

**San Jacinto County
Auditor's Office**

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OPINION COMMITTEE

March 6, 2006

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

FILE # ML-44679-06

I.D. # 44679

Re: Request for Opinion

RQ-0461-GA

Mr. Abbott:

In the past 3 years, San Jacinto County has experienced a myriad of lawsuits and indictments involving certain County Officials and the Criminal District Attorney, which give rise to the questions contained herein.

Background

San Jacinto County has never had a policy that provided for the payment of legal fees for County Officials who are charged with criminal offenses. The County adopted such a policy (see enclosed copy) on November 23, 2005, and it was passed with the strict understanding that it did not provide for "retroactive" payments, or payments made for reimbursement to County officials for fees incurred before the policy was enacted. For the most part, County officials have always been defended in civil actions arising from work related activities by attorneys hired through our insurance carrier.

In July, 2002 a Court Coordinator for the County Judge stated that she noticed illicit materials on the County Judge's laptop computer and reported it to the Pct. 2 Constable. This Constable alerted authorities and a DPS State Computer Forensics investigator was assigned to the case. The County Judge was no-billed by a Grand Jury presided over by the current District Attorney. A Special Prosecutor was appointed and the case was presented to a different grand jury. The County Judge was indicted, suspended and tried. A mistrial was declared and he currently remains suspended while awaiting a new trial.

In between the no-bill and indictment of the County Judge, the District Attorney filed a RICO action against the Court Coordinator, the Pct. 2 Constable, a wrecker driver and six "unnamed co-conspirators." This suit resulted in dismissal on the morning of trial by the District Attorney's motion after several months of discovery, interrogations, and depositions.

Prior to this suit, the District Attorney tried the Pct. 2 Constable for alleged improprieties in his monthly reports. This prosecution resulted in directed not guilty verdict by a Visiting Senior District Judge.

The Pct. 2 Constable and the Court Coordinator both incurred substantial attorney's fees and requested reimbursement for said attorney fees. Such reimbursement was not forthcoming.

The District Attorney was then indicted for Official Oppression, Retaliation, and five unrelated charges of Tampering with a Governmental Record. These trials all ended in acquittal or dismissal.

The Pct. 4 Constable and Pct. 4 Commissioner were indicted and tried for an offense related to the removal and alleged destruction of a mobile home left in a County road. They were acquitted.

The Pct. 4 Constable was also indicted and tried for an offense involving alleged sending bills for personal business to his customers on County letterhead. This ended in mistrial and he is currently awaiting a new trial.

In July of 2005, the Pct. 4 Constable, Pct. 4 Commissioner and the District Attorney all submitted bills to the County Auditor for reimbursement for their attorney's fees. None of these officials approached the Court requesting representation when they were initially charged.

The Pct. 4 Constable was represented by an attorney as a result of being a member of the Texas Municipal Police Association, and the attorney's fees were paid by them.

Questions

1. Would the District Attorney be covered by Chapter 104, Texas Civil Practice and Remedies Code (including specifically 104.001, 104.002, 104.0035, 104.004 & 104.005)?
2. Is the County responsible for the District Attorney's criminal defense under any circumstances since he is a State employee. Would he have had access to representation by the Attorney General's office had he requested it?
3. Would the Court have to find that "a grave public necessity" exists in order to legally pay any of these bills given payment of the bills is not budgeted?
4. Approximately four years ago, the then-Commissioner for Pct. 2 used his own private trailer to move some County equipment because the County didn't have a trailer. A mishap occurred and a County employee was killed while the equipment was being loaded. Our carrier did not cover legal fees for the Commissioner because the trailer was the private property of the then-

Commissioner. The Pct. 2 Commissioner had to provide for his own defense. Given the fact that the County did not defend someone who was sued civilly while performing work-related functions, and the County has historically defended no one charged for criminal offenses, would the County expose itself to liability for discrimination if they pay the bills of some and not of others? How far back would this liability extend?

If you have any questions please call me.



Ray Stelly
San Jacinto County Auditor

CC: Robert Trapp, Judge, 411th Judicial District
Elizabeth Coker, Judge, 258th Judicial District
Fritz Faulkner, County Judge
Mark Price, District Attorney
Mike Griffith, Commissioner Pct. One
Royce Wells, Commissioner Pct. Two
David Brandon, Commissioner Pct. Three
Joe Johnson, Commissioner Pct. Four

REIMBURSEMENT OF LEGAL EXPENSES FOR ELECTED COUNTY OFFICIALS
Criteria for reimbursement:

1. Must be an elected official.
2. Legal expenses must be incurred while acting in an official capacity, and the result of ones actions as a county official.
3. Final disposition must show the county official to be exonerated and/or all charges dismissed for which the legal expenses were incurred, civil charges dismissed with prejudice.
4. Reimbursement will be for ultimate net monetary loss.

Net monetary loss shall mean all legal fees expended less any amounts recovered through legal action, insurance or other means. This shall not be interpreted to mean the office holder shall be required to take legal action to recover legal fees, purchase insurance or engage in any other activity to raise money to defer said legal fees, but if monies are available and collected by or paid to the office holder and the amount collected or received shall be deducted from the total of the legal fees.

5. The official must notify the San Jacinto County Criminal District Attorney in writing allowing notification to be made to Commissioners Court at the next scheduled Court meeting after the official receives notice of legal action being taken against them. The Criminal District Attorney will make the appropriate notification to Commissioners Court. This request must be made for future reimbursement to be made.
6. If and when an elected county official of San Jacinto County, state of Texas incurs such expenses and meets the criteria listed in this document, those expenses will be reimbursed by the county. A cap limit will paid by San Jacinto County and shall not exceed \$50,000.00 for a misdemeanor and \$75,000.00 for a felony per case each.
7. Copies of payment for legal expenses must be a part of the request for reimbursement and addressed to the San Jacinto County Judge for review by the County Commissioners Court.
8. On receipt of the request and attached evidence of expenses incurred all documents shall be reviewed by the San Jacinto County Commissioners Court for authenticity and to insure the request meets the standards listed above at which time the Court will approve payment.

County Judge

Pct. 1 Commissioner

Pct. 2 Commissioner

Pct. 3 Commissioner

Pct. 4 Commissioner









