



TEXAS HISTORICAL COMMISSION
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December 10, 2018

RQ-0259-KP

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

FILE # ML-48467-18
I.D. # 48467

Dear General Paxton:

On behalf of the Texas Historical Commission (THC), I ask for your official opinion concerning this agency's authority to permit the destructive testing of human remains for research purposes, including for the purpose of obtaining DNA samples adequate to enable the identification of genetically-related direct and indirect descendants.

This agency's statutory authority is primarily found in Government Code Chapter 442. Section 442.007 outlines general authority for the State Archeological Program. This authority includes entering into contracts "for prehistoric or historic archeological investigations". Additional authority is found in the state Antiquities Code, Chapter 191 of the Natural Resources Code. Section 191.051(b)(3) states the agency's authority to "contract or otherwise provide for discovery operations and scientific investigations under the provisions of Section 191.053 of this code". Section 191.053 repeats the agency's authority to contract for the "discovery and scientific investigation of . . . archeological deposits. . .". Additional agency authority with respect to human remains and burial places is identified in the Health and Safety Code, Chapter 711. Section 711.010 provides that the THC may intervene in any suit to remove the dedication of a cemetery and associated human remains. Nothing in state law refers specifically to destructive testing of human remains for research purposes including for the purpose of obtaining DNA samples.

The Commission is further authorized to adopt administrative rules to carry out the provisions of state law, and has adopted Texas Administrative Code Title 13, Part 2, Chapter 26 in support of THC's responsibilities under the Antiquities Code. Rule 26.10 addresses the criteria for verifying the existence of cemeteries. There is a reference in Rule 26.17(e) to the possibility that artifacts held-in-trust might be lost through destructive analysis, but no specific reference is made to analysis of human remains.

Accordingly, I ask the following questions:

1. Does the Texas Historical Commission have authority to permit the destructive testing of human remains for research purposes?
2. If the answer to #1 is "yes", can the purpose of destructive analysis be to obtain DNA samples adequate to enable the identification of genetically-related direct and indirect descendants?
3. If the answer to #1 and/or to #2 is "no", is such authority held by some other public entity?

Thank you for considering this request.

Sincerely,

Mark Wolfe
Mark Wolfe
Executive Director

