

R.Q. 0094-GA

GREG LOWERY
COUNTY ATTORNEY



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August 11, 2003

The Honorable Greg Abbott
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

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AUG 19 2003

Re: Request for Opinion

FILE # ML-43224-03
I.D. # 43224

OPINION COMMITTEE

Dear Honorable Abbott:

Enclosed please find the brief supporting my request for an Attorney General Opinion.
Should you require anything further, please advise.

Thank you for your assistance in this matter.

Sincerely,

Greg Lowery
Wise County Attorney

GL/bl
Enclosure

Statement of Facts

On May 29, 2002 Decatur Police Department was dispatched to the Wise County Courthouse in reference to a possible assault. Officer Dick Wood escorted a gentlemen by the name of Randall Kelton from the courthouse. Officer Wood is a certified peace officer, the bailiff for the 271st District court and chief of courthouse security. According to witness statements, Mr. Kelton arrived at the courthouse hoping to present some complaints to the grand jury. These complaints were against the Assistant District Attorney and other courthouse employees. Mr. Kelton had been asked on previous occasions not to return to the District Attorney's office, due to his harassing nature.

On the above date, Mr. Kelton was asked to leave the courthouse by Officer Wood. Mr. Kelton stated that he was there to file complaints with the Grand Jury and told Officer Wood not to interfere. Mr. Kelton contends that Officer Wood then took him forcibly by the arm and pushed him out the door, at which time the doormat in front of the courthouse door slid out from under him, causing him to fall to the ground. Mr. Kelton believes he was purposefully pushed by Officer Wood. However, witness statements verify that Officer Wood was merely ushering Mr. Kelton outside after he refused to leave on his own accord, and that the fall was a result of Mr. Kelton struggling with Officer Wood. Witness statements further indicate that upon falling to the ground, Mr. Kelton purposefully "rocked forward and thrust back to cause his head and left shoulder to hit the glass door." Both Officer Wood and the witness offered to help Mr. Kelton to his feet and call EMS. Mr. Kelton declined their assistance.

Questions of law

- 1) If an assault has occurred, is Officer Wood covered by judicial immunity, as he was acting in his capacity of bailiff and chief of courthouse security?

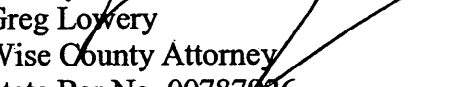
Case Law and Argument

It is the state's position that under the theory of derivative judicial immunity, Officer Wood is immune from prosecution in this matter. In Texas, judicial immunity applies to officers of the court who are integral parts of the judicial process, such as a prosecutor performing typical prosecutorial functions, court clerks, law clerks, bailiffs, constables issuing writs, and court-appointed receivers and trustees. Hawkins v. Walvoord, et. al, 25 S.W.3d 882, 891 (Tex. App.—El Paso 2001, petition for review denied); Byrd v. Woodruff, 891 S.W.2d 689, 707 (Tex. App.—Dallas 1994, writ dismissed by agreement). When judges delegate their authority or appoint persons to perform services for the court, their judicial immunity may follow that delegation or appointment. *Id.* The key consideration in determining whether an officer is entitled to judicial immunity is whether the officer's conduct is a normal function of the delegating or appointing judge. *Id.* Whether an act is judicial in nature is determined by the act's character, not by the character of the individual performing it. *Id.*

Officer Wood was acting in his court appointed capacity of "bailiff" and "chief of courthouse security." A normal function of these positions is to escort or remove people from the courthouse when they have become disruptive to everyday courthouse proceedings or functions. The District Judge, by his judicial authority has appointed his bailiff and head of courthouse security (Officer Wood) to protect the operations of the

courthouse and the people inside of it. Officer Wood's actions are judicial in nature because they facilitate courthouse operations and promote the security of courthouse employees.

Respectfully submitted



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