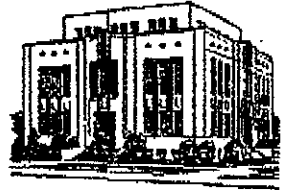




FILE

H. Michael Bartley

DELTA COUNTY ATTORNEY
COURTHOUSE, SUITE 300
P.O. BOX 462 COOPER, TEXAS 75432
903-395-4400, EXT. 235



September 15, 2008

RECEIVED

OCT 20 2008

OPINION COMMITTEE

FILE # ML-45860-08

SUBJECT: Request for an Opinion of the Attorney General
TO: THE HONORABLE GREGG ABBOTT, Attorney General of the State of Texas
FROM: H. Michael Bartley, Delta County Attorney

ID. # 45860

RQ-0753-GA

Dear General Abbott,

The Commissioners Court of Delta County has asked me to obtain an Attorney general's opinion to the the following problem. Here are the facts.

(a) Delta County does not have an auditor. Section 115.901 states that in this case, the County Treasurer shall examine the accounts, dockets, and records of each clerk, justice of the peace, and Constable, and of the sheriff and county tax assessor-collector to determine if any money belonging to the county and in the possession of the officer has not been accounted for and paid over according to law.

(b) If the auditor or treasurer finds that such money does exist, the auditor or treasurer shall report the finding of the examination to the commissioner's court of the county at its next term for the purpose of instituting a suit for the recovery of the money.

(c) Under Article 59.06 Code of Criminal Procedure all law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all such proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year.

(d) On August 13, 2008, the county treasurer's written request stated: "Please furnish copies of all of your bank statements for all accounts (Forfeiture, Commissary, any grant monies accounts, etc.) for the years 2006, 2007 and 2008 within the next day or so. This is needed to bring all county records up to date and to check for accuracy in county records. Thank you for your assistance in a timely manner." The sheriff did not respond to the request.

(e) On September 17, 2008, the county treasures's written request stated: "This is a second request to you. Please furnish copies of all of your bank statements for all accounts (Forfeiture, Commissary, any grant monies accounts, etc.) for the years 2006, 2007 and 2008 within the next day or so. This is needed to bring all county records up to date and to check for accuracy in

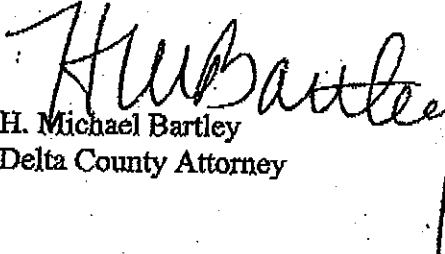
county records. As County Treasurer, it falls under my duties to have access to this information. Thank you for your assistance in a timely manner." The sheriff did not respond to the request.

(f) On September 22, 2008, the county treasurer's written request stated: "This is the third request to you for the provision of records. Please furnish copies of all of your bank statements for all accounts (Forfeiture, Commissary, and any grant monies accounts, etc.) for the years 2006, 2007 and 2008. Again, the statements are needed as this falls under the duties of this office to audit your financial records. Thank you for your assistance in a timely manner."

(g) On September 26, 2008, the county treasurer received a letter from the sheriff stating: "I understand that you have "ask"(sik) for the bank statements on all the accounts for the Forfeiture, commissary and grant monies for 2006, 2007, 2008. The forfeiture's to the Shcriffs office are not county money and do not come under the Auditors or Treasure's office, also the commissary also is not county money, that is money that is inmates money and has nothing to do with the county so that does not involve your office also. As far as any grant money, none of it comes through this office and we have no bank statements for any of it. You will have to look other places. So the first two are not one of your duties to access that information. I know you and some of the Commissioners want to know what is going on here but this is not the way to find out. The first two parts are none of their business or yours either."

(h) We are requesting an attorney general's ruling on this matter. After our research and consultation with the county treasurer, the treasurer and I (County Attorney) believe that the sheriff is remiss in not turning over the documents which the treasurer must have in order to perform her position. Further, we do not believe that the sheriff has the authority to hinder other elected officials in their duties. If we have misconstrued our research, please advise us where we have failed. We appreciate your assistance.

Sincerely,


H. Michael Bartley
Delta County Attorney