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OFFICE OF THE  
**COUNTY ATTORNEY**  
DAVID T. GARCIA

**RQ-0286-GA**

Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711  
Certified Mail: 7003 2260 0001 1127 8039 (RRR)

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OPINION COMMITTEE

October 26, 2004

FILE # MC-44000-04  
I.D. # 044000

RE: Whether the Commissioner's Court has the authority to allow for suspension with pay as an allowance to be used by elected officials

Dear Honorable Mr. Abbott:

Please accept this letter as a request for an opinion in accordance with Section 402.043 of the Government Code. The Brooks County Commissioner's Court has been dealing with the issue whether they have the authority to allow for suspension with pay as an allowance under Section 152.011 of the Local Government Code. As a result of my research, I believe that there is no statute, case law, or Attorney General opinion on which the Commissioner's Court can base their decision.

In Brooks County, the Sheriff is also the Tax Assessor/Collector. He maintains a separate office and a separate Chief Deputy for the functions handled in that office. On August 30, 2004, a deputy from the Tax Assessor's office, who is paid wholly from county funds, was indicted for a felony related to the voter registration duties which are also handled by that office (See Exhibit A). Specifically, she was indicted for Unlawful Delivery of Certificate (Election Code). On September 3, 2004, the Sheriff suspended her with pay until further notice (See Exhibit B). In discussing this matter with him, he stated that he felt that this was the best action to take under the circumstances and did not want to transfer to his law enforcement division. He also advised that he would wait to see if she was convicted before he took any further action on this matter. The Sheriff further advised that he has not adopted personnel policies or rules for his department, per se, but felt that this action was within his discretion.

The Brooks County Commissioner's Court has voiced concerns that this suspension with pay can continue for an indefinite period. Some members have voiced their opinion that "suspension with pay" is like a paid vacation and therefore an allowance, as contemplated by Section 152.011 of the Local Government Code, which must be provided for by the Commissioner's Court. They also rationalize that by allowing for it does not mean that an elected official must utilize "suspension

with pay” unless the elected official feels that it applies to a given situation. Others have felt that suspension with pay is one of the innate powers of the Sheriff over his own personnel matters.

From my research, I have found that Section 152.011 of the Local Government Code requires a County Commissioner’s Court, with certain exceptions, to “set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds.” TEX. LOC. GOVT. CODE ANN. § 152.011 (Vernon 1999); see id. § 152.017 (providing that section 152.011 does not apply to county auditor, district attorneys’ office, certain judges, and others).

It is clear that the “power’s county officer’s (elected officials’) have, including the County Sheriff, over personnel matters is also quite extensive, subject to appropriate constitutional and statutory restraints” JM-521. This is why the Commissioner’s Court may not set the work conditions of other county officials. If the Attorney General’s office, or a court, rules that suspension with pay is one of those innate powers that an elected official has, then the “Commissioner’s Court will have no authority to override it.

It is interesting to note that the legislature has created laws that cover similar situations. Subsection C of Section 85.003 of the Local Government Code states “A Deputy serves at the pleasure of the Sheriff. However, the appointment of a deputy is revoked on indictment of the deputy for a felony.” I have not found any authority to make this applicable to a tax assessor deputy. It is only referred to as an example of specific legislation. Therefore, a deputy who is indicted would lose his job after an indictment is issued.

The same suspension without pay is contemplated in Chapter 87 of the Local Government Code dealing with removals of elected officials. In that chapter, the district judge is allowed to remove an elected official after a petition is filed and after a bond with sufficient sureties is filed to pay for any damages incurred if the grounds for removal are found insufficient or untrue at trial.

In Commissioner’s Court of Shelby County vs. Paul Ross, Sheriff of Shelby County, at 809 s.w.2d 754, the court handled an action that was different from the situation at hand. In that case the Commissioner’s Court had actually suspended three (3) sheriff’s deputies for thirty (30) days for a violation of the overtime policy. The court ruled that the Commissioner’s Court did not have authority to do so. In the case at hand, the Commissioner’s Court is not contemplating taking any action. They feel that it is clear that any action to be taken in the individual case falls squarely on the shoulders of the Sheriff. Their position is only that before a Sheriff or an elected official can actually suspend an employee with pay, this allowance must be made available to that elected official by the Commissioner’s Court. They feel that this tool is closely related to vacation leave, sick leave, and the like. They do not contemplate having the power to regulate when and if it is used, they only feel that they have the power to either make it available as a tool, or to deny it as a tool, or to limit the maximum length of time, since it falls under their fiscal responsibilities to the tax payers of the community.

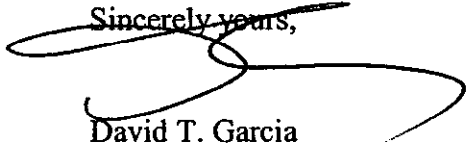
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Office of the Attorney General

Enclosed please find an index with the following exhibits attached.

- A) Indictment of Tax Assessor/Collector deputy involved
- B) Letter from the Sheriff regarding the suspension
- C) Copy of opinion generated by the Brooks County Attorney
- D) Copy of Section 152.011 of the Local Government Code
- E) Copy of 85.003 of the Local Government Code
- F) Copy of Commissioner's Court of Shelby County vs. Paul Ross, Sheriff of Shelby County, at 809 s.w.2d 754

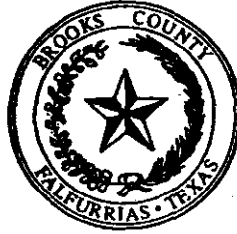
If you have any questions or need more information, please do not hesitate to contact me.

Sincerely yours,



David T. Garcia

DTG:bcr  
Enclosures



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OFFICE OF THE  
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DAVID T. GARCIA

November 3, 2004

Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711  
**Certified Mail: 7003 2260 0001 1127 8046 (RRR)**

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OPINION COMMITTEE

RE: Amending previously requested Attorney General Opinion

FILE # ML-44000-04  
I.D. # 044011

Dear Honorable Mr. Abbott:

Please accept this letter as a request for an opinion in accordance with Section 402.043 of the Government Code. On October 26, 2004, I requested an Attorney General Opinion to consider: "*Whether the Commissioner's Court has the authority to allow for suspension with pay as an allowance to be used by elected officials.*" In reviewing that request, I believe that it should be expanded to also include this additional issue: Whether an elected official has the authority to suspend an employee of his department with pay without the Commissioner's Court of that county previously providing for "suspension with pay" as an allowance contemplated by Section 152.011 of the Local Government Code.

I believe all of the information which I sent in on my letter dated October 26, 2004, which is attached as an Exhibit, is applicable to this request.

If any additional information is needed, please do not hesitate to contact me.

Sincerely yours,

David T. Garcia

DTG:bcr  
Enclosures