



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2021

Mr. Carlos A. Pereda
Dimmit County Auditor
301 North 5th Street
Carrizo Springs, Texas 78834

Opinion No. KP-0374

Re: Whether a constable working as a deputy sheriff may be paid for work under the Justice Assistance Grant (RQ-0393-KP)

Dear Mr. Pereda:

You ask whether a constable working as a deputy sheriff may be paid for work under the Justice Assistance Grant.¹

Background

You tell us the Dimmit County sheriff's office has employed an elected constable as a sheriff's deputy for the last two years. Request Letter at 1. You state that he receives his regular compensation as a constable every pay period. *Id.* As deputy, you tell us, he works 80 hours per pay period and has occasionally received overtime payment through the Governor's Justice Assistance Grant. *Id.* You also wish to know whether a constable employed as a sheriff's deputy may receive (1) the sick leave and vacation benefits of a deputy, and (2) overtime payment under the Justice Assistance Grant. *Id.*

Receipt of Sick Leave and Vacation Benefits

Pertinent to your first question, this office previously determined, in Attorney General Opinion GA-0470, that a constable may be employed as a deputy in the sheriff's office and receive compensation as such, in addition to the salary received for service as constable. Tex. Att'y Gen. Op. No. GA-0470 (2006) at 4. The opinion explained that neither the dual-office holding prohibition in article XVI, section 40 of the Texas Constitution, nor the common-law doctrine of incompatibility precludes an elected constable from simultaneously serving as a deputy sheriff. *Id.* (citing Tex. Att'y Gen. Op. No. GA-0402 (2006) at 2). Relying on section 152.011 of the Local

¹See Letter from Carlos A. Pereda, Dimmit Cnty. Auditor, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Dec. 20, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0393KP.pdf> ("Request Letter").

Government Code, the opinion concluded that “[s]o long as the county’s annual budget appropriates compensation, including overtime compensation, for the sheriff’s deputies, a deputy sheriff, including a deputy sheriff who is also a constable, may be compensated for serving as a deputy sheriff.” *Id.*

Section 152.011 of the Local Government Code requires the county commissioners court to “set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds.” TEX. LOC. GOV’T CODE § 152.011. That section impliedly authorizes the commissioners court to pay employee benefits such as sick leave, vacation leave, and overtime from county funds. *See id.*; *see also* Tex. Att’y Gen. Op. Nos. GA-0661 (2008) at 2 (“Under section 152.011, the court may confer upon county officers and employees such benefits as longevity pay, vacation leave, sick leave, and paid holidays.”), GA-0470 (2006) at 4 (determining that county budget may appropriate overtime pay to sheriff deputies), GA-0303 (2005) at 2 (noting a commissioners court’s general authority concerning compensation and allowances for county and precinct officers and employees who are paid wholly from county funds). Provided a county’s annual budget appropriates sick leave, vacation, and overtime compensation for sheriff’s deputies, the county may provide such compensation to a constable employed as a sheriff’s deputy.

Use of the Justice Assistance Grant

Your remaining question is whether a constable may receive overtime payment from the Governor’s Justice Assistance Grant for service as a deputy. Request Letter at 1. Formally known as the federal Edward Byrne Memorial Justice Assistance Grant Program (“JAG”), the grant “provides federal justice funding to state and local jurisdictions to support a range of program areas including law enforcement.”² In GA-0470, considering the administrative rules in place at the time, this office concluded that JAG funds may not compensate elected or appointed officials such as the sheriff or constable for their service in that capacity, but the opinion did not address whether those officials may receive overtime payment for separate service in an employee capacity. *See* Tex. Att’y Gen. Op. No. GA-0470 (2006) at 3–4.

A “[s]tate or unit of local government” may use JAG funds “to provide *additional personnel*, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice, including for” law enforcement programs. 34 U.S.C.A. § 10152(a)(1) (emphasis added). A state or unit of local government may use JAG grant funds for reasonable overtime compensation if authorized.³ However, the grant funds “may not be used to supplant state or local funds but must be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.” *Id.* at 19; *see also* 28 C.F.R. § 33.23(b) (“Programs which have as their primary purpose the payment of usual salaries

²Bureau of Justice Assistance, U.S. Dep’t of Justice, Edward Byrne Memorial Justice Assistance Grant (JAG) Program, Overview, <https://bja.ojp.gov/program/jag/overview> (“JAG Program”).

³*See* JAG PROGRAM, FREQUENTLY ASKED QUESTIONS (FAQ) 23 (July 2020), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/JAGFAQ.pdf>.

paid to employees generally, or to specific classes of employees within a jurisdiction, are prohibited.”).

The Criminal Justice Division (“CJD”) of the Office of the Texas Governor administers the JAG Program, which “supports state and local agencies in the prevention and reduction of violent crime.”⁴ The CJD promulgated rules regarding CJD grants, including the JAG program, in Title 1, chapter 3 of the Texas Administrative Code. *See* 1 TEX. ADMIN. CODE §§ 3.1–2603. An agency or organization receiving a grant award “must comply with all applicable state and federal statutes, rules, regulations, and guidelines,” and when both federal and state requirements are applicable, “the more restrictive requirement applies.” *Id.* § 3.1. To receive a grant award, an agency or organization must submit an application to the CJD in accordance with CJD requirements. *Id.* § 3.5; *see also id.* § 3.3(s). The CJD may request the applicant to submit additional information necessary to complete the grant review. *Id.* § 3.7(d). The executive director makes the final funding decision. *Id.* § 3.7(a).

Section 3.75 addresses use of grant funds for personnel:

- (a) CJD shall determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary.
- (b) CJD shall not pay any portion of the salary of, or any other compensation for, an elected or appointed government official.
- (c) Compensation for grant-funded employees must be comparable to that of non grant-funded employees performing similar work duties.
- (d)

Id. § 3.75. Subsection (b) plainly prohibits using JAG grant funds to compensate a constable for services as a constable but does not address using JAG funds for a constable’s services rendered in a separate employee capacity such as deputy sheriff. *Id.* § 3.75(b). The “CJD shall determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary.” *Id.* § 3.75(a). Moreover, whether use of JAG funds to pay overtime would supplant an existing county obligation would depend on the particular facts, which cannot be determined in an Attorney General opinion. *Tex. Att’y Gen. Op. No. KP-0239 (2019)* at 3. As the entity with authority to inquire into the particular facts and make the final funding decision, the CJD must ultimately determine whether a constable may receive compensation for overtime in the separate capacity of a deputy sheriff.⁵

⁴*See* OFFICE OF THE TEXAS GOVERNOR, GRANTS, <https://gov.texas.gov/organization/financial-services/grants>.

⁵*See* OFFICE OF THE TEXAS GOVERNOR, eGRANTS, <https://egrants.gov.texas.gov/contactpage.aspx> (providing contact information for the CJD).

S U M M A R Y

Provided a county's annual budget appropriates sick leave, vacation, and overtime compensation for the sheriff's deputies, the county may provide such compensation to a constable employed as a sheriff's deputy.

As administrator of Justice Assistance Grants, the Criminal Justice Division of the Office of the Governor must determine whether a constable may receive overtime payment for service as a deputy sheriff from the Justice Assistance Grant.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA SUTARWALLA
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee