



# Texas State Board of Public Accountancy

333 Guadalupe, Tower III Suite 900, Austin, Texas 78701-3900

William Treacy, Executive Director

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MAY 31 2012

May 30, 2012

FILE # MU-47062-12

I.D. # 47062

## OPINION COMMITTEE

Jason Boatright  
Chair, Opinion Committee  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-1065-CA**

In Re: Request for an Opinion on Fee Exemption-  
§901.410 Public Accountancy Act

Dear Mr. Boatright:

This agency is seeking an opinion from you to assist us in the administration of the Texas Public Accountancy Act, Chapter 901 of the Texas Occupations Code (hereinafter "Act"). We have a question regarding how to apply a section of the Act concerning the exemption of specifically identified licensees from a \$200 fee increase created by the Texas Legislature in 1991.

The fee which is currently found in Sections 901.406 and 901.407 of the Act is a fee in addition to the normal licensing fees for Certified Public Accountants with the fee deposited to the state's general revenue and the foundation school fund. Subsequent to the enactment of the fee increase, the legislature created an exemption from the fee for certain licensees which can be currently found in Section 901.410 of the Act. It states:

The fee increase imposed under Section 901.406 and the additional fee imposed under Section 901.407 do not apply to a license holder who is:...

(2) an employee of a state agency that has authorized the payment of the fee increase and additional fee for the license holder.

In applying this exemption to state agency employees, this agency has historically interpreted the term "state agency" based upon the definition of state agency found in other unrelated sections of the Occupations Code, to mean agencies with state wide jurisdiction. This agency has not formally adopted this interpretation through the Administrative Procedure Act rulemaking process.

The Trinity River Authority (hereinafter "Authority") does not have state-wide jurisdiction but was created as a governmental agency of the State of Texas. Representatives of the Authority maintain that the Authority is the kind of state agency the legislature had in mind when it enacted the exemption provision and therefore, its

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An equal opportunity affirmative action employer

employees should be exempted from the fee. The following is the enabling legislation creating the Authority:

*Be it enacted by the Legislature of the State of Texas:*

Section 1. By virtue of Article XVI, Section 59 of the Texas Constitution, there is hereby created a conservation and reclamation district to be known as Trinity River Authority of Texas (hereinafter sometimes called the "Authority") **which shall be a governmental agency of the State of Texas** and a body politic and corporate...(emphasis added)

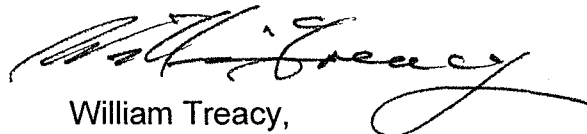
The above legislative excerpt creating the Authority may be found in H.B. 20, Chapter 518, 54<sup>th</sup> Regular Session of the Texas Legislature.

We are asking for your opinion as to whether or not you believe the Texas Legislature intended to exempt the employees of the Authority as employees of a state agency from the fee increase exemption provided for in Section 901.410 of the Act.

We greatly appreciate your help in providing your opinion on this question. Please do not hesitate to contact J. Randel Hill, General Counsel to this agency, regarding this opinion request should you have any questions.

Yours very truly,

TEXAS STATE BOARD OF  
PUBLIC ACCOUNTANCY



William Treacy,  
Executive Director

xc: Alison A. Mackey  
Executive Project Manager  
Trinity River Authority  
P.O. Box 60  
Arlington, Texas 76004-0060