



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 2, 1997

The Honorable Mark W. Stiles
Chair, Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 97-059

Re: Clarification of Letter Opinion No. 97-31
(ID# 39633)

Dear Representative Stiles:

You have requested that this office clarify Letter Opinion No. 97-31, which dealt with the question of whether a contract for the loading and unloading of cargo at the Ports of Port Arthur and Beaumont (the "Ports") was exempt from the competitive bidding requirements of chapter 60 of the Water Code. It has been suggested that the particular contract involved in the request between the Ports and the contracting companies is not, as a matter of fact, solely one which calls for the provision of loading and unloading services. Rather, the course of dealings between the parties is said to require the companies to provide significant and varied management and marketing functions which properly would be characterized as personal or professional services for the purpose of section 60.412(a)(4) of the Water Code.

This office does not interpret particular contracts¹ or find facts² in the opinion process. The conclusion reached in Letter Opinion No. 97-31 is based upon the facts set forth in the requesting letter, which indicated that the contract was one for the loading and unloading of cargo, with a few incidental accounting and other clerical services. If, as is suggested, the contract at issue requires that the companies supply highly skilled management and marketing services, such services may well "requir[e] special knowledge or attainment and a high order of learning, skill, and intelligence." Letter Opinion No. 97-31 (1997) at 2 (quoting Attorney General Opinion JM-940 (1988) at 3). If so, they would under the rationale of Attorney General Opinion JM-940 constitute professional services. Such a determination, requiring as it would factual determinations and the interpretation of a contract, is beyond the purview of the opinion process, and is properly made by the Ports, subject to judicial review.

It remains our view that a contract which requires only the provision of loading and unloading services is not exempt from competitive bidding under chapter 60 of the Water Code. Whether the particular contract at issue here fairly may be so characterized, however, is a separate

¹See, e.g., Attorney General Opinions DM-92 (1992) at 10, JM-697 (1987) at 6.

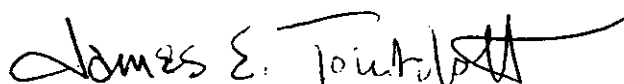
²See Attorney General Opinion DM-106 (1992) at 2.

question which cannot be answered in the opinion process. The determination of that question belongs to the Ports.

S U M M A R Y

While a contract solely for the loading and unloading of cargo is not exempt from competitive bidding under chapter 60 of the Water Code, whether the contract between the Ports of Port Arthur and Beaumont ("the Ports") and the companies involved fairly may be so characterized requires factual determinations and contractual interpretation beyond the purview of the opinion process. Such questions should be determined by the Ports.

Yours very truly,

A handwritten signature in black ink, reading "James E. Tourtelott". The signature is written in a cursive style with a long horizontal flourish extending to the right.

James E. Tourtelott
Assistant Attorney General
Opinion Committee