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OPINION COMMITTEE

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RQ-1020-GA

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Monday, November 21, 2011

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Opinions
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FILE # ML-46883-11
I.D. # 46883

Re: Local Government Code Sec. 351.061 et. seq.
1. Who may be assigned?
2. Who is paid?

Dear Sir,

Local Government Code Sec. 351.061 et. seq. authorizes the county to contract with private associations such as a Property Owners Association to provided extra law enforcement for a fee pursuant to Local Government Code Sec. 351.061 et. seq. In Opinion GA-0553 you overruled a prior Opinion JM-509 and ruled the Subchapter did not, on its face, usurp the authority of a law enforcement agencies to control its personnel.

The issues now arises who may commissioners court request to provide the services and who ultimately receives the money.

The Constable of Precinct 1 in Trinity County, Texas has requested the Commissioners Court to contract with a Property Owners Association for his department to patrol a residential subdivision in Precinct 2 of Trinity County. The testimony before the Commissioners was that certain undesirable elements had moved out Precinct 1, purportedly as a result the actions of the Precinct One Constable's Department, and into the residential subdivision in Precinct Two. The Constable and the

Property Owners Association believe that the Constable can induce those elements to move elsewhere by active patrolling and policing.

Trinity County has a population of less than 15,000. The Constable, as are all four Constables in Trinity, County, is salaried at just over the minimum set by Section 1702.322 Texas Occupation Code. Constable One has four deputies currently bonded and one with an expired bond. The deputy constables were appointed pursuant to Local Government Code Sec. 86.011, as unpaid Deputies, i.e. no salary is budgeted for them.

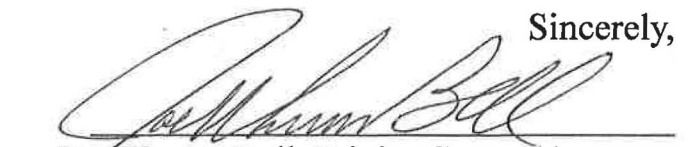
The contract proposed by the Constable provides for his department to patrol for up to 50 hours per month for which the P.O.A. would pay \$20 per hour to the County. This money, in turn, would, after deductions for income tax and social security taxes and for retirement, be paid to the Constable or the deputy who perform the services as an hourly wage.

First, does Local Govt. Code Sec. 351.063 authorizes Constable Precinct 1 to perform these paid services in a residential subdivision located wholly in Precinct 2?

Second, how are the funds to be disbursed; i.e. used to defray the budgeted expenses of the Constable's Department or be paid over the Constable or the "unpaid" deputies as wages?

A negative answer to the first question was implied by dicta in your 2007 opinion on the law in question. The second question has been answered repeatedly in your opinions and case law but not directly in relation to this law, nor in connection with implications of Federal Wage & Hour Law. Do you require a brief? One is ready.

Sincerely,



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