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VIA EMAIL TO:

Opinion.Committee@texasattorneygeneral.gov

AND/OR VIA CERTIFIED MAIL TO: 7014 2870 0000 3702 9880

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

Re: Request for Attorney General opinion regarding application of statutes to accounts maintained by county sheriff

Dear Attorney General:

The purpose of this letter is to request an Attorney General Opinion regarding application of particular Texas statutes relating to accounts currently maintained by the Hudspeth County Sheriff, and particularly, as they relate to the authority and duties of the County Auditor.

The sheriff of Hudspeth County, Texas, maintains several accounts in his own name, holding various funds related to the performance of his duties as County Sheriff. These accounts include (1) a general "Hudspeth County Sheriff's Account," which appears to hold funds received on bail bonds and other general sheriff's business; (2) an "inmate commissary" account holding funds deposited by inmates; (3) a "seizure account," referring to civil asset forfeiture account; (4) a "forfeiture account," also holding funds received from property forfeited under civil forfeiture laws, but which appears to be used for general business purposes. Based on revenue appearing on the Sheriff's budget, there may or may not be a fifth account for "inmate phone revenue." The Sheriff maintains each of these accounts independently from the county auditor and county treasurer, and exclusively controls expenditures from these accounts.

Texas Local Government Code § 112.005 provides for the county auditor to maintain accounts for county officers authorized to receive or collect money for the use of the county or that belongs to the county. Texas Local Government Code § 112.006 provides generally that the county auditor has general oversight of the books and records of a county officer authorized to receive or collect money for the use of the county or that belongs to the county. Texas Local Government Code § 112.007 requires the county auditor to maintain records of the county's accounts and financial transactions.

Texas Local Government Code § 115.001 provides that a county auditor shall have continual access to and examine the correctness of the books, accounts, and records of any officer. Texas Local Government Code § 115.002 requires the county auditor to examine, verify and report on the accounts of all county officers.

Texas Local Government Code § 115.0035 imposes on the auditor specific duties regarding the examination of records of county officials, including accounts of law enforcement agencies, composed of money and proceeds of property seized and forfeited to those officials. Texas Local Government Code § 115.901 requires the auditor to examine the accounts, books and records of the county sheriff.

Texas Local Government Code § 113.021 requires that money belonging to a county be deposited with the county treasury. Texas Local Government Code § 113.064(a) prohibits payment of any clam, bill or account before it is approved by a county auditor. Texas Local Government Code § 113.043 requires the county auditor and the county clerk to countersign a check or payment order to validate it as a proper and budgeted item of expenditure before it may be paid by the county treasurer and county depository.

The Hudspeth County Sheriff has taken the position that the auditor has no authority over the accounts at issue, that they are not subject to audit by the auditor, and that the countersignature requirement does not apply, because the accounts are Sheriff's funds and not county funds.

I am aware of Attorney General Opinion GA-0636, explaining that county officers (including a sheriff) may not deposit funds he receives into an individual account within his control (absent specific statutory authorization), and that county officers who collect fees for the county must deposit those funds in the county treasury. Hudspeth County Sheriff Arvin West has taken the position that Opinion GA-0636 does not apply to him or to the referenced accounts.

I would appreciate a formal opinion regarding the application of the above-cited statutes to the accounts maintained by the Hudspeth County Sheriff. Your opinion on these specific accounts held by the Hudspeth County Sheriff is critical to ensure that we are able to properly apply and enforce the law in this County.

Thank you for your attention to this matter.

Sincerely,


C. R. KIT BRAMBLETT
HUDSPETH COUNTY ATTORNEY