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RECEIVED

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

OPINION COMMITTEE

RQ-1064-GA

FILE # ML-47061-12

I.D. # 47061

Certified Mail: 7005 0390 0002 9990 3062

RE: Whether a home rule municipality may require sex offenders who reside within the city limits of the municipality to register as sex offenders with the County Sheriff's Office instead of the Office of the Chief of Police.

Dear General Abbott:

Pursuant to the authority to issue advisory opinions granted to the Attorney General in §22 of Article IV of the Texas Constitution and §402.041, et. seq. of the Texas Government Code, this letter is being submitted to you to request an opinion regarding certain provisions of the Code of Criminal Procedure. There are criminal cases pending regarding this request for an opinion.

BACKGROUND LAW AND FACTS

The City of Muleshoe Police Department and the Bailey County Sheriff's Office have agreed that the Bailey County Sheriff's Office will act as the registration authority for both the City of Muleshoe and for Bailey County. The Sheriff's Office of Bailey County, Texas is physically located within the city limits of Muleshoe, Texas. Sex offenders who reside within the city limits of Muleshoe are instructed to register with the Bailey County Sheriff's Office. This arrangement has been in place for many years, but there is no written record of the agreement nor is there any evidence of official action by the City Council or by the commissioner's court of the county.

Section 62.004 of the Code of Criminal Procedure provides:

“(a) Except as provided by Subsection (a-1), for each person subject to registration under this chapter, the department shall determine which local law enforcement authority serves as the person's primary registration authority **based on the municipality or county in which the person resides**....” (Emphasis mine)

Section 62.051 of the Code of Criminal Procedure provides:

(a) A person who has a reportable conviction or adjudication or who is required to register as a condition of parole, release to mandatory supervision, or community supervision shall register or, if the person is a person for whom registration is

completed under chapter, verify registration as provided by Subsection (f), with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. If the person does not reside or intend to reside in a municipality, the person shall register or verify registration in any county where the person resides or intends to reside for more than seven days...." (Emphasis mine)

Section 62.001 of the Code of Criminal Procedure defines "local law enforcement authority" as follows:

(2) "Local law enforcement authority" means, as applicable, the office of the chief of police of a municipality, the office of the sheriff of a county in this state, or a centralized registration authority." (Emphasis mine)

The Department of Public Safety was contacted regarding the registration of sex offenders in Muleshoe and in Bailey County. The Department is aware and recognizes that the Bailey County Sheriff's office is the registration authority for offenders residing in the municipality of Muleshoe and for offenders residing in the county. The Department does not have any written record of any agreement regarding sex offender registration between the City of Muleshoe and the Bailey County Sheriff's office.

QUESTIONS PRESENTED

(1) Is a home rule municipality required to provide sex offender registration in the office of the chief of police or may that responsibility be delegated to the Sheriff's Office? If the responsibility may be delegated, what is the proper procedure to designate the Sheriff's Office as the registration authority for the municipality?

(2) Beginning in June of 2009, Section 62.0045 of the Code of Criminal Procedure allows a county with a population of 100,000 or more to designate either the office of sheriff of the county or, through interlocal agreement, designate the office of a chief of police of a municipality in that county to serve as a mandatory county wide registration location for persons subject to the registration requirements of the Code of Criminal Procedure.

(a) Are counties with a population of less than 100,000 prohibited from establishing a centralized registration authority?

(b) Could the county and the city establish a centralized registration authority prior to 2009 without any statutory authorization?

(3) Can an offender be prosecuted for an offense involving a failure to comply with registration requirements if the Code of Criminal Procedure states that the offender shall register with the "local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days" if there is an inability to register with the municipal office, but the offender was directed by his parole or probation officer to register with the office of the county sheriff? (I would also note that the office of the Bailey County Sheriff is located within the city limits of Muleshoe, Texas).

DISCUSSION

The Code of Criminal Procedure prescribes the agency with whom one must register as a sex offender and gives alternative places, depending on whether the proposed registrant lives inside a municipality or outside a municipality. In Simpkins v. State, 300 S.W. 3rd 860 (Tex. App. – Texarkana 2009, no writ), the Court of Appeals reversed the trial court and rendered a judgment of acquittal in a case where the defendant was charged with the offense of failure to register as a sex offender in Gregg County. The issue in this case was whether the defendant resided at an address inside a municipality and was required to register with the municipal authority, or whether the address was within the county and the defendant was required to register with the county authority. The Court found that an essential element of the case was proof that the registrant's address was in rural Gregg County and not within the municipality of the City of Longview. The Court stated that a critical and necessary element of the proof is that the defendant's residence was in a location that required him to register with the Sheriff of the County (as opposed to the City). Because no witness could affirmatively state that the residence of the defendant was in an unincorporated part of Gregg County, the Court found the evidence was legally insufficient to support the conviction. However, in the Simpkins case, there was a municipal registration authority and a county registration authority.

The Code of Criminal Procedure requires registration with the local authority in the municipality if the registrant resides within the city limits. The definition of "local law enforcement authority" states office of the chief of police of a municipality, office of the sheriff of a county, OR a centralized registration authority. Would the fact that the definition of "local law enforcement authority" designates certain offices in the alternative (office of the chief of police OR office of the sheriff OR centralized registration authority) allow the municipality to designate the sheriff's office as the proper law enforcement authority for registration for the municipality, or if the residence of the offender is within the city limits is it mandatory that the registration authority be the office of the chief of police of the municipality? In other words, may the office of the sheriff of Bailey County act as the law enforcement authority for the municipality as well as the county?

Thank you for your attention to this matter. If there are any questions or comments, please do not hesitate to contact me.

Sincerely,



Kathryn H. Gurley
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