

# TEXAS HOUSE OF REPRESENTATIVES



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**RECEIVED**

By Opinion Committee at 10:53 am, Mar 17, 2020

March 11, 2020

The Honorable Ken Paxton  
Attorney General of the State of Texas  
ATTN: Opinion Committee  
PO Box 12548  
Austin, TX 78711-2548

**RQ-0338-KP**

FILE# ML-48733-20  
I.D. 48733

Re: Authority of an Investigator who is not licensed as a Peace Officer and is appointed by a County Prosecutor

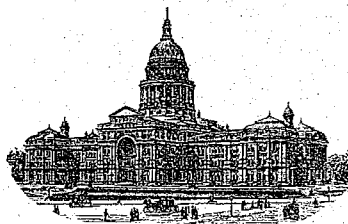
Dear Attorney General Paxton:

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 request an opinion regarding certain provisions of the Texas Penal Code.

The Aransas County Sheriff's Office has asked me to request the following Attorney General Opinion:

An issue arose when a civilian employee of a prosecutor's office carried a firearm in a Felony District Court. The Sheriff's Office disarmed the civilian employee who is the County Prosecutors appointed Investigator, because they were not a licensed peace officer. The Prosecutor is defending the Investigators' right to carry their firearm in the court as she has a concealed carry permit, and that the County Judge has allowed it.

What are the authorities of an Investigator who is not a licensed peace officer, including their right to carry a firearm in a courtroom?



EMAIL: Geanie.Morrison@house.texas.gov

**Background from the Aransas County Sheriff's Office**

While recognized by provisions of codes and statutes the authority to appoint is evident to allow independent investigations and operations from a law enforcement agency. This is evident in Texas Govt. Code 41.109 (a) even going as far as to say has the same authority as the Sheriff in service of documents and investigations. Conflict comes about in Occupation Code Title 10 1701.001 (4) which defines appointments as Peace Officers, seems to challenge an appointment that does not carry a license as described by the Texas Commission on Law Enforcement. There are provisions that clarify that Investigators of Prosecuting Attorneys are recognized as Peace Officers. But it seems they are not under the guidance or regulatory authority of TCOLE as all other Peace Officers are.

While understanding the appointment intent for independent investigators not employed by a law enforcement agency to be recognized as having the full authority, is it the expectation that assigned Investigators by Prosecutors are Licensed Peace Officers by TCOLE?

The issue arose when a civilian employee of a prosecutor's office carried a firearm in a Felony District Court. There are exemptions from prosecution added this last year to cover the Prosecutor and the Assistant Prosecutor who carry in court. But to be able to *appoint just anyone* as investigator and interpret it, that without training or regulatory oversight by anyone they have all the powers of a Licensed Peace Officer who attended over 1100 hours of training and passed a state exam with continued education and qualifying requirements. This individual has no Oath of Office on file, nor probably no Physiological Exam on file as required of all other Officers in Texas.

The Prosecutor is defending the action saying she has a concealed carry permit ( as do probably 1/3 of Aransas County ) and that the County Judge has OK'ed it.

What is requested is an interpretation of the statutes and codes on the books and the explanation if this interpretation of the Prosecutor that her investigator is not required to be licensed by the Texas Commission on Law Enforcement. In what some would call extreme, as an example, what stops any prosecutor from naming their teenage son or daughter as an investigator, giving them a badge and a gun and telling them to hurry up on their breakfast before they are late to school ?

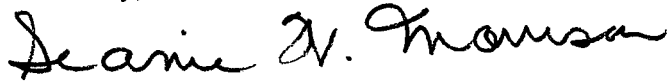
*The Honorable Ken Paxton*

*February 20, 2020*

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I do not believe the Statute intent is to create a shortcut to authority without licensing oversight. When in fact the reverse is expected. Hold a license from the Texas Commission on Law Enforcement and receive an appointment from a prosecutor who would carry the Commission.

Sincerely,

A handwritten signature in black ink that reads "Geanie W. Morrison". The signature is written in a cursive style with a large initial "G".

Geanie W. Morrison

Chairman

House Local and Consent Calendars Committee