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APR 28 2006
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RQ-0482-GA

April 26, 2006

FILE # ML-44765-06

I.D. # 44765

The Honorable Greg Abbott
Attorney General for the State of Texas
300 West 15th Street, Suite 205
Austin, Texas 78711-2548

VIA FACSIMILE TRANSMISSION TO 512-463-2092
and CMRRR ITEM #7002 2030 0006 3535 7786

RE: Request for Attorney General Opinion

Dear Attorney General Abbott:

On April 24, 2006, the Hunt County Judge requested this office, the office of the Hunt County Attorney, to submit an opinion to his office regarding certain issues relating to the use of county patrol vehicles assigned to the sheriff's office. Those issues are set out below. Therefore, at this time, the Hunt County Attorney requests an Attorney General Opinion as to those issues.

Facts

It has come to the attention of certain members of the Hunt County Commissioner's Court, that on certain dates earlier this year, deputy sheriffs working off duty security used county patrol vehicles, in the course and scope of that off duty employment, without reimbursing the county for the use of the county patrol vehicle.

Issues Presented

- (1) May a deputy sheriff who is engaged in working off duty (security) employment, use a county patrol vehicle in the course and scope of that off duty (security) employment, without reimbursing the county for the use of the county patrol vehicle?
- (2) May a Sheriff allow a deputy sheriff, who is engaged in working off duty (security) employment, to use a county patrol vehicle in the course and scope of that off duty

AGR Opinion 2006-02

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(security) employment, without providing reimbursement to the county for the use of the county patrol vehicle?

(3) Should reimbursement of the county vehicle be required for its use in the above, which individual or agency sets the amount to be reimbursed to the county for its use - the sheriff or the commissioner's court?

(4) May the Commissioner's Court prevent patrol vehicles, which were assigned to the sheriff's office, from being used in off duty (security) employment by deputy sheriffs?

Discussion

Texas Penal Code Section 39.02, Abuse of Official Capacity states:

- (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:
- (1) violates a law a law relating to the public servant's office or employment; or
 - (2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's office or employment.

Further, Texas Penal Code Section 39.01 defines "misuse" as:

- (2) "Misuse" means to deal with property contrary to:
- (A) an agreement under which the public servant holds the property;
 - (B) a contract of employment or oath of office of a public servant;
 - (C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
 - (D) a limited purpose for which the property is delivered or received.

In *Hightower v. Smith*, 671 S.W.2d 32, 35 (Tex.1984), the court noted:

Willfully using county vehicles and fuel for private benefit constitutes misapplication or misappropriation, even though the same activity accomplishes a legitimate public function.

Further, at FN1, the court stated that when the evidence:

...supports the conclusion that private gain is earned through the use of official property and labor, a charge of official misconduct is sustainable." *Id.*

On May 4, 2000, Attorney General Opinion No. JC-0214 stated:

While vehicles allotted by the commissioners court to an elected county officer are county property rather than the property of the officer, once such resources have been allocated to an elected officer the commissioner's may not substitute their judgment as to the deployment of those resources for the officer's.

Conclusions

Based on the above, it is the opinion of this office that: (1) a deputy sheriff, who is engaged in working off duty (security) employment, and uses a county patrol vehicle, in the course and scope of that off duty (security) employment, must reimburse the county for the use of the county patrol vehicle; (2) a sheriff may not allow a deputy sheriff, who is engaged in working off duty (security) employment, to use a county patrol vehicle, in the course and scope of that off duty (security) employment, without providing reimbursement to the county for the use of the county patrol vehicle; (3) the commissioner's court is the proper agency to set the amount to be reimbursed to the county for the use of a patrol vehicle for off duty (security) employment; and (4) the Commissioner's Court may prevent patrol vehicles, which were assigned to the sheriff's office, from being used in off duty (security) employment by deputy sheriffs.

However, due to the fact that the conclusion reached by this office could significantly impact activities that promote and accomplish legitimate public functions (i.e. off duty employment of deputies or peace officers working part time security for school events), this office is requesting that those issues presented above be addressed by way of an Attorney General Opinion.

Sincerely,


Joel Littlefield
Hunt County Attorney

c: Honorable Joe Bobbitt, Hunt County Judge
Commissioner Ralph Green
Commissioner Phillip Martin
Commissioner Kenneth Thornton
Commissioner Jim Latham

Via hand delivery
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