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TEXAS HOUSE OF REPRESENTATIVES



**Terry Canales**  
District 40

**RQ-0397-KP**

**FILE# ML-48936-20**

**I.D.# 48936**

February 1, 2021

Honorable Ken Paxton  
Attorney General of Texas  
209 W. 14th Street  
Austin, Texas 78701

RE: Request for Attorney General's Opinion

Dear General Paxton:

In 2019, the Texas Legislature passed and the Governor signed H.B. 2826 amending Chapter 2254, Subchapter C, of the Government Code. Under section 10 of the bill, the amendments to Chapter 2254 apply to contracts entered into on or after the effective date of the act, which was September 1, 2019.

Section 2254.1036 provides that before a political subdivision may enter into a contingent fee contract for legal services, it must make and publish findings supporting the necessity for the contract. Then, the contract must be approved in an open meeting. As provided in Section 2254.1038, the political subdivision must receive the Attorney General's approval of the contract before the contract is effective and enforceable.

The contract itself must establish hourly rates for attorneys working under the contract, which can be as high as \$1,000 per hour. The attorneys must record the time they spend working on the contracted matter. The base fee is calculated by multiplying the number of hours worked by the hourly rate, as provided Section 2254.106. The contract may provide for a multiplier that can be used to enhance the base fee.

Section 2254.110 provides that "[a] contract entered into or an arrangement made in violation of this subchapter is void as against public policy, and no fees may be paid to any person under the contract or under any theory of recovery for work performed in connection with a void contract."

Section 2254.101(2) defines "contingent fee contract" to mean "a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained." The word "contract" is used throughout the statute.



Does an amendment to an existing contract that changes the scope of work require compliance with Chapter 2254? Specifically, is an amendment to a contract that changes the scope of work void under Section 2254.110 if the political subdivision fails to comply with the approval process required by Section 2254.1036 or fails to obtain the Attorney General's approval of the amendment as provided by Section 2254.1038? Is an amendment to an existing contract that changes the scope of work void if it allows the contracted attorney to be paid more than the limited amounts provided by Section 2254.106? For example, if a political subdivision contracted with attorneys before September 1, 2019 to pursue a multimillion-dollar lawsuit for alleged defects in the construction of a specified elementary school, can the political subdivision amend that contract after September 1, 2019 to allow the attorneys to pursue other multimillion-dollar lawsuits for alleged defects in the construction of other school buildings? Or, instead, is that amendment void and unenforceable?

Very truly yours,

A handwritten signature in black ink, appearing to be 'Terry Canales', with a long horizontal line extending to the right.

State Representative Terry Canales  
House District 40