



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 8, 1993

**Ms. Raymie Kana**  
County Auditor  
Colorado County Courthouse, 3rd Floor  
Columbus, Texas 78934

Letter Opinion No. 93-17

**Re: Payments to spouse of county judge for  
expenses incurred in execution of contract  
under federal program (ID# 17139)**

**Dear Ms. Kana:**

You ask whether the county judge's wife may receive reimbursement for lodging, food, and travel to attend seminars for the non-profit corporation of Colorado County Youth and Family Services, Inc. through claims submitted to the county. We understand from your letter that her claims are submitted directly to the commissioners court for approval, and not to the non-profit corporation. You also ask the complementary question, whether the county is authorized to pay those expenses. We believe that, provided that these expenditures are incurred and accounted for as required by law, the county judge's spouse may receive and the county may pay reimbursement for these expenditures.

As described in your letter and accompanying documents, the county has entered a contract with the Texas Department of Human Services to provide services to truant and at-risk youth in the county and their families. The county entered the contract because the non-profit corporation that will actually provide the services was not incorporated. The county judge's spouse helped to develop and continues to be involved with the program, thus incurring the expenses.

There are two general statutory provisions that regulate a county judge's personal financial dealings with the county. First, section 81.002 of the Local Government Code requires a county judge or commissioner to take an oath, prior to taking office, swearing that he or she "will not be interested, directly or indirectly, in a contract or claim against the county." Local Gov't Code § 81.002(a). At one time, this oath was held to prohibit the wife of a county commissioner from receiving a salary as a deputy tax assessor-collector on the grounds that community property laws gave the commissioner an indirect interest in that salary. Attorney General Opinion H-993 (1977). That conclusion was overruled in Attorney General Opinion MW-437 (1982), which reexamined the legal status of women and concluded that a county commissioner did not violate the oath of office by virtue of his community property interest in his spouse's county employment. The conclusion in MW-437 applies equally well to the reimbursement of the spouse's expenses. Thus, section 81.002 does not prohibit the reimbursement.

The other statutory provision that is relevant to the reimbursement of the spouse's expenses is found in chapter 171 of the Local Government Code. That chapter generally regulates local government officials' conflicts of interest and requires those officials to disclose substantial interests in business entities and abstain from participating in matters which would affect those entities. *See* Local Gov't Code § 171.004; Attorney General Opinion JM-1090 (1989) at 2. This office has previously noted that chapter 171 reaches only financial interests and only prohibits a local governmental official from participating in a vote or a decision after disclosing his or her interest. *See* Attorney General Opinions JM-1060 at 4; JM-424 (1986).

Section 171.001(2) of the Local Government Code defines "business entity" to include a corporation, which term includes a non-profit corporation. *See* Attorney General Opinion JM-424. Section 171.002 of the Local Government Code defines "substantial interest in a business entity" to include the interest of a person related to the official within the first degree by affinity, which includes the official's spouse. Attorney General Opinion V-785 (1949). Because the legislature has expressly defined the interest of persons within the stated degree of relationship as an interest of the official, the determination regarding community property interests in Attorney General Opinion MW-437 has no bearing on the application of chapter 171 to the reimbursement of these expenses. *See* Attorney General Opinion JM-1090. This office is not equipped to make the fact determination of whether or not the reimbursement of the expenses under consideration here would constitute a "substantial interest in a business entity." That determination is for the county judge, in the first instance. If he discovers that his wife has such an interest, he must declare it and abstain from further participation in the matter as required by chapter 171.

### S U M M A R Y

A county judge does not violate the oath of office by virtue of the county's reimbursement of expenses incurred by the judge's spouse in furtherance of a contract between the county and the Texas Department of Human Services. If that reimbursement amounts to a "substantial interest in a business entity" under chapter 171, Local Government Code, the judge must declare the interest and abstain from further participation in the matter.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee