



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

September 16, 1988

Honorable Gary E. Kersey
Kerr County Attorney
317 Earl Garrett
Kerrville, Texas 78028

LO-88-106

Dear Mr. Kersey:

This in in regard to your May 11, 1988, request (RQ-1451) for an attorney general opinion as to the legality of the Kerr county judge's collecting funds and disbursing them to local law enforcement agencies for the purpose of combatting drug abuse in the county. You say that the commissioners court has approved the county judge's activities in this regard, but you give no factual information as to, for example, the manner of collecting and disbursing funds, the particular law enforcement agencies to which funds are disbursed, or the specific uses to which such funds will be put by such agencies. Consequently, we cannot provide a specific answer to your question.

Nevertheless, we have researched various legal issues we discern in your question as you present it. As to the issue of the county's authority to accept donations, it would appear from a consideration of the scheme of statutory provisions in this regard that a county must have specific statutory authorization to accept donations for a particular purpose. The statutes make specific provisions for counties' accepting donations for certain purposes. See for example article 5138a, V.T.C.S., authorizing a county to accept donations, and to apply them in accordance with the terms of the donations, for the purpose of providing parental homes and schools for the training of dependent and delinquent juvenile residents of the county. But see Bell County v. Alexander, 22 Tex 351 (1858) (suggesting that the authority of a county to receive grants of property for purposes the county is authorized to further is inherent in the county's nature as "a body corporate and politic").

Even assuming for the purposes of argument that the county is authorized to accept the donations in question, there is some doubt as to how such funds should be

characterized and, as to whether the county would be bound to expend them only for the purposes for which they were donated. In Attorney General Opinions V-1365 (1951) and V-1444 (1952) this office addressed the acceptance and use of donations by soil conservation districts, which had express statutory authorization to accept donations. In V-1365 this office wrote:

If, as we have been advised occurred in one instance, the Chamber of Commerce of a certain city saw fit to donate funds for the purpose of providing entertainment designed to promote soil conservation, the organization could accomplish this result only by paying for the entertainment itself because once the funds are donated to the political subdivision of the State, they become public money and the property of the political subdivision.

Attorney General Opinion V-1365 (1951). In contrast, V-1444 stated:

Whether the particular donation for an award for an essay contest or for a soil conservation project would further the purposes of the act is a fact question upon which this office is not authorized to pass. Assuming that such award would further the purposes of the act, we think a district would accept funds in trust for these purposes. Such funds would not become a part of the public funds of the district and their expenditure in this fashion would not, therefore, be counter to the constitutional provision we discussed in Attorney General's Opinion V-1365 (1951).

Attorney General Opinion V-1444 (1952).

Attorney General Opinion WW-1058 (1961) concluded that a tract of land deeded to the county judge for use as a cemetery must be deemed to be held, not by the county, but by the county judge in a private capacity as trustee, since the county was not at that time authorized to maintain cemeteries. In Bastrop County v. Hearn, 8 S.W. 302 (Tex. 1888), the supreme court held that the county judge was not authorized to receive and disperse county funds, which duties belonged to the county treasurer. See the provisions now codified as subchapters B and C of chapter 113 of the

Local Government Code relating to deposit of funds collected by county officers with county treasurer and the disbursement of funds by the county treasurer. Also, it should be noted that it is the commissioners court which has responsibility for adopting the county budget. Local Gov't Code, ch. 111. We find no authority for the county judge to appropriate county funds for particular purposes or for the commissioners court to delegate such authority to him.

Finally, disbursement of county funds to non-county entities may well present constitutional problems. See Tex. Const. art. III, § 52.

You may find that this discussion and the authorities cited provide sufficient guidance for your legal staff to determine the legality of the activities you inquire about or to arrive at a legally satisfactory way of structuring such activities. But should you wish to resubmit your request accompanied by the factual information necessary for our determination of the question, please do so. Also, if you choose to resubmit, we urge you to accompany your request with the brief required by section 402.043 of the Local Government Code. In the meantime we are closing our file on RQ-1451.

Very truly yours,



William Walker
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion-Section

WW/bc

Ref.: RQ-1451
ID# 3528