



**CAMERON COUNTY (DISTRICT) ATTORNEY**

**Armando R. Villalobos**  
County and District Attorney

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**OPINION COMMITTEE**

FILE # ML-45821-08  
I.D. # 45821

Civil Division

September 3, 2008

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

**RQ-0739-GA**

Re: Regarding Court Interpreters appointed und Article 38.30 of the Texas Code of Criminal Procedure and the transcribing and translating of foreign language evidence and related questions.

Dear Mr. Abbott:

Pursuant to section 402.043 of the Texas Government Code, I request your written opinion regarding the following issues:

Are the Court Interpreters appointed under Article 38.30 of the Texas Code of Criminal Procedure responsible for transcribing and/or translating foreign language video, audio and written recordings of testimony in preparation for a criminal proceeding?

Would interpreters employed by Cameron County and tasked by the Cameron County (District) Attorney to translate audio recordings of testimony in anticipation of criminal proceedings, fall under the compensation provisions of Article 38.30(b) and 38.30(c) of the Texas Code of Criminal Procedure?

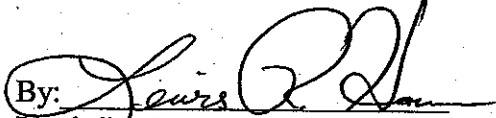
Is the Cameron County Commissioners' Court required to provide funding for the use of interpreters that transcribe and/or translate foreign language video, audio and written recordings of testimony in preparation for a criminal proceeding?

**Cameron County Courthouse**  
P.O. Box 2299 ♦ Brownsville, Texas 78522-2299  
Mainline: 956.544.0849 Ext. 414  
Fax: 956.550.7204

Cameron County has employed full-time and contract Court Interpreters to translate Spanish to English and English to Spanish the testimony of non-English-speaking witnesses and defendants. From time to time, court interpreters are tasked to translate and transcribe audio, video and written recordings of testimony in anticipation of trial and in such cases; the district courts have asked the Cameron County District Attorney's Office to pay for such translations. It is the position of the Cameron County District Attorney's Office that the transcription and translation of the recordings are the duty of the court appointed translators under Article 38.30 of the Texas Code of Criminal Procedure and as such are covered by the compensation provision of 38.30 (b) and 38.30 (c). Therefore, I respectfully request that the attorney general provide a written opinion concerning the role of interpreters employed by the county and the compensation paid for the transcription and translation services. The brief required by section 402.043 of the Government Code is enclosed.

Thank you for your assistance in this matter.

Respectfully submitted,  
Armando R. Villalobos  
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BRIEF IN SUPPORT OF ARMANDO VILLALOBOS'S REQUEST FOR AN  
ATTORNEY GENERAL'S OPINION REGARDING COURT INTERPRETERS  
DUTIES AND COMPENSATION

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**A. Issues Presented.**

Are the Court Interpreters appointed under Article 38.30 of the Texas Code of Criminal Procedure responsible for transcribing and/or translating foreign language video, audio and written recordings of testimony in preparation for a criminal proceeding?

Would interpreters employed by Cameron County and tasked by the Cameron County (District) Attorney to translate audio recordings of testimony in anticipation of criminal proceedings, fall under the compensation provisions of Article 38.30(b) and 38.30(c) of the Texas Code of Criminal Procedure?

Is the Cameron County Commissioners' Court required to provide funding for the use of interpreters that transcribe and/or translate foreign language video, audio and written recordings of testimony necessary for the preparation of a criminal proceeding?

**B. Historical Context**

Cameron County handles a large number of court cases that require the use of interpreters no doubt due to the County's proximity to Mexico. To address this

caseload Cameron County (District) and County courts have employed full-time and contract interpreters.<sup>1</sup>

From time to time the Cameron County (District) Attorney's Office has contracted with these interpreters for transcription and translation services with forfeiture funds.<sup>2</sup> The charges have been for translations in anticipation of or preparation for criminal proceedings and have been in addition to the compensation provided by Cameron County.

It is unclear whether the interpreters' compensation received from Cameron County, independent of forfeiture funds, includes translation services tasked by the Cameron County (District) Attorney if performed during Cameron County business hours.

The Cameron County Commissioners' Court has set the salary of the District Court interpreters in accordance with the Local Government Code §152.903 and under subchapter B of chapter 152 of the Local Government Code for the County Courts.

### **C. Argument and Authorities**

For testimony given in a foreign language to be admissible in court, the statement must be translated into English for the benefit of the court. "All persons are charged with notice that for crimes committed against the laws of this State, the trial will be conducted in the English language and that for non-English-speaking witnesses the law has made provision for the translation of their testimony by interpreters into the English language. ..."*Garcia v. State*, 151 Tex. Crim. 593, 210 S.W. 2d 574,580 (1948).

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<sup>1</sup> See Attachment A – Job Duties of Interpreters

<sup>2</sup> Funds Forfeited pursuant to Chapter 59 of the Texas Code of Criminal Procedure

The Texas Code of Criminal Procedure provides for the appointment of spoken-language interpreters in criminal cases. *See* TEX. CODE CRIM. PROC. ANN. arts. 38.30 (Vernon Supp. 2002) When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. *Id.* art. 38.30(a). The defendant's right to have an interpreter translate the trial proceeding into another language must be implemented unless expressly waived. *Garcia v. State*, S.W. 3d 135 (Tex. Crim. App. 2004).

A "criminal proceeding" may often involve the testimony in many different forms. It may consist of an audio recording, a video recording or written documents along with verbal testimony. When testimony is verbally given in court, an interpreter translates the questions for witnesses, defendants and for the Court.<sup>3</sup> Obviously, a defendant or witness in a criminal proceeding needs to understand what is being said in the court proceedings. An interpreter's duty is to provide the translation of the proceedings into the language of the defendant or witness and to translate the witness's statements into English for the court.

To this end, the State carries the burden of ensuring evidence relevant to a criminal case is presented in an admissible format in anticipation of "criminal proceedings". This task requires the examination of evidence at early stages in the prosecutorial process which may require both the transcription and translation of foreign

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<sup>3</sup> Texas established long ago the need for interpreters where non-English speaking witnesses take the stand. Otherwise, the right of cross-examination would be lost *Garcia*, at 580.

language evidence. Confessions and defendant statements made during custodial interrogations provide such examples.<sup>4</sup>

If foreign language testimony has been recorded either on video or audio or if written documents need to be presented in court, a translation is required for admission of this evidence. The admission of this evidence implicates the “safeguards of code of criminal procedure article 38.30.” *See* TEX. CODE CRIM. PROC. ANN. art. 38.30(a); *Leal v. State*, 782 S.W. 2d 844, 849 (Tex.Crim. App. 1989). When the safeguards of 38.30 apply, so should the funding requirements under 38.30(b) for the translation of evidence prior to or in anticipation of “criminal proceedings.”

It has been determined that grand jury proceedings are criminal proceedings requiring the appointment of a properly qualified interpreter for a non-English speaking witness.<sup>5</sup> Although reference is made to article 38 of the Texas Code of Criminal Procedure in chapter 57 of the Government Code, the chapter is silent regarding the source of compensation for such appointment of interpreters.

Prior to any pre-trial criminal proceeding, it is often necessary to translate documents in preparation of case for filing in county court or presentation to a grand jury for indictment in district court. There is no readily available magistrate for a finding for the necessity for an interpreter.

Is the Commissioners' Court required to provide funding for the ordinary and necessary expenditures needed for the translation prior to judicial proceedings?

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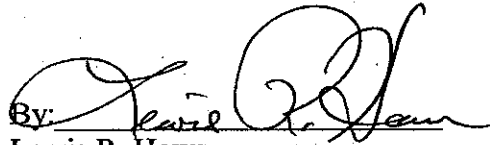
<sup>4</sup> Article 38.22 Sec. 3(a) of the Texas Code of Criminal Procedure addresses any statements made by a defendant during custodial interrogation

<sup>5</sup> Attorney General Opinion JC-0579 November 20, 2002

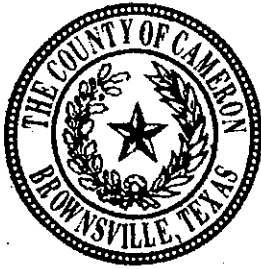
**D. Conclusion**

For the foregoing reasons, in criminal proceedings, court interpreters employed by Cameron County should be required to provide transcription and translation services requested by the Cameron County (District) Attorney's Office in anticipation of or preparation for criminal proceedings.

Respectfully submitted,  
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## Cameron County

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**CLASSIFICATION TITLE: COURT INTERPRETER**

Class Code:

Civil Service Status: Non-exempt

EEO Category: Supportive

Classification Series:

Pay Table:

Pay Grade

FLSA Status: Non-Exempt

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**SECTION I-JOB DESCRIPTION****SUMMARY:** *(State Purpose and General Responsibilities)*

This is a responsible nonsupervisory position. Duties include accurate translation of word meanings from English or Spanish and/or from Spanish to English in a courtroom proceeding or other matters related to the court's business.

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**ESSENTIAL FUNCTIONS:** *(State the fundamental duties and tasks)*

1. Translates testimony, conversation, instructions, explanations, and any other court related business or activity from Spanish to English and/or English to Spanish as needed.
2. Takes special care to insure that work meanings are correctly translated instead of just literal translations.
3. Translates documents from the courts and other governmental agencies as needed.
4. May translate either in courtroom during trials or other court proceedings or in judge's chambers on court related matters.
5. Ability to work well under pressure.
6. Ability to understand and perform complex oral and written instructions.
7. Ability to establish and maintain effective working relationship with co-workers.
8. Performs related duties as required.

**SECTION II-JOB REQUIREMENTS**

**EDUCATION AND EXPERIENCE:** *(State the minimum requirements for formal education and job related experience.)*

Graduation from High School or a General Education Development (GED) certificate plus one year's experience in translating oral and written material from English to Spanish and from Spanish to English (including translation of legal terminology); or any equivalent combination of experience and training which provides the required knowledge, skills, and abilities.

ATTACHMENT "A"



**KNOWLEDGE, SKILLS, AND ABILITIES:***(As utilized in the performance of the Essential Functions of the job.)*

Excellent knowledge of and skill in speaking and writing fluently both in English and Spanish including considerable working knowledge of conversational Spanish; ability to translate word meanings rather than just literal translations; knowledge of courtroom and legal terminology in both languages; ability to use correct grammar, spelling, and punctuation in both languages in both oral and written translations; ability to work effectively with a variety of persons from widely divergent socioeconomic backgrounds; and familiarity with courtroom procedures.

**SPECIAL REQUIREMENTS:***(Special licenses and other requirements necessary to obtain or retain the position.)*

May be required to work more than 40 hours during the workweek. Telecommunication skills.

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### **SECTION III-JOB DIMENSIONS**

**CONTACTS:***(Nature of contacts, external relationships, and internal relationships.)*

*External Contacts:* Judges and attorneys.

*Internal Contacts:* Constant contact with judges, attorneys, and any or all individuals or groups involved in a court proceeding including plaintiffs, defendants, jurors, spectators, etc. primarily face-to-face, via telephone and through written communication.

**RESPONSIBILITY:***(Supervision given, accountability, Safety, budgeting, spending authority and confidentiality.)*

No supervisory responsibility.

**DIFFICULTY:***(Judgement, initiative, and decision-making.)*

Independent judgment is required to interpret established project guidelines.

**GUIDANCE:***(Supervision received and level of independence.)*

Employee receives general direction when performing the essential functions. Employee selects appropriate procedures required to complete work assignments.

**WORKING CONDITION:***(Describe working environment and other conditions of employment.)*

Physical requirements include lifting/carrying 10 lbs. Occasionally; visual acuity, speech and hearing; hand and eye coordination and manual dexterity necessary to operate computer keyboard and basic office equipment. Subject to sitting, standing, walking, reaching, twisting and handling to perform the essential functions. Working conditions are primarily inside an office environment.