMITTEE



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COMMITTEE ON GENERAL INVESTIGATING & ETHICS
TEXAS HOUSE OF REPRESENTATIVES

April 30, 2018

RQ-0228-KP

The Honorable Ken Paxton
Attorney General
Office of Attorney General
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: WHEN MAY A LEGISLATOR RECEIVE PAYMENT FROM A UNIT OF LOCAL GOVERNMENT FOR LOBBYING ACTIVITY WITH A STATE AGENCY OR UNIT OF LOCAL GOVERNMENT? MAY A LEGISLATOR RECEIVE PAYMENT FOR PERFORMING A TASK FOR A UNIT OF LOCAL GOVERNMENT AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR IF THE TASK IS TO SECURE STATE FUNDING OR STATE PERMIT APPROVAL?

Dear Attorney General Paxton:

During a recent legislative oversight committee the following question arose about permissible actions and payment to legislators. The following specific questions are submitted for your consideration:

- 1. When may a legislator receive payment from a unit of local government for a lobbying, as that term is described in Chapter 305, Government Code, either a state agency or another unit of local government?**

Background: At a recent legislative hearing, a state agency opined that no law prohibits an elected official from representing a client who is not a person (i.e., an individual or for-profit corporation) before an executive branch agency. Thus, if no law prohibits an elected official from lobbying on behalf of a unit of local government before a state agency or other unit of local government, an elected official could engage in such lobbying activity. However, it is unclear in which situations an elected official could legally receive payment for engaging in these lobbying activities.

- 2. May a legislator receive payment for a task performed by the legislator for a unit of local government as an employee or independent contractor if the task is to secure either state funding or state licensing or permitting approval?**

Background: If an elected official may legally lobby a state agency on behalf of a unit of local government as an employee or independent contractor of the unit of local government, such legal lobbying activity likely could involve attempting to influence the agency's exercise of discretion in awarding a competitive grant or approving a license or permit. Because no law prohibits an elected official from lobbying a state agency on behalf of a unit of local government, it is unclear whether the unit of local government may pay the elected official as an employee or independent contractor for attempting to influence the state agency's decision-making process.

- 3. May a legislator receive payment for a task from a unit of local government if the legislator did not either "lobby" for or otherwise cause the securing of state funding or state licensing or permitting approval? In other words, can a unit of local government pay money to a legislator for the occurrence of an action which they did not cause to occur. Specifically, would awarding money to a legislator if the legislator performed no action violate the constitutional restrictions on spending public funds for a non-public purpose?**

Background: If an elected official may legally lobby a state agency on behalf of a unit of local government as the unit of local government's employee or independent contractor, such activity could include attempting to influence a state agency's decision-making process over funding, licensing, and permitting approvals. However, a state agency could exercise favorable discretion to award grant funding or approve a license or permit when the elected official did not make an attempt to influence the state agency's decision-making process. It is unclear whether unit of local government who engages the elected official as an employee or independent contractor may still legally pay and the elected official legally receive monies from the unit of local government.

Thank you for your consideration of this request. Please do not hesitate to contact me or my office if you have any additional questions.

Sincerely,



Chairman Sarah Davis