



Criminal District Attorney

Calhoun County, Texas



RECEIVED

MAR 08 2011

RANDY R. CRIDER
Investigator

ALICIA FLORES
Victim Assistance Coordinator

DAN W. HEARD
Criminal District Attorney

SHANNON E. SALYER
Assistant Criminal District Attorney

DAIN WHITWORTH
Assistant Criminal District Attorney

JAMES D. HENDERSON
Assistant Criminal District Attorney

OPINION COMMITTEE

March 3, 2011

Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Attn.: Opinion Committee

Dear Committee Members:

FILE # ML-46680-11

I.D. # 46680

RQ-0950-GA

The city attorney of Port Lavaca has asked me to seek an opinion as to whether the city can compensate a member of the city council who is employed by the school district as the school district chief of police.

Specifically, the chief of the local school district police department is an elected member of the city council of City of Port Lavaca. The City of Port Lavaca is not paying this individual the monthly compensation paid to the other members of the council, pending an opinion.

A copy of the letter from the City Attorney is attached as Exhibit A, and the school district's job description for district police officers is attached as Exhibit B.

The applicable provisions of the law relating to this matter are as follows: Section 40 of Article 16 of the Texas Constitution prohibits holding more than one civil office of emolument at the same time. Subsection (b) of that section provides in part that individuals who are not state officers but receive any part of their compensation either directly or indirectly from State funds, shall not be barred from serving as members of the governing bodies of local governmental districts, but may not receive a salary for such services, unless a schoolteacher, a retired schoolteacher, or retired school administrator.

The letter from the city attorney states that part of the district's police officer's compensation is from state funds. That allegation is disputed, but because the school district receives funds from both state and local sources and does not keep them separate, it is possible that some of the police officer's compensation is derived from state funds. It has been held that employees of public school districts receive all or part of their compensation directly or indirectly from funds of the State. Tilley v. Rogers, 405 S.W.2d 200 (Tex.Civ.App.-Beaumont, 1966, writ ref'd n.r.e.); Tex. Atty. Gen. Op. No. JM-1266 (1990); Tex. Atty. Gen. Op. No. GM-0530 (2007).

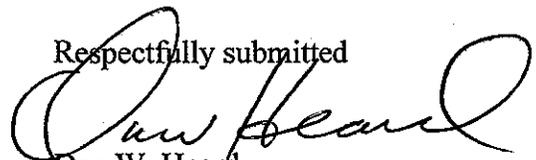
The city attorney's letter raises the question of whether the officer could be paid under the "schoolteacher" exception of the constitution. The Texas Education Code defines the term

“Classroom teacher” (Sec. 5.001, Ed. Code) and the term “professional employee of a school district” (Sec. 22.051, Educ. Code), but does not appear to define the term “schoolteacher.” The job description for the district police officer does not include any teaching responsibilities. Under Tex. Atty. Gen. Op. No. GA-0530(2007), a schoolteacher is a person employed to instruct students in a school setting as a result of which participating students may receive credit. Using that definition, a school district police officer would not be a “schoolteacher”, but such determination would be a question of fact and not subject to an attorney general opinion.

The remaining question is whether Article XVI, Section 40 of the Constitution prohibits payment to the school district police chief for service as a member of the city council. It appears that prior opinions holding that police officers, sheriffs deputies, and security officers held civil offices within the meaning of Article XVI, Section 40, have been overruled. Aldine Indep. Sch. Dist. v. Standley, 280 S.W.2d 578 (Tex. 1955). There is one attorney general opinion which held that security officers for school districts do not hold civil offices. Tex. Atty. Gen. Op. No. DM-212 (1993). Based upon the job description for the Calhoun County Independent School District police officers, it would appear that the chief of police for the school district is only an agent or employee of such school district and serves at its discretion, with the school board retaining the authority to control the manner in which the district police officers perform their duties, and thus, not a civil office holder who could be paid for service as a member of the city council. However, if the test adopted in Aldine Indep. Sch. Dist. v. Standley, *ibid*, is used, it does not appear that a “schoolteacher” would be a civil office holder, which would render the 2001 amendment to Article XVI, Section 40 of the Constitution, which authorized compensation for service on the governing body of a local governmental district by a schoolteacher, unnecessary.

Thank you for an opinion which will resolve this matter.

Respectfully submitted



Dan W. Heard

DWH:dpw

xc: Mr. Ty Zeller

Ms. Anne Marie Odefey

Mr. Greg Falcon

Ty Zeller
ATTORNEY AT LAW
131 N. Virginia Street, Suite A
Port Lavaca, Texas 77979

Tel (361) 552-9222
Fax (361) 552-9218

January 10, 2011

VIA HAND DELIVERY

Dan Heard, Calhoun County District Attorney
211 S. Ann Street
Port Lavaca TX 77979

Re: Request for Attorney General Opinion

Dear Dan,

I am writing in my capacity as City Attorney for the City of Port Lavaca.

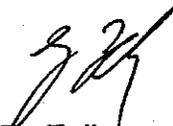
One of our council members is the District Resource Officer/Police Chief for the local school district. My understanding is that he, in addition to his enforcement duties, teaches students about drug use and other related topics on an "as needed" basis. He receives a part of his compensation from state funds as mentioned in Article XVI Section 40 of the Texas Constitution.

In trying to determine whether he fits the "teacher" exception in Section 40, I contacted the attorney for the school district and asked her if our council member was a "teacher." Her response was that he was not a teacher since he does not fit the definition in the Education Code.

I realize that the Education Code is not necessarily controlling over terms in the Constitution but I think we really need an opinion from the Attorney General in order to begin paying this council member.

Please forward the question to the Attorney General for his immediate attention.

Very truly yours,


Ty Zeller

TZ/db



CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT POLICE DEPARTMENT

9.0 Job Descriptions

9.1 District Police Officer

The District Police Officer is responsible for handling law enforcement and police related matters at District facilities as outlined in the Texas Penal Code, Code of Criminal Procedure, District's Board Policy, Management Guidelines, Departmental Rules and Regulations, and as directed by the Chief of Police. The District Police Officer is responsible for working cooperatively with the school administration, students, staff members, other District police officers, and officers from all law enforcement agencies to maintain positive campus security and a safe and secure campus environment.

Reporting directly to the Chief of Police, the District Police Officer performs the following duties:

1. Patrol the District and provide police services to individual facilities, students, and staff.
 - A. Operate a District vehicle and patrol school property or an assigned area to deter criminal offenses such as fire, burglary, theft, vandalism and other unauthorized activities.
 - B. Investigate criminal offenses that occur within the District's jurisdiction or against the District.
 - C. Collect evidence.
 - D. Enforce regulations for and on District school buses.
 - E. Perform possibly physically strenuous activities required to identify, detain, and apprehend offenders, cause to be placed in jail, and file appropriate charges.
 - F. Investigate suspicious persons in and around schools.
 - G. Report the misuse of buildings and property belonging to the District.
 - H. Enforce all the general and criminal laws of Texas within the District's jurisdiction.
 - I. Enforce all applicable sections of the Texas Education Code.
 - J. Perform all the duties of a Texas Peace Officer enumerated in the Code of Criminal Procedure.



- K. Assist with traffic control on streets, at athletic events, school closings, school openings, or any other location deemed necessary to insure the safety and welfare of students and staff.**
- L. Provide crisis response to schools and facilities.**
- M. Perform security inspections of buildings including manual (foot patrol) checks of all exterior doors and windows promptly reporting any breach in security to the police communications officer.**
- N. Maintain awareness of District activities occurring on school property after hours and perform special patrols during those events.**
- O. Report any road and weather conditions that may affect, disrupt or require a change in the transportation schedules or routine operation of the District.**
- P. Perform routine daily patrol car servicing (gas, oil, tires, etc.) to ensure a proper functioning vehicle.**

2

- 2. Provide police services and assistance to the administration, other officers, students and staff.**
 - A. Assist other law enforcement agencies on campus when requested.**
 - B. Investigate violations of District rules and regulations when requested by District administration.**
 - C. Participate in administrative hearings concerning alleged violations.**
 - D. Provide police services at District sponsored events, on or off campus.**
 - E. Promptly refer non-school related criminal incidents to the proper agency having jurisdiction.**

3.

3. Prepare complete and concise written reports on the forms provided in

English, of incidents and problems that can be used in successful criminal prosecutions.

- A. Identify, locate, and report security problems or potential security problems.**
- B. Prepare a written report of each incident or relevant observation that occurs on campus.**
- C. Appear in court as a witness whenever summoned.**

4.

4. Perform other security and courtesy services as directed and maintain a positive image on the campuses and in the District for students, staff, and the public.

- A. Provide courtesy services as requested.**
- B. Assist in enforcing applicable items from the student handbook as requested by local campus administrator.**
- C. Establish a positive working relationship among students, staff and community.**
- D. Provide police related services at District functions.**
- E. Be available to work overtime.**
- F. Be available for "call out" on emergency situations in the District.**
- G. Perform other duties as assigned by the Chief of Police.**

5.

5. Patrol and observe activities on campuses being alert to crimes and other incidents that may occur.

- A. Provide surveillance of the parking lot areas and protect the vehicles and their contents.**
- B. Provide surveillance of the campus in order to deter disruptive and/or criminal activities.**
- C. Monitor vehicles entering and leaving campus parking lots.**
- D. Screen and assist outsiders entering the campus.**
- E. Deter or prevent trespassing and loitering on or near the campus.**
- F. Control and/or prevent fights and disorders when they occur inside or outside the building.**
- G. Assist school staff in emergency situations, inside the building when notified.**
- H. Maintain high visibility on the campus and in the District with varying patrol patterns.**
- I. Perform constant patrol of the campus to ensure that all areas are monitored and observed equally and continuously.**
- J. Ensure that all persons found on school property after school hours are authorized; take appropriate action to facilitate the departure of unauthorized persons; and maintain appropriate records including daily patrol reports, communications log, CAD, student referrals, trespassing warnings, and class c tickets, of all such encounters.**

6. Enforce local campus driving regulations.

- A. Keep fire zones and bus ramps clear at all times.**
- B. Enforce all rules and regulations relative to the safe operation of a motor vehicle on campus to insure a safe environment for students and staff.**
- C. Assist with traffic control as needed within the District's jurisdiction.**

7.

7. Required Knowledge, Skills, and Abilities

- A. Excellent knowledge of standard law enforcement procedures and the regulations and laws relating to school district law enforcement including building intrusion and trespassing.**
- B. Ability to exercise good judgment under potentially dangerous conditions.**
- C. Ability to maintain records and write offense reports in English to be used by the Calhoun County District Attorney's office, courts, juries, and other law enforcement agencies.**
- D. Ability to effectively communicate orally and in writing in English.**
- E. Ability to perform exterior checks without the use of an automobile which may require crossing areas which are without sidewalks or not paved and may be poorly lit.**
- F. Sufficient mobility and dexterity to respond quickly to situations which may involve measures to detain individuals who are running away, jumping fences and/or barriers.**
- G. Sufficient strength to detain intruders and trespassers who physically resist detention.**
- H. Have and maintain minimum standards including but not limited to possessing a valid Texas driver's license, good driving record, good punctuality and attendance, TCLEOSE license, and firearm proficiency.**