

# MARK BURTNER

LAMAR COUNTY ATTORNEY  
WITH FELONY RESPONSIBILITY

**Assistants:**

Loretta Owen, First Assistant\*  
Phil Kline  
Gary L. Waite\*  
Cynthia L. Braddy

119 N. Main St.  
Paris, Texas 75460  
Telephone: 903/737-2413  
Fax: 903/737-2450

March 18, 2003

Greg Abbott  
Attorney General  
State of Texas  
P. O. Box 12548  
Austin, Texas 7871-2548

R.Q. 0031-GA

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OPINION COMMITTEE

Attn: Opinions Section

FILE # ML-43035-03  
I.D. # 43035

Dear General Abbott:

I would like to request an official opinion regarding the following matter:

The Lamar County Sheriff has requested an opinion from our office regarding the Sheriff (not a deputy) obtaining a second compensated job. The proposed job would be providing security at an apartment complex. His duties would include enforcing criminal trespass, and other criminal misdemeanor and felony statutes. He would be required to wear the Lamar County Sheriff's office uniform, and to be armed. I seek an official opinion from your office about whether this type of employment agreement would comply with Article XVI, section 61 of the Texas Constitution controlling the compensation and disposition of official fees for county officials and with Texas Local Government Code, sections 351.061 and 351.062.

The pertinent parts of Texas Local Government Code, sections 351.061 and 351.062 provides as follows:

§ 351.061. Authority to Contract

To protect the public interest, the commissioners court of a county may contract with a nongovernmental association for the provision of law enforcement services by the county on a fee basis in the geographical area represented by the association.

§ 351.062. Fees

(a) The commissioners court shall determine the amount of the fee charged by the county. The fees must recover 100 percent of the cost to the county for supplying the law enforcement services, including salaries and any additional expenses the county may incur in providing the services. If the time of the sheriff or county official who provides the services is divided between services to the political subdivision and a nongovernmental association, the total cost to the association must be so prorated, as

provided in the contract.

(b) The contract must provide for the payment of the fees to the county. The fees shall be deposited in the general fund of the county.

This statutory scheme seems to specifically overrule and authorize what Attorney General Opinion JM-57 of August 16, 1983 said was impermissible. A copy of Attorney General Opinion JM-57 is attached to this request.

What is unclear is whether an elected Sheriff may accept employment; i.e. "moonlight" to provide security as set forth above. Language in the opinion at p.241 (from earlier Attorney General Opinion) suggests that a Sheriff cannot provide security service on a private basis. However, this seems to fly in the face of local custom and practice in communities all over this state. One only has to go to a local sporting event or even a bar and see uniformed officers (albeit deputies, not usually an elected Sheriff) providing compensated security for private businesses.

I would conclude that a Sheriff cannot contract to provide private security for an apartment complex. I would appreciate an opinion from your office on this issue.

Thank you for your assistance in this matter. If you have any questions, or need additional information from this office, please contact County Attorney Mark Burtner or Assistant County Attorney Gary Waite.

Sincerely

A handwritten signature in black ink that reads "Mark Burtner". The signature is written in a cursive style with a large, looping initial "M".

Mark Burtner

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