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OPINION COMMITTEE

FILE # ML-45404-07
I.D. # 45404

October 18, 2007

Honorable Greg Abbott
Attorney General of Texas
Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

RQ-0641-GA

Dear General Abbott:

Pursuant to Section 402.042 of the Government Code, I request your written opinion on the following question:

Is a county attorney required to issue an identification card described by Texas Government Code §614.122 to the peace officers employed as unpaid county attorney's investigators?

Please find attached a brief on the question. Thank you in advance for your consideration. I look forward to your opinion on this issue of law.

Sincerely

James M. Kuboviak
Brazos County Attorney

FACTS

The Brazos County Attorney has appointed investigators to assist him in his duties as county attorney.¹ Each investigator holds a peace officer license issued by the Texas Commission on Law Enforcement Officer Standards and Education; each has been commissioned by the County Attorney. Some of the investigators are employed as full-time paid peace officers. Some are part-time paid peace officers. Since the County Attorney may not have reserves, he employs additional investigators as part-time unpaid peace officers.² The County Attorney himself is a peace officer as well as several of his assistant attorneys.

BRIEF ON THE LEGAL ISSUES

Newly enacted House Bill 3613, effective September 1, 2007, amended Chapter 614 of the Government Code by adding Subchapter H to require the law enforcement agency or other governmental entity that appoints or employs a peace officer to issue an identification card to its full-time or part-time peace officers.³ Its purpose is to create a statewide standard for peace officer identification cards which would include the type of commission an officer carries.⁴ The bill defines “full-time peace officer”, “honorably retired peace officer”, “part-time peace officer”, and “reserve law enforcement officer”.

For the purpose of our question we reference the definitions at section 614.121(1):

“Full-time peace officer” means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law, who:

(A) works as a peace officer on average at least 32 hours per week, exclusive of paid vacation; and

¹ A prosecuting attorney may employ the assistant prosecuting attorneys, investigators, secretaries, and other office personnel that in his judgment are required for the proper and efficient operation and administration of the office. Tex. Gov't Code §41.102 (Vernon 2004).

² “The following are peace officers:...(5) investigators of the district attorneys’, criminal district attorneys’, and county attorneys’ offices;...” Tex. Code Crim. Proc. art. 2.12 (Vernon Supp. 2006).

³ House Bill 2667 also amended Chapter 614, Government Code, by adding a Subchapter H entitled “Insurance Coverage Required for Volunteer Police Force Members”. Act of May 27, 2007, 80th Leg. R.S., ch.1248, §2, 2007 Tex. Sess. Law Serv. 10 (Vernon). Our question refers solely to the Subchapter H amendment entitled “Peace Officer Identification Cards”. Act of May 26, 2007, 80th Leg., R.S., ch. 938, §1, 2007 Tex. Sess. Law Serv. 8 (Vernon).

⁴ House Comm. on Law Enforcement, Bill Analysis, Tex. H.B. 3613, 80th Leg. R.S. (2007)

(B) is compensated by this state or a political subdivision of this state at least at the federal minimum wage and is entitled to all employee benefits offered to a peace officer by the state or political subdivision."

and at section 614.121(3):

"Part-time peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law, who:

(A) works as a peace officer on average less than 32 hours per week, exclusive of paid vacation; and

(B) is compensated by this state or a political subdivision of this state at least at the federal minimum wage and is entitled to all employee benefits offered to a peace officer by the state or political subdivision."

Part-time or full-time peace officer status is determined by the number of hours worked, compensation at least at the federal minimum wage, and the officer's entitlement to employee benefits.

In 1991, the Texas Court of Criminal Appeals found that the term "peace officer" had acquired a technical meaning by legislative definition. Deltenre v. State, 808 S.W. 2d 97 (Tex. Crim. App. 1991); Tex. Code Crim. Proc. art. 2.12 (Vernon Supp. 2006). The term is used throughout the provisions of Title 6 of the Texas Government Code, "Public Officers and Employees". Chapter 614 is devoted specifically to "Peace Officers and Fire Fighters". "Peace officer" is defined twice in Chapter 614, first at §614.001(3) as "an individual elected, appointed, or employed to serve as a peace officer for a governmental entity under Article 2.12, Code of Criminal Procedure, or other law" (applying to Subchapter A) and then at §614.061 as "a person who is elected, appointed, or employed by a governmental entity; and is a peace officer under Article 2.12, Code of Criminal Procedure, or other law" (applying to Subchapter E). The definitions, both of which refer specifically to Article 2.12, are virtually identical. Elsewhere in Title 6, including other subchapters of Chapter 614, the term "peace officer" refers directly to the Article 2.12 definition - §602.002(16) (administration of an oath), §612.005 (liability insurance for law enforcement motor vehicles), §614.021(a)(3) (complaint against a law enforcement officer), §615.003 (benefits for survivor of peace officer), §615.102(a)(2) (duty weapon and badge), and §615.103 (burial with uniform). In addition, the term "peace officer" appears in §607.001 (definition of a "public safety employee"), §612.001 (motor vehicle insurance for peace officers), §614.041 (collecting

debt for another - Chapter 614, Subchapter C), and §614.051-052 (purchase of firearm - Chapter 614, Subchapter D). The term's use throughout Title 6 is consistent with its technical meaning.

In Chapter 614's Subchapter H, the legislature has designated specific classifications of peace officers who must be issued identification cards – full-time paid peace officers, part-time paid peace officers, honorably retired peace officers, and reserve law enforcement officers.⁵ The classifications have no common background requirements either in training, experience, or employment. Full-time paid peace officers and part-time paid peace officers must be paid and have employment benefits. Most reserve law enforcement officers and retired officers are unpaid volunteers without benefits, although various statutes permit compensation for reserves. All peace officer candidates must currently have completed 618 hours of initial training to be certified as a peace officer. Reserve law enforcement officers under prior certification rules were required to complete considerably fewer hours of training to be licensed as a reserve law enforcement officer, the most recent number of required hours being 144. Following initial certification, peace officers and reserve law enforcement officers must complete additional legislatively required training during a 24 month training cycle in order to maintain peace officer certification. Retired peace officers are not required to complete additional training; however they, along with all actively commissioned peace officers and reserve law enforcement officers, must annually demonstrate weapons proficiency. The legislative committee did not include in its bill analysis the reasons for classifying peace officers into these sub-categories.

The work hour, wage, and benefit provisions of House Bill 3613 mirror in part the wage and hour provision relating to the exemption of full-time peace officers from the requirements of the Private Security Act. Tex. Occ. Code §1702.322 (Vernon 2004).⁶ The legislature chose to include part-time peace officers in the Act's requirements, but to exempt full-time peace officers who met certain wage and hour restrictions. *Id.* §1702.322. These

⁵ Tex. Code Crim. Proc. art. 2.12(1)-(3)(Vernon Supp. 2006). Tex. Occ. Code Chapter 1701 defines the term "reserve law enforcement officer" as "a person designated as a reserve law enforcement officer under §85.004, 86.012, or 341.012, Loc. Gov't Code, or §60.0775 Water Code" Tex. Occ. Code §1701.001(6) (Vernon Supp. 2006)

⁶ "This chapter does not apply to: (1) a person who has full-time employment as a peace officer...if the officer...(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;.... Tex. Occ. Code §1702.322 (Vernon 2004)

distinctions have been upheld. Garay v. State, 940 S.W. 2d 211 (Tex. App. – Houston [1st Dist.] 1997, writ ref'd)(upholding the application of the Act to part-time peace officers).

In summary, except for Subchapter H, the term “peace officer” is used consistently throughout Title 6 of the Government Code. The legislature has created sub-categories of peace officers for a special purpose – peace officer identification cards. The courts have recognized the legislature’s authority to distinguish peace officer categories. Although House Bill 3613 may not fully accomplish the legislature’s stated purpose to create a statewide standard for commissioned peace officer identification cards by excluding unpaid full-time or part-time peace officers, the legislature has chosen not to require that a law enforcement agency issue peace officer identification cards to its unpaid peace officers.