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MAY 17 2006

OPINION COMMITTEE

May 10, 2006

RQ-0487-GA

Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2318

FILE # ML-44804-06

I.D. # 44804

Re: Is it a conflict of interest for an elected constable to own and operate a wrecker service that is on the County's Wrecker Rotation List?

To The Opinion Committee Chairperson:

I request an opinion regarding whether or not it is a conflict of interest for an elected constable to own and operate a wrecker service that is on the County's Wrecker Rotation List. The fact situation is as follows:

Terry Gilbert is the elected constable of Precinct 1-1 in Cooke County, Texas, and also owns Gilbert's Wrecker Service, which is on the Cooke County Sheriff's Wrecker Rotation List. The wreckers are called at the discretion of law enforcement, by the dispatcher. The wreckers are called on a rotating basis and logs are kept of each call made. If a wrecker on rotation is unable to respond for any reason or if the call is refused by that wrecker service, that wrecker service is skipped and a notation is entered into the log, and the wrecker next in rotation is called. If a rotation wrecker is called and is cancelled by law enforcement for any reason, that wrecker is put back into the rotation and list as next up for call. There are presently six such wrecker services on the Rotation List for the Cooke County Sheriff's Office.

Local Government Code §86.021 defines the general powers and duties of a constable, which deal generally with the service of process and attending justice court. Pursuant to the Texas Code of Criminal Procedure Article 2.12 (2) a constable is a peace officer and therefore also has the powers and duties enumerated in Texas Code of Criminal Procedure Article 2.13. Those duties include:

- (1) prevent or suppress crime;
- (2) execute process;
- (3) advise magistrates of offenses committed;
- (4) arrest criminal offenders and;
- (5) take possession of a missing child under Article 63.009(g).

A constable is a precinct officer who exercises responsibilities beyond those that are advisory in nature. Tex. Const. art. V, § 18. He is therefore a local public official within the definition of Local Government Code §171.001. § 171.003 of the Local Government Code lists prohibited acts for local public officials and states that the official commits an offense if the official knowingly:

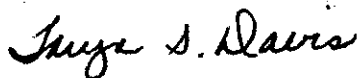
- (1) violates Section 171.004;
- (2) acts as surety for a business that has work, business or a contract with the governmental entity; or
- (3) acts as surety on any official bond required of an officer of the governmental entity.

Local Government Code § 171.004 states that a local public official with a substantial interest in a business entity must file an affidavit before voting or deciding on any manner involving that entity. It is not at question that Constable Gilbert has a substantial interest in Gilbert's Wrecking Service, however, his duties and powers as constable do not include voting on any matter concerning the wrecker service. In Attorney General Opinion JM-776, the question was whether or not an individual whose spouse was a bail bondsman could be employed as an investigator for the office of the criminal district attorney. In that opinion it was noted that the kind of decision an investigator would be called upon to make in performance of his duties as a peace officer would not be those referred to in §171.004. As a peace officer, a constable would have similar types of duties as an investigator.

The instant situation differs from all of the opinions and cases found during my research, in that although the wrecking services work in connection with the County, they are not contracting with the county for those services. They are not paid by the County for their services. I could not in my research find any case or opinion on point.

I look forward to receiving your opinion at your earliest opportunity.

Sincerely,



Tanya S. Davis
Cooke County Attorney

xc: Constable Terry Gilbert