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May 16, 2001

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0384-JC

Dear General Cornyn,

RE: Brief regarding opinion whether the County Commissioner's Court must provide health insurance for the County Constable, an elected official

According to Tex. Local Gov't Code § 152.011 (1999), "[t]he commissioners court of a county shall 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."

When setting the budget for Fiscal year 2000, the McCulloch County Commissioners Court set the McCulloch County Constable's salary at \$106.09 per month, for a total of \$1273.08 per year. The commissioners court did not provide for health insurance for the McCulloch County Constable. Because the McCulloch County Constable is paid wholly from county funds, it was within the discretion of the commissioners court to choose to not provide health insurance for the County Constable.

Neither Texas statutes nor the Texas Constitution requires McCulloch County to provide health insurance for the McCulloch County Constable.

Tex. Local Gov't Code § 154.005 (1999) provides in part that "(c) A sheriff or constable may receive, in addition to a salary, any reward for the apprehension of a criminal fugitive from justice or for the recovery of stolen property" and "(d) A constable may receive, in addition to Subsection (c), all fees, commissions, or payments for delivering notices required by Section 24.005, Property Code, relating to eviction actions. Notices may only be delivered when not in conflict with the official duties and responsibilities of the constable. A constable delivering said notices must

not be wearing upon his or her person a uniform or any insignia which would usually be associated with the position of constable nor may the constable use a county vehicle or county equipment while delivering said notices. For purposes of collecting fees for serving said notices, a constable is considered a private process server.”

Tex. Local Gov't Code § 154.005 (1999) does not provide for health insurance for constables.

Tex. Const. Art. III § 52e (1999) provides that “[e]ach county in the State of Texas is hereby authorized to pay all medical expenses, all doctor bills and all hospital bills for Sheriffs, Deputy Sheriffs, Constables, Deputy Constables and other county and precinct law enforcement officials who are injured in the course of their official duties; providing that while said Sheriff, Deputy Sheriff, Constable, Deputy Constable or other county or precinct law enforcement official is hospitalized or incapacitated that the county shall continue to pay his maximum salary; providing, however, that said payment of salary shall cease on the expiration of the term of office to which such official was elected or appointed. Provided, however, that no provision contained herein shall be construed to amend, modify, repeal or nullify Article 16, Section 31, of the Constitution of the State of Texas.”

Although the Texas Constitution authorizes McCulloch County to pay for the health insurance of the County Constable; it does not require it. Tex. Const. Art. III § 52e (1999).

The McCulloch County Commissioners Court has the discretion to set the allowances of all elected officials in McCulloch County. The commissioners court elected to not provide health insurance for the McCulloch County Constable, and, in doing so, has followed the law.

I'll be happy to answer any questions that may arise in preparing your opinion on this matter. Please don't hesitate to call me.

Sincerely,



Ginger K. Treadwell