



**Advisory Commission on
State Emergency Communications**

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February 25, 1999

RQ-0028

ML-40694-99

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FEB 26 1999

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Opinion Committee

Attention: Andy Taylor, First Assistant Attorney General

Re: Opinion No. DM-494, Whether an emergency communications district may unilaterally withdraw from participation in a regional 9-1-1 plan under Texas Health & Safety Code chapter 771 and related questions (RQ-1021). **Request for Second Opinion**

Dear General Cornyn:

The purpose of this letter is to respectfully request that you reconsider the above-referenced Attorney General Opinion. By letter dated October 22, 1997, I requested that your office among other things, provide an opinion whether an emergency communication district, as defined by TEX. HEALTH & SAFETY CODE § 771.001(3)(A), that elected to participate in a regional 9-1-1 plan may later withdraw from participation.

As you may be aware, my original request was prompted by a notice provided to the Coastal Bend Council of Governments ("the COG") and the Advisory Commission on State Emergency Communications ("ACSEC") on June 26, 1997 by the City of Corpus Christi ("the City"). The City advised the COG and ACSEC on that date that it intended to withdraw from participation in the 9-1-1 plan administered by the COG, and requested ACSEC to direct telephone service providers to cease collecting the statutory 9-1-1 service fee within the City's limits. ACSEC was, and remains opposed to the City's request.

On December 21, 1998, your predecessor issued the above-referenced Opinion, in which he concluded that Texas Health & Safety Code chapter 771 impliedly authorizes an emergency communication district that has elected to participate in a regional 9-1-1 plan may unilaterally withdraw from the plan. We believe that some of the legal conclusions in DM-494 are erroneous, and that our original request for an opinion merits reconsideration.

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Opinion DM-494 apparently turns on its author's analysis of the legislative intent behind Texas Health & Safety Code chapter 771. In making its assessment of the legislative intent behind chapter 771, the opinion reasons that the primary indicator of intent is the literal language of a statute; and that intent may also be inferred from the existence or non-existence of a certain provision. Finally, the opinion purports to consider the consequences of a proposed construction of the statute.

We believe that a thorough reconsideration of this question in light of these principals can not but lead you to the opposite conclusion than that reached by your predecessor. Among the points we would like to make, that we urge you to reconsider, are the following:

- The authors of HB 911 (70th Leg. 1987), which adopted Health & Safety Code Chapter 771, intended to facilitate a *statewide* 9-1-1 emergency telephone service system. Although the statute include a grandfather provision that allowed pre-existing emergency communications districts with an option whether to join a regional 9-1-1 plan set up under ch. 771, or remain independent, this option was limited to emergency service providers in existence prior to September 1, 1987. Conspicuously absent from the statute is any mechanism for a service provider to opt out of a regional 9-1-1 plan once it has elected to join.
- To construe chapter 771 as allowing an emergency service provider to opt out of a regional 9-1-1 plan, in the absence of express language providing for withdrawal, runs counter to the legislative intent behind the statute. It makes no sense to allow a service provider to withdraw from a regional 9-1-1 plan when the whole purpose of the statute is to promote timely, effective, statewide emergency communications services.
- The consequences of an adverse decision with respect to our request are staggering. If the eleven entities which stand in the same shoes as the City of Corpus Christi were allowed to withdraw, the other participants in each of their respect 9-1-1 regional plans would not be able to generate sufficient revenue through the collection of 9-1-1 service fees to adequately fund emergency communications services. Consequently, the demand on the Commission for distribution of equalization surcharge fees will increase dramatically.

In the wake of your predecessor's decision, other home rule cities, and entities that qualify as emergency communications districts have already begun to inquire if they might withdraw from participation in the state program. My staff has analyzed the impact to the statewide 9-1-1 program if other home rule cities were allowed to withdraw from participation in regional plans. For the next three fiscal years, we anticipate a potential increase in the amount of \$9,008,292.00 in the demand for equalization surcharge funds. For FY 2000-2001 alone, we anticipate the demand to total \$4,700,610.00. The

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Commission does not have sufficient equalization surcharge funds to meet this demand. Consequently, there is very real danger posed by this situation that 9-1-1 service in the ten affected COGs will suffer and human lives may be lost.

This kind of potential fragmentation also runs counter to recommendations of the Texas State Auditor's Office (SAO). In their recent audit report on the "Statewide 911 System" (SAO, July 1998), the SAO notes that

"... (t)he statewide 911 organizational structure is inefficient. Overlapping 911 service responsibilities between 67 of 75 regional and local entities have resulted in duplicative administrative costs of \$4.9 million a year (36 percent of total administrative costs)."

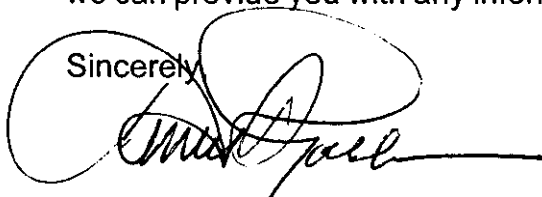
The SAO concludes that "... (b)y reducing the complexity of the current administrative system, the ability to plan and manage the statewide system could be improved." Clearly, this was part of the Legislature's intent in 1987.

We would appreciate the opportunity to thoroughly brief these issues for you.

On Friday, February 5, 1999, at its regular meeting, the Commission voted to submit this request for reconsideration to you. The Commission will take no further action with respect to the City's request to withdraw from the regional 9-1-1 plan until such time as we receive your response to this letter.

Your favorable consideration of this request for reconsideration is greatly appreciated. If we can provide you with any information, please do not hesitate to contact me at 305-6920.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Goerke", written over a large, loopy flourish.

James D. Goerke
Executive Director

cc: Samuel L. Neal, Jr., Mayor, City of Corpus Christi
Ron Harris, Chairman, Advisory Commission on State Emergency Communications