



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1994

Honorable James L. Anderson, Jr.
Aransas County Attorney
301 North Live Oak Street
Rockport, Texas 78382

Letter Opinion No. 94-084

Re: Whether a sheriff may collect a fee for researching an individual's criminal history records and certifying the results of the search (ID# 25904)

Dear Mr. Anderson:

You state that some individuals are asking the sheriff's department to provide criminal history record checks and to certify to a gun dealer that the individual's possession or receipt of the handgun would not violate the "Brady Law."¹ See 18 U.S.C. § 922(g)(1), (n) (establishing violation of law if person convicted of or indicted for crime punishable by imprisonment for term exceeding one year receives firearm or ammunition that has been shipped in interstate commerce). You ask whether the individual may be charged a fee for the criminal history record check and certification based on the record. You direct our attention to section 118.131 of the Local Government Code, which provides in part:

- (a) The commissioners court of a county may set reasonable fees to be charged for services by the offices of the sheriff and constables.²

¹Under the "Brady Law," handgun sellers provide the chief law enforcement officer of the location with information about the purchaser to enable the law enforcement officer to check for criminal history information about the purchaser. 18 U.S.C. § 922(s)(1)(A)(ii)(I). The chief law enforcement officer, defined to include the sheriff, 27 C.F.R. § 178.11, has five business days to inform the gun dealer whether the purchase would violate federal, state, or local law. *Id.* The waiting period does not apply if the transferor has received notice from the chief law enforcement officer that he has no information that transferee's receipt or purchase of a handgun would violate federal, state, or local law. 18 U.S.C. § 922(s)(1)(A)(ii)(II); 27 C.F.R. § 178.102(b)(3)).

²Section 118.131 of the Local Government Code does not apply to fees in criminal matters. *Camacho v. Samaniego*, 831 S.W.2d 804 (Tex. 1992).

(b) The commissioners court may not set fees higher than is necessary to pay the expenses of providing the services.

(c) The commissioners court may not set fees under this section more than once during any one-year period.

(d) The commissioners court must set the fees before October 1 of each year to be effective January 1 of the following year.

....

(h) If the commissioners court does not set fees under this section, the fees for services by the offices of the sheriff and constables are those fees provided by law in effect on August 31, 1981.

You state that the commissioners court of Aransas County has not yet approved or authorized the collection of the proposed fee. You ask whether the commissioners court may authorize the collection of the proposed fee under section 118.131 of the Local Government Code.

We have found no provision that expressly deals with a criminal history search and certification of the kind you inquire about. *Cf.* 28 C.F.R. § 20.34 (individual may review criminal history record information maintained about him in Department of Justice criminal history record information system). The commissioners court has broad discretion in exercising expressly conferred powers, *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948); *see* 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 5.11, at 152 (Texas Practice 1989), such as the power to set reasonable fees expressly conferred upon it by section 118.131 of the Local Government Code. *See* Attorney General Opinion JM-1046 (1989) (holding that commissioners court may set fees for services performed by sheriffs and constables in unsuccessful attempts to serve civil process). This provision authorizes the commissioners court to set a fee for services performed by the sheriff and constable's office, even though no fee for the service was authorized prior to September 1, 1981. Attorney General Opinion JM-193 (1984) (construing article 3926a, V.T.C.S., predecessor of section 118.131 of Local Government Code). The commissioners court must set the fee before October 1 of this year for it to be effective on January 1 of next year.³

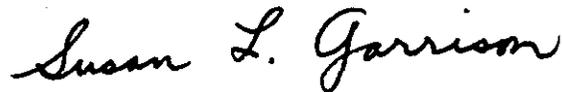
³Section 112.010(a) of the Local Government Code provides that the county fiscal year is the calendar year unless the commissioners court adopts a fiscal year beginning October 1, as provided by subsection (b) of section 112.010, or, for counties of 2.2 million population or more, a fiscal year beginning October 1 or March 1, as provided by subsection (c). If the commissioners court adopts a fiscal year beginning October 1, the dates prescribed by other laws for action relating to the county budget are moved back three months. Local Gov't Code § 112.010(e); 35 DAVID B. BROOKS, COUNTY AND SPECIAL

Accordingly, the commissioners court may set a reasonable fee pursuant to section 118.131 of the Local Government Code to be charged by the sheriff for researching an individual's criminal history record and preparing a certification that the individual is in compliance with the requirements of the Brady Law, if that is what the record shows. Whether a particular fee is reasonable cannot be determined in the opinion process. The amount of the fee is to be determined by the commissioners court in the exercise of good faith discretion, subject to judicial review for abuse of discretion.

S U M M A R Y

The commissioners court may set a reasonable fee pursuant to section 118.131 of the Local Government Code to be charged by the sheriff for researching an individual's criminal history records and certifying the result of the search. The amount of the fee is to be determined by the commissioners court in the exercise of good faith discretion.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

(footnote continued)

DISTRICT LAW § 15.15, at 542 (Texas Practice 1989). If a fiscal year beginning March 1 is adopted in a county of 2.2 million or more, the dates for action relating to the county budget are moved forward three months. Local Gov't Code § 112.010(e).