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August 25, 2003

RQ-0097-GA

FILE # ML-43237-03  
I.D. # 43237

Hon. Greg Abbott  
Attorney General  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711-2548

Dear Attorney General Abbott:

Enclosed is the brief of the Montgomery County District Attorney in support of an opinion request regarding the jurisdiction of city police officers on duty in the Town Center Improvement District pursuant to an interlocal contract between their city and the District.

Please call Assistant District Attorney Gail McConnell at (936) 539-7907, if you have questions or need additional information.

Sincerely,

Michael A. McDougal  
District Attorney

cc: Mr. Michael Page  
Attorney for the District

OPINION REQUEST ID# \_\_\_\_\_

IN THE OFFICE OF THE ATTORNEY GENERAL  
OPINION COMMITTEE

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**BRIEF OF THE MONTGOMERY COUNTY DISTRICT ATTORNEY  
IN SUPPORT OF AN OPINION REQUEST REGARDING THE  
JURISDICTION OF CITY POLICE OFFICERS ON DUTY IN THE TOWN CENTER  
IMPROVEMENT DISTRICT PURSUANT TO AN INTERLOCAL CONTRACT BETWEEN  
THEIR CITY AND THE DISTRICT**

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- EXHIBIT A: Unofficial composite copy of the District Act.
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- EXHIBIT D: S.B. No. 1807, 76th Legislature (1999).
- EXHIBIT E: Copy of the contract between the Town Center District and the City of Oak Ridge North
- EXHIBIT F: Copy of the contract between the Town Center District and the City of Shenandoah
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**TO THE HONORABLE ATTORNEY GENERAL:**

**STATEMENT OF THE CASE**

This request for an opinion arises from a concern of the undersigned District Attorney about (1) whether the Town Center Improvement District of Montgomery County, Texas (the "District"), has the authority to contract with a city for supplemental law enforcement services, and (2) whether city police officers, on duty pursuant to an interlocal contract between their respective city and the District, have jurisdiction to make traffic stops within the District but outside their city limits.

**QUESTIONS PRESENTED**

**Question One Presented:**

May the District contract with a city for additional law enforcement services?

**Question Two Presented:**

Does a city police officer, acting pursuant to an interlocal contract between the officer's respective city and the District, have jurisdiction to make traffic stops within the District but outside their city limits?

## STATEMENT OF FACTS

The Town Center Improvement District of Montgomery County, Texas (the "District"), is a political subdivision of the State of Texas created by and operating pursuant to an act of the Texas Legislature ("District Act"). Act eff. May 26, 1993, 73rd Leg., R.S., ch. 289, 1993 Tex. Gen. Laws 1354-63; amended by Act eff. May 26, 1997, 75th Leg., R.S., ch. 255, 1997 Tex. Gen. Laws 1188-93; amended by Act eff. June 19, 1999, 76th Leg., R.S., ch. 1562, 1999 Tex. Gen. Laws 5371-80. An unofficial composite copy of the District Act is attached as Exhibit A; a copy of each of the foregoing Acts is attached as Exhibits B, C, and D in chronological order, respectively. All references to the "District Act" herein refer to the unofficial composite copy provided in Exhibit A.

The District encompasses an area in Montgomery County that is unincorporated and is regularly patrolled by the Montgomery County Sheriff's Office. The District also has interlocal contracts with its neighboring cities of Oak Ridge North and Shenandoah to provide peace officers for additional law enforcement services referred to as "enhanced Patrol Services." [Exhibit E, being a copy of the Interlocal Contract and amendments thereto with Oak Ridge North; and Exhibit F, being a copy of the Interlocal Contract and amendments thereto with Shenandoah] Both the City of Oak Ridge North and the City of Shenandoah are Type A general-law municipalities within Montgomery County.

Under the foregoing interlocal contracts, "Patrol Services" refers to "patrol visibility, backup services to other law



enforcement agencies and traffic management services." [Ex E and F, Contracts at 2] "Patrol Services" also "shall be deemed and construed to include the enforcement of all laws of the State of Texas within the Patrol Area, including, where appropriate, the making of warrantless arrests." [Ex E & F, First Amendments at 2]

### SUMMARY OF THE ARGUMENT

The undersigned district attorney believes that section 7(k) of the District Act, which prohibits the District from employing its own peace officers and allows the District to contract with individual off-duty peace officers in certain circumstances, complements, rather than prohibits, the District's ability to contract with a city for additional law enforcement services.

Therefore, the District may contract with the Cities of Oak Ridge North and Shenandoah for additional law enforcement services in the District. Pursuant to such contract, city police officers are the District's peace officers with authority pursuant to section 49.216(a), Water Code, to effect warrantless arrests, including traffic stops under article 14.03(g) of the Code of Criminal Procedure, within the District but outside their respective city limits.

## ARGUMENT AND AUTHORITIES

### Question One Presented:

May the District contract with a city for additional law enforcement services?

### Question Two Presented:

Does a city police officer, acting pursuant to an interlocal contract between the officer's respective city and the District, have jurisdiction to make traffic stops within the District but outside their city limits?

### State's Proposed Conclusion:

Yes, the District may contract with a city for supplemental law enforcement services, and city police officers, on duty in the District pursuant to a contract between their city and the District, are authorized to make warrantless arrests for traffic violations within the District but outside their city limits.

### Argument:

- A. Section 49.216, Water Code, applies generally to the District.

The Attorney General has advised the undersigned district attorney that a city police officer acting under contract as a drainage-district peace officer "is authorized by section 49.216 [of the Water Code] to make warrantless arrests for state-law traffic violations within [a drainage] district." Op. Tex. Att'y Gen. No. JC-0530, 2002 WL 1471731, at \*5 (July 9, 2002). A copy of this opinion is attached hereto as Exhibit G.

The District Act provides the District with general powers, "including those conferred by Chapters 49 and 54, Water Code." District Act § 6(a), Act of 1997, ch. 255, § 3 at p. 1189. Therefore, it initially appears that pursuant to section 49.216,

Water Code, the District could contract with a city to provide law enforcement services, and that a peace officer acting under such a contract would be authorized to make warrantless arrests in the District. However, the District Act includes specific provisions addressing law enforcement that thwart a straightforward application of section 49.216.

B. The general powers of the District are limited by specific provisions of the Act.

"If any provision of the general law is in conflict or inconsistent with this Act, this Act prevails." District Act, § 6(b), Act of 1993, ch. 289, § 6 at p. 1358.

Section 49.216(a) provides that "[a] district may contract for or employ its own peace officers." Tex. Water Code § 49.216(a). However, the District Act provides that "[t]he district may not employ peace officers, but may contract for off-duty peace officers to provide public safety and security services in connection with a special event, holiday, period with high traffic congestion, or similar circumstance." District Act, § 7(k), Act of 1999, ch. 1562, § 2 at p. 5374. Section 7(k) specifically prohibits the District from employing peace officers, but does section 7(k) prohibit the District from contracting with cities to provide supplemental law enforcement services, i.e., contracting for its own peace officers?

The undersigned district attorney submits that as shown in the following section, other specific provisions of the District Act authorize the District to contract with cities for supplemental law enforcement services, and that section 7(k) complements those

provisions.

- C. In the liberal construction of the District Act to effect the purposes and intent of the Legislature, the specific provisions of the Act can be harmonized.

"This Act shall be liberally construed in conformity with the legislative findings and purposes set forth herein." District Act, § 5(c), Act of 1993, ch. 289, § 5(c) at p. 1358.

The Legislature created the District, "which shall be a governmental agency, a body politic and corporate, and a political subdivision of the state." District Act, § 1(a), Act of 1993, ch. 289, § 1(a) at p. 1354. The Legislature found "that the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the Town Center area of Montgomery County." District Act, § 1(e); Act of 1993, ch. 289, § 1(e) at p. 1354. The Legislature further found

that the creation of the district is essential to further the public purposes of the economic development and diversification of the state, the elimination of unemployment and underemployment, and the stimulation and development of transportation and commerce; that it is in the public interest; and that it will promote the health, safety, and general welfare of residents, employers, employees, and consumers in the district and of the general public.

District Act, § 5(b), Act of 1993, ch. 289, § 5(b) at p. 1358.

To effect these purposes, the Legislature specifically authorized the District Board to

undertake separately or jointly with other persons or, entities and pay all or part of the cost of improvement projects, including improvement projects for improving, enhancing, and supporting public safety and security, fire protection and emergency medical services, and law

enforcement within and adjacent to the district and improvement projects that confer a general benefit on the entire district and the areas adjacent thereto or a special benefit on a definable part of the district, which may be the entire district or any part thereof.

District Act, § 7(j) (emphasis added), Act of 1999, ch. 1562, § 2 at p. 5374.

The Legislature also specifically authorized the District to "contract with a city, county, other political subdivision, corporation, or other persons to carry out the purposes of this Act on such terms and conditions and for such period of time as the board may determine." District Act, § 13, Act of 1999, ch. 1562, § 7 at p. 5379. This specific authorization is in addition to the general authorization under the Government Code for the District to contract with another local government for "police protection and detention services." Tex. Gov't Code Ann. §§ 791.011(a), 791.003(3)(A) & 791.003(4)(A) (Vernon Supp. 2003).

It appears that pursuant to the foregoing specific sections of the District Act, the Legislature authorized the District to contract with a city for supplemental<sup>1</sup> law enforcement services.

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<sup>1</sup> Section 1(e) provides:

It is the legislature's intent that the creation of the district and this legislation not be interpreted to relieve Montgomery County or any other governmental agency, political subdivision, or municipality from providing the present level of services to the area included within the district or to release the obligations each entity has or may hereafter have to provide services to that area. The district is created to supplement and not supplant such services in the area included within the district.

District Act, § 1(e) (emphasis added), Act of 1993, ch. 289, § 1 at p. 1354

By enabling the District to contract with off-duty peace officers during high traffic time periods or in special circumstances, section 7(k) complements, rather than prohibits, the District's authority to contract with a city. All the specific provisions of the District Act can thus be given effect and harmonized.


- D. City police officers acting pursuant to an interlocal contract between their respective city and the District have jurisdiction to make traffic stops in the District but outside their city limits.

The District's authority to contract with a city for supplemental law enforcement services would be defeated if city police officers, even though not directly employed by the District, could not act as the District's officers. In other words, when the foregoing specific provisions are read together with the general powers under section 49.216, Water Code, a city police officer acting as a District peace officer is in fact a District peace officer and "is authorized by section 49.216 to make warrantless arrests for state-law traffic violations within the district." Tex. Att'y Gen. Op. No. JC-0530, 2002 WL 1471731, at \*5.


**CONCLUSION**

An opinion is respectfully requested regarding the authority of the District to contract with a city for supplemental law enforcement services and whether a city police officer acting under such a contract would have the powers of arrest provided in section 49.216, Water Code, including the power to effect arrests for traffic violations within the District but outside their city limits.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the State's brief in support of an opinion request was served by first class mail on August 25, 2003, on Mr. Michael Page, Schwartz, Page & Harding, L.L.P., Attorney for the District, 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056.

  
\_\_\_\_\_  
Gail Kikawa McConnell