



Tyler County

Criminal District Attorney
Joe R. Smith

RECEIVED

FEB 11 2005

OPINION COMMITTEE

February 7, 2005

FILE # ML-44124-05

I.D. # 044124

Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711

RQ-0318-GA

Re: Request for Attorney General Opinion

Dear Mr. Abbott:

Pursuant to Sec. 402.043 of the Texas Government Code, I submit the following questions and brief to your office:

Questions

Does a constable have county wide jurisdiction to investigate a criminal offense that was not committed within his view?

Would he have this authority if his investigation were requested by a law enforcement agency with jurisdiction of the offense?

Brief

Our situation is similar to the one in your opinion GA-0189, when you were asked if a constable's authority in a county extended outside of the constable's precinct. However, that question involved a constable who wanted to "police and patrol" in his county outside of his precinct. Here, we have an elected constable who has a part-time job as a security officer in a private subdivision located outside his precinct, but within his county. In response to prior inquiries, we told the constable and the subdivision officials that, in our opinion, the constable could patrol the subdivision and detain or arrest perpetrators of jailable offenses committed within his view. We also told them that the constable could not "investigate" crimes – take witness statements, perform tests, etc.

The general powers and duties of a Texas constable are set forth in Sec. 86.021 of the Local Government Code:

- (a) A constable shall execute and return as provided by law each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer. Notices required by Section 24.005, Property Code, relating to eviction actions are process for purposes of this section and may be executed by a constable.
- (b) A constable may execute any civil or criminal process throughout the county in which the constable's precinct is located and in other locations as provided by the Code of Criminal Procedure or by any other law.
- (c) A constable expressly authorized by statute to perform an act or service, including service of civil or criminal process, citation, notice, warrant, subpoena, or writ, may perform the act or service anywhere in the county in which the constable's precinct is located.
- (d) Regardless of the Texas Rules of Civil Procedure, all civil process may be served by a constable in the constable's county or in a county contiguous to the constable's county, except that a constable who is a party to or interested in the outcome of a suit may not serve any process related to the suit.
- (e) The constable shall attend each justice court held in the precinct.

This list is not exhaustive, however. As noted in Texas Attorney General Opinion No. GA-0189, other constable duties are scattered throughout the statutes. Further, as peace officers, as listed in Art. 2.12 of the Code of Criminal Procedure, constables have a duty to preserve the peace within their jurisdiction by all lawful means, pursuant to Art. 2.13. Art. 2.13 also provides that constables and other peace officers shall:

- (1) in every case authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime;
- (2) execute all lawful process issued to the officer by any magistrate or court;
- (3) give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and
- (4) arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

Art. 12.13 also states that it is a peace officer's duty to take possession of a missing child under Art. 63.009.

As noted in your Opinion No. GA-0189, a peace officer's authority is generally limited to the officer's own geographic jurisdiction. However, because Local Government Code Sec. 86.021(c) authorizes a constable to perform all express statutory duties anywhere in the county in which the constable precinct is located, it was determined that "a constable's law enforcement jurisdiction includes not only the constable's precinct, but extends to the entire county."

The investigation of crimes is not one of the express statutory duties listed for either a constable or a peace officer in general. In our opinion, the power to investigate a crime committed outside the constable's precinct is not provided to him as a constable under Local Government Code Sec. 86.021 or elsewhere, nor as a peace officer under Art. 2.13 of the Code of Criminal Procedure.

I would appreciate a response to this request for an opinion at your earliest opportunity. If you have any questions or comments, please contact me at the mailing address or phone number shown above.

Respectfully,

A handwritten signature in black ink, appearing to read "Joe R. Smith", written in a cursive style.

Joe R. Smith,
Criminal District Attorney