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Rod Price

Linda Deaderick

Janice Hinshaw

R.N. (Bobby) Bland

Dennis Cadra

Dan Wade

RQ-0418-JC

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AUG 01 2001

July 26, 2001

OPINION COMMITTEE

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

FILE # ML-42084-01
I.D. # 42084

ATTN: Attorney General Opinions Section

Gentlemen:

Attached is a request from Ms. Barbara Graff, one of our county commissioners, requesting an attorney general's opinion on the questions posed in her letter.

I would appreciate your looking into this and rendering your opinion at your earliest convenience.

Please contact me should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. Smith".

JOHN W. SMITH

JWS/jbw
attachment

P.S. The sole duties of these bailiffs, or officers, would be to provide courthouse security.



ECTOR COUNTY, TEXAS

Barbara★
Graff

COUNTY COMMISSIONER, PRECINCT 3

July 25, 2001

Mr. John W. Smith
District Attorney
Ector County Courthouse
Odessa, Texas 79761

Dear Mr. Smith:

Pursuant to our conversation on the 12th of July, 2001, I am requesting that you seek an attorney general's opinion on the following:

1. Can the Commissioner's Court set up and fund a security force for the courthouse?
2. Can that security force be paid out of the Courthouse Security Fund?
3. Can the District Attorney carry those officers' peace officer commission?

I understand that this can take several weeks or months, but I anxiously await your reply.

Very truly yours,

BARBARA GRAFF
Commissioner, Precinct #3
Ector County

BG/jbw



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AUG 20 2001

OPINION COMMITTEE

August 15, 2001

Office of the Attorney General
State of Texas
P. O. Box 12548
Austin, TX 78711-2548

ATTN: Ms. Susan D. Gusky, Chair
Opinions Committee

FILE # ML-42084-01
I.D.# 42106

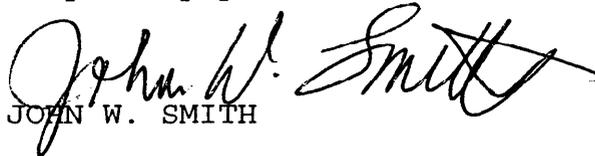
Dear Ms. Gusky:

Pursuant to your letter of August 2, 2001, attached is our Memorandum Brief as to the Bailiff question about which our Commissioner Graf has requested an attorney general's opinion. I trust that upon your receipt of the enclosed brief, that question may now be addressed.

As stated in her letter previously furnished you, the commissioner is most anxious to receive the opinion. I believe some commissioner's court action awaits your decision. I would appreciate anything your committee can do to expedite this request.

Thank you for your usual courteous attention to this matter.

Very truly yours,


JOHN W. SMITH

JWS/jbw
attachment

MEMORANDUM BRIEF

Pursuant to your letter of August 2, 2001, the State presents its memorandum brief on the Ector County Courthouse Security Department.

As you are undoubtedly aware, the primary statute on Courthouse Security is Article 102.017 Code of Criminal Procedure. You are also undoubtedly aware, there is no Judicial Analysis available. A thorough search of the current case law draws a blank.

That leaves the Attorney General's Letter Opinion No. 98-026 as the leading authority on the subject.

The fact situation in Ector County is markedly different than that addressed in 98-026. The Courthouse Security Department in Ector County has been in operation for several years. It was formed by and is under the direct administration of the Ector County Commissioners Court. They do the hiring and administration. The Court currently has four experienced, certified law enforcement officers employed. They are titled Bailiff's . Their only duty is Courthouse Security. (See FN 1 98-026).

It is interesting to note, that when the Security Department was initially formed, it was headed by the now Ector County Sheriff, Mark Donaldson. He was instrumental in its formation, and saw no problems with the structure.

Also different from Colorado City, the Ector County District Attorney's Office has no contract with the Commissioner's Court regarding Courthouse Security and does not desire one. The only involvement that the District Attorney has in the Courthouse

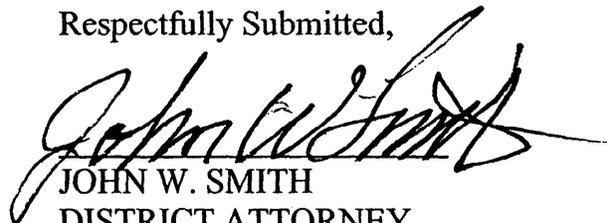
Security is that the District Attorney, at the behest of the Commissioner's Court, carries the Bailiff's law enforcement commissions, as an accommodation to the Court. Once again, it must be stressed that the Bailiff's are not under the administration of the District Attorney. They are not employed by the District Attorney. They are not supervised by the District Attorney, nor do they office with the District Attorney.

Bearing the above and foregoing in mind, I respectfully urge the Attorney General's Office to revisit 98-026 under this distinct distinguishable fact situation.

The conclusions of this Office are that

1. The Commissioner's Court has already set up and funded a security force for the Courthouse, and it has been in operation for several years.
2. While not being sure how such force is funded, one would assume it is being funded through the Security Fund.
3. The Ector County District Attorney has carried the Bailiff's commissions since the inception of the Security force.

Respectfully Submitted,



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