



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2010

The Honorable Jo Ann Bernal
El Paso County Attorney
County Courthouse, Room 503
500 East San Antonio
El Paso, Texas 79901

Re: Whether a county clerk may issue a marriage license when one of the parties is a female and the other was born a male but subsequently underwent sexual reassignment surgery (RQ-0882-GA)

Dear Ms. Bernal:

It has come to our attention that the issues in the above referenced opinion request are the subject of pending litigation recently filed in the 245th District Court of Wharton County, styled *In the Estate of Thomas Trevino Araguz III, Deceased*, Cause No. 44575.

It is the policy of this office to refrain from issuing an attorney general opinion on a question that we know to be the subject of pending litigation. See Attorney General Opinion Nos. GA-0502 (2007) at 4; MW-205 (1980) at 1; V-291 (1947) at 5-6; Letter Advisory No. 142 (1977) at 1. This policy, which has been in effect for more than sixty years, is based upon the fact that attorney general opinions, unlike those issued by courts of law, are advisory in nature. By contrast, court decisions are binding unless and until they have been modified or overturned by a higher court or until the legal texts they construe have been amended. Consequently, when a legal matter is being litigated, the courts are the appropriate forum for resolving the issue.

As a result, we are closing our file on this request. If any of the legal issues in this opinion request remain unresolved at the conclusion of the lawsuit, you may submit a request to resolve those issues.

Please contact us if we may be of assistance in the future.

Very truly yours,

Nancy S. Fuller
Chair, Opinion Committee

NSF/JRG/rem

Encl: Tex. Att'y Gen. Op. Nos. MW-205 (1980), V-291 (1947); Tex. Att'y Gen. Letter Advisory No. 142 (1977); Request Letter dated April 19, 2010 (RQ-0881-GA)