



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1998

The Honorable Raymie Kana
Colorado County Auditor
Colorado County Courthouse, Third Floor
Columbus, Texas 78934

Letter Opinion No. 98-026

Re: Whether the Colorado County Commissioners Court may contract with the county attorney's office to provide courthouse security, and related questions (RQ-969)

Dear Ms. Kana:

The Colorado County Attorney represents the state in criminal cases in the county and in numerous other kinds of legal proceedings. He or she is authorized to employ personnel, including an investigator, as necessary to ensure the office runs smoothly and efficiently. The county attorney is not, however, authorized to hire personnel to perform tasks that do not further the county attorney's functions. You ask whether the Colorado County Commissioners Court may contract with the county attorney's office to provide courthouse security. We do not find authority for the Colorado County Attorney to provide such a service. You further ask whether the courthouse security fund, established by Code of Criminal Procedure article 102.017, may be used to fund the newly created courthouse-security position in the county attorney's office. Because we answer your first question in the negative, we must conclude that the commissioners court may not use the courthouse security fund for such a purpose. Finally, you ask whether *contract security personnel*, as used in Code of Criminal Procedure article 102.017, describes a county employee with benefits. We conclude it does not.

You state that the Colorado County Commissioners Court allowed the county attorney to hire an investigator out of the courthouse security fund. This investigator will be employed on a full-time basis and will provide courthouse security.¹ You further inform us that, if the investigator is unavailable for courthouse security, then the county attorney will assign another of his employees to the task. You question the legality of these arrangements.

In our opinion, the Colorado County Attorney lacks authority to provide courthouse security. All of the Colorado County Attorney's duties we find pertain to his or her role as the state's representative.² The Colorado County Attorney is expressly given the same duties and powers the

¹You do not indicate whether the investigator's sole duty is to provide courthouse security. To the extent the investigator has other duties, we do not consider the propriety of the county attorney's hiring him or her.

²See generally Attorney General Opinion MW-66 (1979) (discussing district attorney's authority).

district attorney has under general law.³ Generally, the Colorado County Attorney, like a district attorney, is required to “represent the State in all criminal cases in the district courts of [the county] and in appeals therefrom”⁴ The Colorado County Attorney also is required to represent the state in examining trials and habeas corpus proceedings.⁵ In addition, the Colorado County Attorney has various duties, found in scattered statutes, such as providing legal advice to appropriate officials;⁶ enforcing certain licensing acts;⁷ and challenging public nuisances.⁸ We find nothing that would authorize the Colorado County Attorney to provide courthouse security services. Furthermore, the county attorney’s role as a representative of the State cannot, we believe, encompass providing security services in the county courthouse.

Moreover, the Colorado County Attorney may not hire employees to perform functions the county attorney is not authorized to provide. The county attorney may employ any assistants, investigators, secretaries, and other office personnel that, in his or her judgment, are required to properly and efficiently operate and administer the office.⁹ In particular, the county attorney may hire an investigator, but the investigator’s authority is limited:

*An investigator appointed by a prosecuting attorney has the same authority as the sheriff of the county to make arrests anywhere in the county and to serve anywhere in the state warrants, capiases, subpoenas in criminal cases, and all other processes in criminal cases issued by a district court, county court, or justice court of this state.*¹⁰

We do not believe the term *make arrests*, as it is commonly understood, encompasses the authority to patrol the courthouse looking for potential security threats. More importantly, an investigator may not perform tasks that do not further the county attorney’s function: to represent the state.

Because the county attorney’s office may not provide courthouse security services by contract with the commissioners court, we must conclude that the commissioners court cannot

³See Gov’t Code § 45.145(a).

⁴Code Crim. Proc. art. 2.01.

⁵See *id.*; see also 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 21.41 (Texas Practice 1989).

⁶See Gov’t Code § 41.007.

⁷See, e.g., V.T.C.S. arts. 249a, §§ 5(c), 13(b) (architects), 4413(29bb), § 44 (private investigators and private security agencies), 8890, § 17 (veterinarians); Gov’t Code § 419.905(b) (fire personnel).

⁸See, e.g., Civ. Prac. & Rem. Code §§ 125.001 - 125.069; Health & Safety Code § 341.012(d).

⁹See Gov’t Code § 41.102.

¹⁰*Id.* § 41.109(a).

allocate monies from the courthouse security fund to fund the county attorney's employee hired to provide such services.

Finally, we conclude that the phrase *contract security personnel* in Code of Criminal Procedure article 102.017 does not mean county employees who provide courthouse security. Colorado County has established a courthouse security fund under Code of Criminal Procedure article 102.017. That article imposes a security fee upon convicted defendants. Likewise, civil litigants and others filing documents must pay a security fee, but only if the county commissioners court adopts one.¹¹ These revenues constitute the courthouse security fund,¹² which the county may use only for very limited purposes:

A [courthouse security fund] . . . may be used only to finance the following items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate:

(1) the purchase or repair of X-ray machines and conveying systems;

(2) handheld metal detectors;

(3) walkthrough metal detectors;

(4) identification cards and systems;

(5) electronic locking and surveillance equipment;

(6) *bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;*

(7) signage;

(8) confiscated weapon inventory and tracking systems;

(9) locks, chains, or other security hardware; or

¹¹See Local Gov't Code § 291.008.

¹²See Code Crim. Proc. art. 102.017(d).

(10) continuing education on security issues for court personnel and security personnel.¹³

The county commissioners court administers the courthouse security fund.¹⁴ Clearly, unless a county employee fits within subsection (6), italicized above, monies from the courthouse security fund may not be used to finance the position. The statute limits the use of the fund to *only* the listed purposes.¹⁵ Consequently, the county commissioners court may allocate monies from the courthouse security fund to pay the salary and benefits of a county employee if the employee is a bailiff, a deputy sheriff, or a deputy constable.

We do not define *contract security personnel* to include a county employee who is not a bailiff, deputy sheriff, or deputy constable but who provides courthouse security services. As you suggest, article 102.017 does not define the phrase. Additionally, we find no other definition of that term. In our opinion, the phrase refers only to security personnel who provide courthouse security as independent contractors.

¹³*Id.* (emphasis added).

¹⁴*See id.* art. 102.017(e).

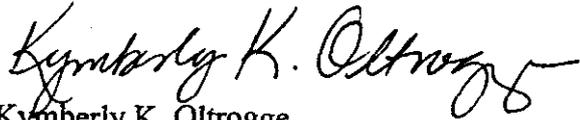
¹⁵*See id.* art. 102.017(d).

S U M M A R Y

The Colorado County Attorney may not contract with the county commissioners court to provide courthouse security. The commissioners court may not fund such a position in the county attorney's office with monies from the courthouse security fund established under Code of Criminal Procedure article 102.017.

The phrase *contract security personnel* in Code of Criminal Procedure article 102.017 does not denote county employees. Rather, it refers only to security personnel who provide courthouse security as independent contractors.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee