



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 20, 1962

*Overruled by
M-726
where conflicts*

Honorable Jack N. Fant
County Attorney
El Paso County
El Paso, Texas

Opinion No. WW-1385

Re: Whether it is the official duty of the county attorney to represent a county commissioner and county employees in a civil suit against such individuals.

Dear Mr. Fant:

You have requested our opinion on the following questions:

"(1) Whether it is the official duty of the County Attorney to represent certain County officials and personnel in a civil suit in the State District Court under the facts stated? and (2) If it is not the County Attorney's official duty, whether he then has the right, power and/or authority as County Attorney to represent said persons under the facts stated?"

Your request concerns a petition filed in the 65th District Court alleging a conspiracy as having been entered into between eight persons so as to create a monopoly with regard to the use of the El Paso County Coliseum. The plaintiff sues for judgment against defendants jointly and severally, seeking monetary damages. Among the defendants named in the suit are a duly elected county commissioner, a county employee and manager of the Coliseum, and three members of the County Recreation Board that acts in an advisory capacity to the commissioners court. The County has not been named as a party defendant and judgment is sought against the defendants and not the County.

Section 21 of Article V of the Constitution of Texas provides:

"The County Attorney shall represent the State in all cases in the District and inferior Courts in their respective counties; but if any

county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall in such counties be regulated by the Legislature."

In Davis v. Wildenthal, 214 S.W.2d 620 (Civ.App. 1951, error ref., n.r.e.), the Court held that the county has not been made a party to a suit simply because of the fact that some county officials are being sued. Based on this decision, in Attorney General's Opinion WW-1036 (1961), this office held that where a county is not a party to the suit, the county is neither authorized nor obligated to furnish an attorney for the officials who are being sued. In Attorney General's Opinion WW-1036, it is stated:

"It is not the duty of the County Attorney to represent either the Sheriff or a Justice of the Peace in Federal Appellate Court. Since the suit is a suit against the Sheriff and a Justice of the Peace individually, the County is not a party and the County is neither authorized nor obligated to furnish an attorney for those two officials. The action of the Grand Jury in refusing to return an indictment and writing a memorandum about the case was within the scope of its power and not improper."

In Attorney General's Opinion O-4955 (1942), it was held that the commissioners court was authorized to pay a private attorney for representing the court and the county in a suit against the county, county judge, commissioners, county auditor and county treasurer to enjoin them from paying out county funds. However, this suit named the county as a defendant and was viewed as one affecting the county as a whole. In Attorney General's Opinion WW-662 (1959), it was held:

"In the present case neither Wichita County nor the Commissioners' Court of that county were ever named as defendants. The Commissioners' Court did not employ or authorize the employment of the attorney. The design and effect of the suit was not to obstruct or control the performance of official acts, but to recover damages from the Sheriff and his bonding company for his failure in the past to properly perform his official duties.

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In view of the foregoing, it cannot be said that the county as a whole was interested in or affected by such a suit. Hence, in our opinion, the Commissioners' Court is not authorized to reimburse the Sheriff for his expenses in defending such suit."

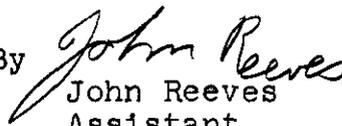
In view of the foregoing, it is our opinion that, since damages are sought against the named defendants and the county is not a named defendant, it cannot be said that the county as a whole is interested in or affected by such a suit. Therefore, it is our opinion that you are neither authorized nor required to represent as county attorney the named defendants.

SUMMARY

The county attorney is neither authorized nor required to represent as county attorney individuals named as defendants in a suit in which the county is not a party, wherein monetary damages are sought against the named defendants.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

L. P. Lollar
Sam Stone
Grady Chandler

REVIEWED FOR THE ATTORNEY GENERAL
By: Leonard Passmore