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CERTIFIED MAIL: 7000 0520 0024 6297 0363

I.D. # 043915

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

Re: Request for Attorney General Opinion

Dear General Abbott:

I am seeking guidance from your office regarding statutory interpretation of TEX. LOC. GOV'T CODE § 86.011. More specifically, must a deputy constable's appointment be revoked if he or she is indicted for a felony?

TEX. LOC. GOV'T CODE § 86.011, (Appointment of Deputy Constables), addresses the appointment of deputy constables. Specifically, section 86.011 (b) states that, "[e]ach deputy constable must **qualify** in the manner provided for deputy sheriffs," but section 86 does not address the issue of appointment revocation. However, TEX. LOC. GOV'T CODE § 85.003 (c), (Regarding the appointment of Deputy Sheriffs), states, "[a] deputy serves at the pleasure of the sheriff. However, **the appointment of a deputy is revoked on the indictment of the deputy for a felony**".

Although the statute detailing the appointment process for deputy constables does not include language regarding the indictment of, and subsequent revocation of his or her appointment, it does, as mentioned above,

state that a deputy constable must qualify in the manner provided for deputy sheriffs. In reading the deputy constables and sheriffs appointment statutes in light of the Code Construction Act¹, it would appear that a deputy constable's appointment would be revoked upon his or her indictment in the same manner as provided for a deputy sheriff. This assumption is premised upon the uniformity in which TEX. LOC. GOV'T CODE §§ 85.003 and 86.011 were drafted.

The Code Construction Act, particularly TEX. GOV'T CODE § 311.023, (Statute Construction Aids), states that:

"In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law, or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision".

In the present case, we are presented with the ambiguous term "qualify". TEX. LOC. GOV'T CODE § 86.011 (b) states each deputy (constable) must **qualify** in the same manner provided for deputy sheriffs. Does this simply mean that deputy constables must meet the same initial qualifications as sheriffs/deputy sheriffs as specified by TEX. LOC. GOV'T CODE § 85.0011, or do deputy constables lose their appointments in the same manner as deputy sheriffs when they are indicted for a felony? A plain reading of the statute implies that a deputy constable would be disqualified in the same manner as a deputy sheriff. If this is true, it is clear that deputy sheriffs no longer qualify to serve in their positions because their appointments are automatically revoked upon indictment, ergo deputy constables would lose their appointments as well.

The appointment statutes for deputy sheriffs and deputy constables are extremely similar. For example, although the appointment process is different, both sheriffs and constables are responsible for the acts of their deputies. TEX. LOC. GOV'T CODE §§ 85.003 (d), 86.011 (c). Moreover, sheriffs and their deputies, as well as constables and their deputies, are statutorily designated as peace officers under article 2.12 of the Code of Criminal Procedure. TEX. CODE CRIM. PROC. art. 2.12 (1)(2), *Arrington v. County of Dallas*, 792 S.W.2d 468 (Tex. App. – Dallas 1990, writ denied). Additionally, "[t]he term of deputy constables,

¹ Chapter 311 of the TEX. GOV'T CODE.

as that of deputy sheriffs, expires when the principal's term expires". *Arrington* at 471, citing *El Paso County v. Hill*, 754 S.W.2d 267, 268 (Tex. App. – El Paso 1988, writ denied). Construing sections 85.003 and 86.011 in light of TEX. GOV'T CODE § 311.023, and in comparing the similarities of the two statutes, it appears that the object sought to be attained is to hold deputy sheriffs and deputy constables to the same standards, including automatic appointment revocations for felony indictments.

In making a determination in this case, please be advised that Denton County sheriff and constable deputies are not covered by a civil service plan. Op. Tex. Atty. Gen. No. JM-698 (1987), states that the provision revoking a deputy's appointment because of a felony indictment does not apply to deputy sheriffs subject to a civil service system. This is not the case in Denton County.

In summary, Denton County is seeking your opinion on the following issue: Is a deputy constable's appointment revoked in the same manner as deputy sheriffs if he or she is indicted for a felony?

Thank you for your time and consideration in this matter. If you need any additional information to make a determination in this case, please do not hesitate to call. Best Regards.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Isaacks".

Bruce Isaacks

Denton County Criminal District Attorney