



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2003

The Honorable Tempie T. Francis
Motley County Attorney
P.O. Box 7
Matador, Texas 79244

Opinion No. GA-0094

Re: Whether a county attorney who is not subject to the Professional Prosecutors Act may maintain more than one private civil practice office (RQ-0033-GA)

Dear Ms. Francis:

You ask whether a county attorney who is not subject to the Professional Prosecutors Act may maintain more than one private civil practice office.

Chapter 46 of the Government Code, the Professional Prosecutors Act, “applies to all county prosecutors.” TEX. GOV’T CODE ANN. § 46.002 (Vernon Supp. 2003). Section 46.005 provides, in relevant part:

(a) A state prosecutor may not engage in the private practice of law but may complete all civil cases that are not in conflict with the interest of any of the counties of the district in which the prosecutor serves and that are pending in court before the prosecutor takes office.

.....

(c) This section applies to a county prosecutor and any assistant of a prosecutor if, from all state and county funds received, the county prosecutor or assistant receives a salary that is equal to or more than 80 percent of the benchmark salary.

Id. § 46.005(a), (c). “Benchmark salary” is defined as “the salary that is provided for a district judge in the General Appropriations Act.” *Id.* § 46.001(2). The “benchmark salary” for a district judge for the 2002-03 biennium is \$101,700. *See* General Appropriations Act, 77th Leg., R.S., ch. 1515, art. IV-18, 2001 Tex. Gen. Laws 5411, 5935. The benchmark salary for the 2004-05 biennium is also \$101,700. *See* General Appropriations Act, Conference Committee Report, Tex. H.B. 1, 78th Leg., R.S., art. IV-26 (2003), available at http://www.lbb.state.tx.us/Bill_78/6_Conf/Bill-78_6.htm.

You indicate that you are the elected county attorney of Motley County. You further state that your total salary is \$38,950 per annum.¹ An annual salary of \$38,950 is approximately 38.3 percent of the benchmark salary. Your salary is therefore not “equal to or more than 80 percent of the benchmark salary” denoted in section 46.005(c) of the Government Code. As a result, section 46.005 is not applicable to you, and you are entitled to engage in the private practice of law.

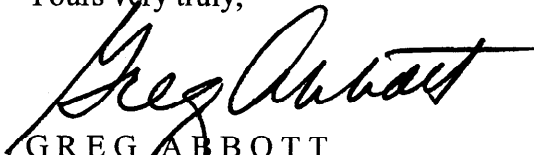
You ask whether you may maintain a private civil practice office in both Motley and Floyd Counties. No provision of chapter 46, or any other statute, limits the number of such offices to one. Nor do the statutes place any limitation on the location of those offices. Where the language of a statute is clear, we need not look to extrinsic evidence of the legislature’s intent. *See Fitzgerald v. Advanced Spine Fixation*, 996 S.W.2d 864, 864 (Tex. 1999). Because you are a county attorney who is not subject to the Professional Prosecutors Act, you may maintain more than one private civil practice office, and you may maintain an office in more than one county.

¹Letter from Honorable Tempie T. Francis, Motley County Attorney, to Honorable Greg Abbott, Texas Attorney General (Mar. 24, 2003) (on file with Opinion Committee).

S U M M A R Y

A county attorney who is not subject to the Professional Prosecutors Act may maintain more than one private civil practice office and may maintain an office in more than one county.

Yours very truly,


GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

DON R. WILLETT
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Rick Gilpin
Assistant Attorney General, Opinion Committee