

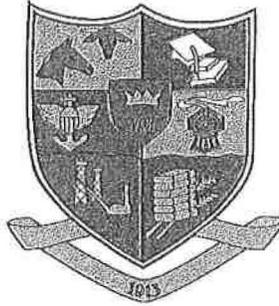
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NOV 22 2013

OPINION COMMITTEE

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COUNTY of KLEBERG
KINGSVILLE, TEXAS

FILE # ML-47460-13
I.D. # 47460

KLEBERG & KENEDY COUNTIES

KLEBERG COUNTY COURTHOUSE
P.O. BOX 1471
KINGSVILLE, TEXAS 78364

RQ-1166-GA

November 22, 2013

Office of the Attorney General of Texas
The Honorable Greg Abbott
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

SENT VIA EMAIL TO: Opinion.Committee@texasattorneygeneral.gov

RE: Request for Opinion as to whether the Kleberg & Kenedy District Attorney's Office may purchase real property (a building and land) with Ch. 59 Asset Forfeiture funds, and subsequently rent/lease the property, or a portion thereof, in furtherance of law enforcement purposes and/or for the preservation, enforcement or administration of the laws of this state.

SPECIAL REQUEST FOR EXPEDITED and EMERGENCY OPINION

Dear Attorney General Abbott:

Background:

Given the 2013 Texas Legislative amendments to Chapter 59 of the Texas Code of Criminal Procedure, SB 878, and specifically §59.06 (d-4) (7), which explicitly authorizes expenditures for "facility costs, including building purchase", may an attorney representing the State (Kleberg & Kenedy Counties District Attorney's Office), under §59.06 (c) (1), purchase a building and land in its county, and subsequently rent and/or lease the building and land back to the county or other law enforcement agency operating within that county, in satisfaction and conformity with the requirement that it (Asset Forfeiture Funds) be used solely for

the official purposes of his office. Specifically, the Texas National Guard [Texas Military Forces – Adjutant General’s Department] has relocated from its building and land, being approximately 2.7548 acres, located in Kingsville, Kleberg County, Texas, with the physical address being 604 E. Kleberg Avenue, Kingsville, Texas, 78363, which is now for sale. The subject property is located adjacent to the Kleberg County Courthouse. The subject property consists of a main building with approximately 16,781 square feet; and a vehicle storage building of approximately 5720 square feet. There is also an asphalt paved parking lot at the corner of East Kleberg Avenue and North 11th Street, which the County of Kleberg, Texas is interested in utilizing, by renting and/or leasing this parking lot for use by the public accessing the courthouse for parking. This includes juries, grand juries, witnesses and the general public that attend Court and courthouse for the administration of justice by the District Attorney’s office, the county and the Courts.

Questions Presented:

1. May the Kleberg & Kenedy Counties District Attorney’s Office (the attorney representing the State under Chapter 59) purchase land and a building with asset forfeiture funds, and subsequently lease part of the land and/or building (the asphalt paved parking lot) to Kleberg County, Texas, and comply with and satisfy Chapter 59.06 (c) (1)?
2. Can the Kleberg & Kenedy Counties District Attorney’s Office (the attorney representing the State under Chapter 59) rent and/or lease the asphalt paved parking lot to Kleberg County, Texas, and receive as payment, as the consideration of the contract for rent and/or lease, the County’s promise and obligation to maintain the property, perform regular maintenance on the building, pay any and all ad valorem taxes when due, pay any and all electrical and utility bills and expenses and any and all liability property insurance?
3. May the Kleberg & Kenedy Counties District Attorney’s Office (the attorney representing the State under Chapter 59) purchase land and a building with asset forfeiture funds, and subsequently sell the building and land to Kleberg County, Texas, and comply with and satisfy Chapter 59.06 (c) (1)?
4. May the Kleberg & Kenedy Counties District Attorney’s Office (the attorney representing the State under Chapter 59) purchase land and a building with asset forfeiture funds, and subsequently lease part of the land and/or building, to the Texas Department of Public Safety, Highway

Patrol, to house its Kingsville, Texas office, and comply with and satisfy Chapter 59.06 (c) (1)?

Discussion:

It is acknowledged by this office that the 2013 Legislative Notes regarding SB 878 indicates that Chapter 59.06 of the Texas Code of Criminal Procedure is amended to provide additional guidance in how proceeds or property received under Chapter 59 can be used and to eliminate the need for frequent requests for Attorney General opinions about expenditures. The bill also adds subsection (d-4) to provide approval of an expenditure as “an official purpose” of a prosecuting attorney’s office if it is made for an activity of a prosecuting attorney or that attorney’s office that relates to the preservation, enforcement, or administration of the laws of this state, including the listed items. As SB 878 amended Ch. 59.06, it would appear that this amendment could change and alter the conclusion of *Op. Tex. Att’y Gen. GA-0613 (2008)*, which said that a district attorney could not use asset forfeiture funds to help purchase a juvenile detention facility for a county because “providing a juvenile detention facility is not an official purpose of that office under Ch. 59.06 (c) (1), and is therefore not an authorized use of those funds”.

Therefore, it is imperative and important to this office that the Texas Attorney General be hereby requested to issue an opinion on this matter, before this office enters into any agreement to purchase said property.

Conclusion:

Respectfully, the Kleberg & Kenedy Counties District Attorney’s Office (the prosecuting attorney representing the State under Chapter 59 in Kleberg County, Texas), believes that the Texas Attorney General should conclude that:

1. The Kleberg & Kenedy Counties District Attorney’s Office (the attorney representing the State under Chapter 59) may purchase land and a building with asset forfeiture funds, and subsequently lease part of the land and/or building (the asphalt paved parking lot) to Kleberg County, Texas, and comply with and satisfy Chapter 59.06 (c) (1)?
2. The Kleberg & Kenedy Counties District Attorney’s Office (the attorney representing the State under Chapter 59) can rent and/or lease the asphalt paved parking lot to Kleberg County, Texas, and receive as payment, as

the consideration of the contract, for rent and/or lease the County's promise and obligation to maintain the property, pay any and all ad valorem taxes when due, pay any and all electrical and utility bills and expenses and any and all liability property insurance?

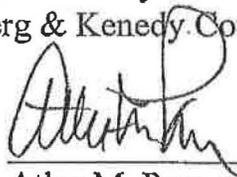
3. The Kleberg & Kenedy Counties District Attorney's Office (the attorney representing the State under Chapter 59) may purchase land and a building with asset forfeiture funds, and subsequently sell the building and land to Kleberg County, Texas, and comply with and satisfy Chapter 59.06 (c) (1)?
4. The Kleberg & Kenedy Counties District Attorney's Office (the attorney representing the State under Chapter 59) may purchase land and a building with asset forfeiture funds, and subsequently lease part of the land and/or building, to the Texas Department of Public Safety, Highway Patrol, to house its Kingsville, Texas office, and comply with and satisfy Chapter 59.06 (c) (1)?

This office respectfully requests that the Office of the Attorney General of Texas process and expedite the issuance of its opinion in this request, as the Texas National Guard [Texas Military Forces – Adjutant General's Department] is requesting and demanding a response to whether the building is to be purchased by the District Attorney's office and/or Kleberg County, Texas on or before the Kleberg County Commissioner's Court meeting set for November 25, 2013.

Respectively Submitted,

John T. Hubert
District Attorney
Kleberg & Kenedy Counties

By:



Atlee M. Parr
Assistant District Attorney