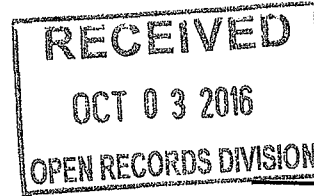


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OCT 04 2016

OPINION COMMITTEE

September 30, 2016

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

FILE # ML-48086-16
48086
RQ-0132-KP

Dear Attorney General Paxton and Opinion Committee:

The Lee County Attorney requests the opinion of the Texas Attorney General regarding which type of bond (or bonds) is required for a county attorney who has both felony and misdemeanor jurisdiction.

Background:

Article V, Section 21 of the Texas Constitution provides:

Sec. 21. COUNTY ATTORNEYS; DISTRICT ATTORNEYS. A County Attorney, for counties in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of four years. In case of vacancy the Commissioners Court of the county shall have the power to appoint a County Attorney until the next general election. The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of District Attorneys in such districts, as may be deemed necessary, and make provision for the compensation of District Attorneys and County Attorneys. District Attorneys shall hold office for a term of four years, and until their successors have qualified.

Lee County is one of only a few Texas counties in which the prosecution of all criminal

offenses is consolidated into the office of county attorney.¹ Lee County has neither a resident criminal district attorney as provided for in Article V, Section 21 of the Texas Constitution nor is Lee County part of a district in which there is a district attorney. As a result, the elected county attorney and his or her assistants serve in the role of both a county and a district attorney.

The Lee County Attorney and other similar “county” attorneys performing the duties of district attorneys are considered a “State Prosecutor” along with district attorneys and criminal district attorneys. *Texas Government Code Section 46.001*. (Criminal district attorneys are similar to offices like the Lee County attorney because those offices generally represent the state in all matters in the district and inferior courts in a county and perform the other duties that are conferred by general law on district and county attorneys. *See, e.g., Texas Government Code 44.101*.) “State Prosecutors” are paid compensation by the state and are considered professional prosecutors. *See Texas Government Code Section 46.001 et. seq.*

District attorneys are required to post a bond before assuming the duties of the office in accordance with Texas Government Code 43.002. The district attorney bond is payable to the governor, is in the sum of \$5,000, has two or more good and sufficient sureties, is approved by the district judge, and is conditioned that the district attorney will, in the manner prescribed by law, pay over all of the money that he collects or that comes into his hands for the state or a county. *Texas Government Code Section 43.002*.

Criminal district attorneys must meet the qualifications and give the bond required of a district attorney by the constitution and general law. *Texas Government Code Section 44.002*.

County attorneys must execute a bond payable to the governor in the amount of \$2,500, with at least two good and sufficient sureties to be approved by the commissioners court of the county and the bond must be conditioned on the county attorney faithfully paying over in the manner prescribed by law all money that he collects or receives for any county or the state. *Texas Government Code Section 45.001*.

My authority as Lee County Attorney has in the past been challenged by a sovereign citizen because I only had a district attorney bond. Earlier this year, the Office of the Texas Comptroller of Public Accounts contacted me requesting me to submit proof of my District Attorney Bond payable to the Governor to their office. I had the district attorney bond, however a copy had not been forwarded to the Comptroller. Enclosed is a copy of my letter to the Comptroller’s Office responding to their request and asking that their office review county attorney bond requirements. As stated therein, I had previously inquired of my prosecutor’s association about the bond requirement and was advised by them their opinion that only a county attorney bond is required. In an abundance of caution, I have obtained both a county and district attorney bond.

Question:

I am requesting an opinion of what bond is required of a county attorney who performs

¹ *See* Gov’t Code Sec. 45.244 (“The county attorney of Lee County represents the state in all matters pending before the district courts in Lee County.”); *see also*, Gov’t Code Sec. 46.002(3).

the functions of both a county and district attorney.

Given that the title of county attorney is the only one held by the sole elected prosecutor in Lee County, does the Government Code require only that a county attorney bond be held, does the additional mandate to prosecute felonies require a district attorney bond, or are both required? Moreover, does the required bond type for the County Attorney follow to his or her assistant prosecutors? In the absence of clear legislative history, the Government Code does not clearly delineate the type of bond necessary in the circumstance of combined jurisdiction.

This office looks forward to, and appreciates, your response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Placke", is written over a horizontal line.

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Enclosures