Truancy court may refer a child to the probation department upon the third instance of contemptuous conduct. [Tex. AG Op. KP-0064](16-2-7A)

On February 16, 2016, the Texas Attorney General opined that a court would likely conclude that under subsection 65.251(b) of the Family Code, a truancy court may refer a child to the juvenile probation department for either failure to obey a truancy order or direct contempt; however, such a referral requires two prior instances of contemptuous conduct regardless of form-either failure to obey a truancy order or direct contempt.

¶ 16-2-7A. **Tex. AG Op. KP-0064**, 2/16/16.

**Re**: Circumstances under which a truancy court may refer a child to the juvenile probation department, and circumstances under which a child may be prosecuted for delinquent conduct (RQ-0046-KP)

**Query**: You ask us to construe two provisions in newly-added chapter 65 of the Family Code, which now governs court jurisdiction and procedures relating to truancy. You first ask about a truancy court's referral of a child to a juvenile probation department. Request Letter at 1-3.

Subsection 65.251(b) of the Family Code provides, in relevant part, that [i]f a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt of court on two or more previous occasions, the truancy court ... may refer the child to the juvenile probation department .... TEX. FAM. CODE § 65 .251 (b). You explain that this provision could be interpreted in a number of ways depending on the grammatical construction of the phrases beginning with the words "or" and "and" in the sentence. Request Letter at 2. Thus, you ask this office for assistance in determining the meaning of subsection 65.251(b} Ii at 2-3.

**Opinion:** As with any statute, our goal in construing subsection 65.251(b) is to give effect to the Legislature's intent. Lippincott v. Whisenhunt, 462 S.W.3d 507, 509 (Tex. 2015). "[W]hen

statutory language is susceptible to more than one reasonable interpretation, [a court] look[s] beyond its language for clues to the Legislature's intended meaning." In re Smith, 333 S.W.3d 582, 586 (Tex. 2011). One such clue comes from another subsection of section 65.251. See Tex. Student Hous. Auth. v. Brazos Cty. Appraisal Dist., 460 S.W.3d 137, 141(Tex.2015) (stating that when construing a statute, a court will focus "not on isolated words or phrases but on the statute as a cohesive, contextual whole"). Subsection 65 .251 (a) provides that "[i]f a child fails to obey an order issued by a truancy court ... or a child is in direct contempt," a truancy court may impose a fine, restrict driving privileges, or both. See TEX. FAM. CODE§ 65.25l(a). Subsection 65.251(a)'s imposition of these penalties upon a single occurrence of either truancy order defiance or direct contempt suggests that subsection 65 .251 (b) requires something more than a single occurrence of either behavior to trigger its provisions. Otherwise, there would be no reason to express the penalty for a single occurrence in a separate subsection. See City of Dallas v. TC! West End, Inc., 463 S.W.3d 53, 55-56 (Tex. 2015) (stating that "an interpretation that renders any part of the statute meaningless" should be avoided).

The grammatical structure of subsection 65.251(b) can thus be read to pivot on the conjunctive word "and," requiring the occurrence of some additional condition expressed after the conjunction. The question then is whether either of the additional conditions (i.e., the child failing to obey an order or engaging in direct contempt) must have occurred "on two or more previous occasions" or whether that phrase refers only to direct contempt. Again, we seek clarity from the surrounding text by examining subsection 65 .251 (c), which sets forth the documentation required when a referral to a juvenile probation department is made. That subsection, in relevant part, requires a truancy court to provide

documentation of all truancy orders for each of the child's previous truancy referrals, including: (A) court remedies and documentation of the child's failure to comply with the truancy court's orders, if applicable, demonstrating all interventions that were exhausted by the truancy court; and (B) documentation describing the child's direct contempt of court, if applicable[.]

TEX.FAM. CODE § 65.251 (c)(2) (emphasis added).

Thus, subsection (c) suggests that, regardless of the category, there must have been two or more previous occurrences of an offending behavior before the truancy court may refer the child to a juvenile probation department. No language in chapter 65 appears to limit the prior contemptuous behavior requirement to the same category. Thus, one instance of truancy order defiance together with one instance of direct contempt would constitute the requisite "two or more previous occasions" of offending behavior for purposes of subsection 65 .251 (b). This construction also simplifies the execution of the statute because it results in a child's eligibility for juvenile probation department referral upon the third commission of any combination of the offending behaviors, thus making it consistent with the Legislature's express purpose in "creating simple civil judicial procedures" for holding a child accountable for excessive school absences. Id. § 65.00l(b). In sum, a court would likely conclude that under subsection 65.251(b) of the Family Code, a truancy court may refer a child to the juvenile probation department for either failure to obey a truancy order or direct contempt; however, such a referral requires two prior instances of contemptuous behavior regardless of form-either failure to obey a truancy order· or direct contempt.

**Summary:** A court would likely conclude that under subsection 65.251(b) of the Family Code, a truancy court may refer a child to the juvenile probation department for either failure to obey a truancy order or direct contempt; however, such a referral requires two prior instances of contemptuous conduct regardless of form-either failure to obey a truancy order or direct contempt.