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Opinion Committee

November 3, 1999

RQ-0144-JC

Attorney General John Cornyn  
The State of Texas  
P.O. Box 12548  
Austin, Texas 78711

C.M./R.P.R. # Z 908 646 234  
FILE # ML-41097-99  
I.D. # 41097

Re: Civil Division Opinion 99-OP-133;  
Sheriff Department Vehicles

Dear General Cornyn:

During the last budget session, concluding with the adoption of the budget beginning October 1, 1999, the Tarrant County Commissioners Court voted to eliminate 40 positions in the Tarrant County Sheriff's Department. Of the forty positions eliminated twenty-three were vacant. The Sheriff did not object to the elimination of the vacant positions. The Sheriff's Department presently has 1,250 positions.

Fourteen positions were eliminated in a division called Civil/Mental Warrants. After the budget cut the Civil/Mental Warrant Division retained fifty-six people, including thirty-three deputy sheriffs. The Commissioners Court also reduced the number of vehicles funded for this division. The Sheriff claims that these actions have severely compromised his ability to discharge the duty imposed by section 85.021 of the Texas Local Government Code which requires him to serve civil process.

The Commissioners Court also reassigned fifteen vehicles from the Sheriff's Department to other parts of county government. Ten of the fifteen vehicles were from the Civil/Mental Warrants Division. However, the division retains thirty-five vehicles for its use. The remaining vehicles included one of the two vehicles previously assigned to the Sheriff by himself.

The Commissioners Court's position is that the Sheriff needs one, not two vehicles for his personal use in the department. Additionally, since the positions in Civil/Mental Warrants have been eliminated, the Commissioners Court seeks to utilize the existing vehicles elsewhere rather than sell the vehicles at auction or buy new vehicles. In that connection Commissioners Court has increased the number of deputy constables by three and has encouraged the district and county clerk to forward civil process to the constables. As you know, the constables have a concurrent and equal duty to serve civil process. TEX.LOC. GOV'T CODE ANN. § 86.021 (Vernon 1999).

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At this time there is no litigation regarding the following questions for which we seek your guidance:

**QUESTION NO. 1:**

**While it is a truism of county government that the Commissioners Court should reasonably fund mandatory duties imposed on the Sheriff and other county officials, what are the guidelines regarding the depth of the cuts that the Commissioners Court may impose?**

**QUESTION NO. 2:**

**May a Commissioners Court lawfully require a Sheriff to relinquish control of any of the Sheriff's office vehicles and associated equipment allocated in previous budget years to the Sheriff's office for carrying out his legal duties but not reallocated in a current budget year?**

**QUESTION NO. 3:**

**Once the annual budget is set and the Commissioners Court has authorized a set number of positions in the office of Sheriff for a budget year, is the Sheriff authorized to decide how to deploy the authorized personnel in his office? If the answer is yes, may a Commissioners Court interfere with such deployment during the budget year? What limitations exist on the Sheriff's deployment of such personnel?**

**QUESTION NO. 4:**

**May the Commissioners Court decline, over the objection of the Sheriff, to make a purchase of replacement vehicles that the Commissioners Court budgeted for the Sheriff's department in the current fiscal year? Is the Sheriff required to comply with the county vehicle policy regarding vehicle allocations, and with the purchasing agent's determinations pursuant to Texas Local Government Code § 262.011(j)?**

**QUESTION NO. 5:**

**May a Sheriff or other elected official independently set minimum bid specifications to reflect mission demand, officer safety and public safety issues, for equipment or vehicles to be purchased by the county through the bid process?**

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**QUESTION NO. 1:**

**While it is a truism of county government that the Commissioners Court should reasonably fund mandatory duties imposed on the Sheriff and other county officials, what are the guidelines regarding the depth of the cuts that the Commissioners Court may impose?**

For guidance in answering this question we have reviewed several cases that establish the parameters. For example, the Randall County Commissioners Court reduced the criminal district attorney's investigators positions from three to two. Although all three members of the Amarillo Court of Appeals wrote separately, they all concluded that the Commissioners Court could reduce the criminal district attorney's investigative unit by one-third. Justice Poff determined that the district attorney does not dictate to the Commissioners Court what positions are essential in the operation of his office. The Commissioners Court may make changes to the district attorney's budget so long as those changes are reasonable. In closing Justice Poff noted that absent a mandatory statutory duty to employ a third investigator in the office "The Commissioners Court reasonably exercised its discretion in declining to fund the position." *Randall County Com'rs Court v. Sherrod*, 854 S.W.2d 914, 923 (Tex.App. - Amarillo 1993, *no writ*).

The Randall County District Attorney lost despite statutory language authorizing him to employ the investigators, secretaries and office personnel "that in his judgment are required for the proper and efficient operation and administration of the office." TEX. GOV'T CODE ANN. § 41.102 (Vernon 1988). We find no comparable section for the Sheriff, especially one that removes his office from the general rule requiring the Commissioners Court to determine the number of employees. TEX. LOC. GOV'T CODE ANN. § 151.002 (Vernon 1999).

In this connection the power of the Commissioners Court is limited when the Commissioners Court acts arbitrarily, capriciously, collusively, fraudulently, or abuses its discretion. *Hooten v. Enriquez*, 863 S.W.2d 522, 528 (Tex. App. - El Paso 1993, *no writ*). In El Paso the Commissioners Court attempted to take employees of the county clerk and assign them to the records management department. In this instance the Court of Appeals determined that the duties in question were the exclusive responsibility of the county clerk. *Hooten v. Enriquez*, 863 S.W.2d at 531-2.

However, when the Commissioners Court reduces the number of employees of an elected official, the appellate courts have been more forgiving. For example, when the Dallas County Commissioners Court reduced the number of Sheriff deputies by twenty the Dallas Court of Appeals most succinctly held:

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The allocation of county funds is a discretionary act of the public officials who were elected to make such decisions. The district court's authority extends only to enjoin illegal expenditures and to situations where the commissioners abuse their discretion.

*Weber v. City of Sachse*, 591 S.W.2d 563, 566 (Tex.Civ.App. - Dallas 1979, *writ dismiss'd*).

The precise plan adopted by the Commissioners Court in Tarrant County was adopted in the reverse in Ector County. Since service of process may be had through either the Sheriff or the constables the evidence in *Bomer* showed that the "commissioners court of Ector County has not abused its discretion or acted arbitrarily or capriciously in electing to provide process servers through the sheriff's office." *Bomer v. Ector County Com'rs Court*, 676 S.W.2d 662, 665 (Tex.App. - El Paso 1984, *writ ref'd n.r.e.*). The Tarrant County Commissioners Court of Tarrant County in adopting the complained of action gave the constables in total three additional persons to expand their handling of civil process in Tarrant County. This plan saved Tarrant County \$ 362,771.00.

Tarrant County has a long history of disputes between the Sheriff and the Commissioners Court over the authorized number of deputies. In 1935 the Fort Worth Court of Appeals held that the Commissioners Court could limit the number and salary of the Sheriff deputies. *Tarrant County v. Smith*, 81 S.W.2d 537, 538 (Tex. Civ. App. - Fort Worth 1935, *writ ref'd*).

**QUESTION NO. 2:**

**Can a Commissioners Court lawfully require a Sheriff to relinquish control of any of the Sheriff's office vehicles and associated equipment used in carrying out the legal responsibilities of the Sheriff?**

The Sheriff had two vehicles assigned to himself, a Caprice and a Tahoe. The Commissioners Court requested that he turn in the Tahoe. In connection with the shift of funding to the constables, the Commissioners Court required the return of ten vehicles and associated equipment, such as hand held radios used in conjunction with the vehicles. The Sheriff's complaint centers around his desire to keep this equipment so that he may reassign other personnel to use the vehicles and the equipment in continuing to perform civil process service or to perform other official duties of the Sheriff.

Any possible argument that property acquired pursuant to Chapter 262 of the Texas Local Government Code becomes the property of the office holder, in this instance, the Sheriff, would appear untenable. Disputes between the Commissioners Court and the Sheriff have a long-standing history. In 1939 your office concluded that the Commissioners Court of Ellis County could refuse to continue to provide the Sheriff with

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three vehicles, thereby reducing his fleet to two vehicles. OP. TEX. ATT'Y GEN. No. 0-1615 (1939). Long ago your office concluded that personal property of the county does not belong to the respective commissioner's precinct to which it might be allocated. OP. TEX. ATT'Y GEN. No. V-40 (1947).

It appears that the purchasing agent with the approval of the Commissioners Court has the power to determine the appropriate user of county personal property. See TEX. LOC. GOV'T CODE ANN. § 262.011(j) (Vernon 1999).

**QUESTION NO. 3:**

**Once the annual budget is set and the Commissioners Court has authorized a set number of positions in the office of Sheriff for a budget year, is the Sheriff authorized to decide how to deploy the authorized personnel in his office? If the answer is yes, may a Commissioners Court interfere with such deployment during the budget year? What limitations exist on the Sheriff's deployment of such personnel?**

Texas Local Government Code, Chapter 151, provides in relevant part:

**§ 151.001**

(a) A district, county, or precinct officer who requires the services of deputies, assistants, or clerk in the performance of the officer's duties shall apply to the commissioners court of the county in which the officer serves for the authority to appoint the employees. If the county has a population of more than 190,000, the officer shall apply for the authority to appoint any other kinds of employees.

(b) The application must be sworn and must state:

- (1) the number of employees required;
- (2) the title of the positions to be filled; and
- (3) the amounts to be paid the employees.

(c) If the application is made in a county with a population of more than 190,000, it must also describe the duties to be performed by the employees.

(d) The application must be accompanied by a statement of the probable receipts from fees, commissions, and compensation to be collected by the office during the fiscal year and the probable disbursements, including salaries and expenses, of the office.

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**§ 151.002**

After the receipt of an application under this subchapter, the commissioners court by order shall determine the number of employees that may be appointed and shall authorize their appointment.

**§ 151.003**

After the entry of the commissioners court's order, the officer applying for the employees may appoint them.

**§ 151.004**

The commissioners court or a member of the court may not attempt to influence the appointment of any person to an employee position authorized by the court under this subchapter.

TEX.LOC. GOV'T CODE ANN. § 151.001-151.004 (Vernon 1999).

The positions to be authorized for the Sheriff for a given fiscal year, and the salaries authorized for each position, are set annually through the county budget process. Tarrant County currently utilizes the budget preparation method set out in Subchapter C of Chapter 111 of the Texas Local Government Code. TEX.LOC. GOV'T CODE ANN. § 111.061-111.074 (Vernon 1999). The Commissioners Court in the exercise of its discretion may, and often does, authorize and fund positions in the budget for a fiscal year that the Commissioners Court deems appropriate, even when the Sheriff has not submitted a sworn application setting out the information and duties of each position as set out in § 151.001 (b) and (c).

In JC-0125, dated October 13, 1999, the Office of Attorney General stated:

"We conclude that the sheriff is authorized to decide, in the exercise of reasonable discretion, how to allocate the law enforcement services of his office to different areas in the county. . ."

OP.TEX. ATT'Y GEN.NO. JC-0125 (1999).

Attorney General Cornyn explains that it is the Sheriff, in the exercise of reasonable discretion, who has the authority to determine how to allocate the authorized personnel of the Sheriff's office. We note that the situation giving rise to JC-0125 involved a Commissioners Court and Sheriff in agreement with regard to the deployment of authorized Sheriff's personnel, whereas our question involves a Commissioners Court and Sheriff in

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potential disagreement regarding such an allocation of approved personnel. *See also Weber v. City of Sachse*, 591 S.W.2d 563 (Tex. Civ. App. — Dallas 1979, writ *dism'd*), cited with approval in OP.TEX. ATTY GEN. No. JC-0125 (1999).

There are several statutes that guide and limit the exercise of the Sheriff's reasonable discretion. These are discussed below.

Texas Local Government Code provides that in a county with a population of more than 75,000 the county government shall classify all positions in its Sheriff's department and **shall specify the duties** and prescribe the salary for each classification. TEX.LOC.GOV'T CODE ANN. § 152.071 (Vernon 1999) (Emphasis added). A person who is in charge of the Sheriff's department or is responsible for setting compensation provided by Texas Local Government Code Sections 152.071 and 152.072 commits an offense if the person violates this provision. TEX.LOC. GOV'T CODE ANN. § 152.073 (Vernon 1999). The only statutory authority we located that specifically relates to the setting of salaries gives that authority to the Commissioners Court; the Commissioners Court has that specific authority with regard to the setting of salaries for deputies, jailers, and all other Sheriff's department personnel who are compensated wholly from county funds. TEX.LOC. GOV'T CODE ANN. §§ 152.011-152.013 (Vernon 1999).

But, a contrary argument could be made by reference to Texas Local Government Code Chapter 158, Subchapter B, regarding the Tarrant County Sheriff's Department Civil Service Commission [Tarrant County has elected to create a Sheriff's Department Civil Service Commission, pursuant to Subchapter B], which does not speak directly to the setting of salaries, but states:

**§ 158.035 Powers of Commission**

(a) The commission shall adopt, publish, and enforce rules regarding:

- (1) selection and classification of employees;
- (2) competitive examinations;
- (3) promotions, seniority, and tenure;
- (4) layoffs and dismissals;
- (5) disciplinary actions;
- (6) grievance procedures;
- (7) the rights of employees during an internal investigation; and,
- (8) other matters relating to the selection of employees and the procedural and substantive rights, advancement, benefits, and working conditions of employees.

TEX.LOC. GOV'T CODE ANN. § 158.035 (Vernon 1999).

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A person employed by the Sheriff cannot be required by the Sheriff or anyone else to perform job duties outside of their position's classification if those job duties rightfully belong in a classification that was assigned a higher salary by the Commissioners Court, since that would result in a criminal offense. TEX.LOC. GOV'T CODE ANN. § 152.073 (Vernon 1999). The budget officer and auditor are empowered to monitor, but not interfere in, the deployment of authorized personnel to ensure that personnel are not deployed in job duties that are not within the pay level authorized for a position, as provided by Texas Local Government Code § 111.065, which states:

In preparing or monitoring the budget, the budget officer may require the county auditor or any other district, county, or precinct officer of the county to provide any information necessary for the budget officer to properly prepare or monitor the budget.

TEX.LOC. GOV'T CODE ANN. § 111.065 (Vernon 1999).

And, by Texas Local Government Code § 112.006, which states:

(a) The county auditor has general oversight of the books and records of a county, district, or state officer authorized or required by law to receive or collect money or other property that is intended for the use of the county or that belongs to the county.

(b) The county auditor shall see to the strict enforcement of the law governing county finances.

TEX.LOC. GOV'T CODE ANN. § 112.006 (Vernon 1999).

It appears that the statutes entrust the Sheriff with the discretion to deploy a person occupying an authorized position to perform job duties that are rightfully within the same compensation level, although the duties are otherwise outside the person's usual job description, if the deployment is reasonable. The determination of what is reasonable must first be entrusted to the Sheriff. When any official or body of officials is entrusted with discretion, courts may only interfere if there is an abuse of discretion and not merely because of a dispute between public officials regarding the reasonableness of the actions. *Weber v. City of Sachse, supra; Ector County v. Stringer*, 843 S.W.2d 477, 479 (Tex. 1992). The Sheriff would have to remain within the limitations of state and federal laws relating to pay and overtime and other general laws relating to public employees, including but not limited to the restrictions of Texas Local Government Code Chapter 157, which provides:



**§ 157.022**

- (a) A peace officer employed by a county with a population of more than one million may not be required to work more hours during a calendar week than the number of hours in the normal work week of the majority of other county employees.
- (b) A sheriff or constable may require a peace officer to work more hours than allowed by Subsection (a) if the sheriff or constable determines an emergency exists that requires the officer to work extra hours.
- (c) A peace officer who elects to work extra hours during a calendar week shall be compensated on a basis consistent with overtime provisions of the county personnel policy.

TEX.LOC. GOV'T CODE ANN. § 157.022 (Vernon 1999).

**QUESTION NO. 4:**

**May the Commissioners Court decline, over the objection of the Sheriff, to make a purchase of replacement vehicles that the Commissioners Court budgeted for the Sheriff's department in the current fiscal year? Is the Sheriff required to comply with the county vehicle policy regarding vehicle allocations, and with the purchasing agent's determinations pursuant to Texas Local Government Code § 262.011(j)?**

The Sheriff had objected to the Commissioners Court's declination to order budgeted replacement vehicles that were expected to be assigned to the Sheriff's department. The Commissioners Court had refused to order budgeted replacement vehicles for so long as the Sheriff continued to hold onto vehicles that had been allocated to the Sheriff's department in the prior budget year, but which had not been re-allocated to the Sheriff in the current fiscal year. The Commissioners Court had selected a vendor but had not entered into an enforceable commitment with that vendor. In the past several days, but after the start of this current budget year, the Sheriff surrendered the disputed vehicles (the ones no longer allocated to his office in this current fiscal year), as required by the county vehicle policy and in conformity with the currently effective budgetary allocations. Following the Sheriff's surrender, the Commissioners Court proceeded to authorize the county purchasing agent to place the order for all the budgeted county replacement vehicles, including the 11 which will probably be allocated to the Sheriff's department. Once the ordered replacement vehicles are received, dispute is anticipated regarding whether the Sheriff must comply with the county vehicle policy and turn in an old vehicle for each new vehicle received, in order to ensure that his office does not at any time control a number of vehicles that exceeds the total number of vehicles allocated to the Sheriff's department in the current fiscal year.

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The county vehicle policy requires that "on the same date a department takes control of a vehicle which increases the number of vehicles assigned to the department, the department head shall surrender another department vehicle to the Supervisor of the Central Garage. . . . Once a vehicle is surrendered, the Supervisor of the Central Garage shall notify the Purchasing Agent of such action. The Purchasing Agent shall recommend to the Court the disposition of the vehicle. The Court shall, through a court order, designate the disposition of the vehicle. . . . This section does not apply if the department increases the number of authorized vehicles and has prior approval of Commissioners Court to not surrender a departmental vehicle."

The county vehicle policy requires the Sheriff (as it requires all department heads) to relinquish possession of a currently in-use vehicle on the same day that his office takes possession of its replacement, the result being that the department will never be in possession of more vehicles than are authorized by the currently effective county budget and the current vehicle allocations.

Each year it is the obligation of the county to prepare a budget to cover all proposed expenditures of the county government for the succeeding fiscal year. Departmental expenses may not exceed the budget appropriations for that department during a fiscal year. TEX.LOC. GOV'T CODE ANN. § 111.092 (Vernon 1999). Once a prior budget year concludes and until a budget for the current fiscal year is adopted by the Commissioners Court, the county cannot make any payments during the current fiscal year except for emergencies and for obligations legally incurred before the first day of the fiscal year for salaries, utilities, materials, and supplies. TEX.LOC. GOV'T CODE ANN. § 111.064 (Vernon 1999). If the Sheriff (and, parenthetically, any other county official) is permitted to retain vehicles not allocated to him in the current budget year, the associated expenses to run the vehicles (such as gasoline, oil, maintenance and repairs, lights and sirens, and radios) will necessarily exceed the budgeted amounts for such expenses.

We have not located any law that suggests that every expenditure provided for in the county budget must be expended. [We do not herein deal with salaries, since that is not at issue; there are statutes prohibiting the lowering of salaries of various officials.] Indeed, the Legislature has empowered the county, through its purchasing agent, to take steps to ensure that unnecessary purchases are not made. TEX.LOC. GOV'T CODE ANN. § 262.011(j) (Vernon 1999). There are numerous situations where there might well be budgeted funds that are not expended by the end of the fiscal year. For example, proposed salary funds might not be expended completely where a budgeted position is unoccupied for any part of the fiscal year, such as when an employee has left employment and a replacement employee is not immediately hired. A proposed and budgeted purchase may be determined to be unnecessary, or it may be delayed in order to better time its acquisition at a later time. An item budgeted for purchase may be received by gift. An item may be unavailable or become undesirable for purchase for a number of reasons.

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When a budgeted amount is allocated for a specific expenditure, and an obligation to a particular person or vendor is legally incurred by purchase order, requisition, contract, special purchase, or by virtue of salary earned or labor performed, the earmarked allocation may not be allocated for another purpose, unless there is an amount left over, or unless the Commissioners Court or a county officer cancels the allocation in writing for a valid reason. TEX.LOC. GOV'T CODE ANN. § 111.093(c) (Vernon 1999). This statutory provision acknowledges that the Commissioners Court or a county officer can cancel a budgeted allocation and the Commissioners Court can then allocate it for some other purchase or expenditure, even in some situations where a requisition or contract has been made. The statute permits either the Commissioners Court or a county officer to cancel the budgeted allocation; it does not on its face require that the Commissioners Court and the county officer agree to the cancellation nor that they perform the cancellation jointly.

In our earlier fact situation, before the Sheriff surrendered the excess vehicles, there had been neither contract nor requisition issued. Rather, a proposed purchase was provided for in a budget, and had not yet been consummated, nor even reached the point where the county had committed to make the purchase from any particular vendor. It would seem that, even after a contract was let, either the Commissioners Court or the Sheriff could cancel the allocation for a valid reason. And, since this is a matter of discretion, the decision of either the Commissioners Court or the Sheriff to cancel the allocation must be presumed to be reasonable, with no interference from a district court unless the officers canceling the allocation clearly abuse the discretion conferred by law. *Vondy v. Commissioners Court of Uvalde*, 714 S.W.2d 417, 420 (Tex. App. — San Antonio 1986, *writ ref'd n.r.e.*). *Accord, Tarrant County v. Shannon*, 104 S.W.2d 4 (Tex. Civ. App. — Fort Worth 1937, *no writ*); *Hooten v. Enriquez*, 863 S.W.2d 522 (Tex. App. — El Paso 1993, *no writ*).

**QUESTION NO. 5:**

**May a Sheriff or other elected official independently set minimum bid specifications to reflect mission demand, officer safety and public safety issues, for equipment or vehicles to be purchased by the county through the bid process?**

Items required to be purchased through the county bid procedure must be competitively bid if the amount in question exceeds \$ 25,000.00. Chapter 262, subchapter C, of the Texas Local Government Code. The bid procedure is set out in subchapter C, which sets out in relevant part the following:

**§ 262.023. Competitive Bidding and Competitive Proposal Requirements.**

(a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$25,000, **the commissioners**

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court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter.

TEX.LOC. GOV'T CODE ANN. § 262.023 (Vernon 1999) (Emphasis added).

It would appear that the Commissioners Court is entrusted by statute with setting the final bid specifications for items that are purchased through the bid procedure, and that another elected official, such as the Sheriff, may not do so independently. The specifications must be couched in terms of the quality of specifications needed, not in terms that limit the bid to the products of only one vendor or include nonfunctional characteristics that have the effect of limiting the source of purchase. OP.TEX. ATT'Y GEN. No. JC-0124 (1999).

I would appreciate your earliest resolution of these important questions for the operation of our county government.

Sincerely,



TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS

TC/sdb

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