



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

**DAN MORALES**  
ATTORNEY GENERAL

June 18, 1993

Honorable W. C. Kirkendall  
District Attorney  
Twenty-Fifth Judicial District of Texas  
113 South River, Suite 205  
Seguin, Texas 78155

Letter Opinion No. 93-51

Re: Whether the use of a county-paid employee in the private law practice of a county attorney is a use of public funds for a private purpose in violation of article III, section 52 of the Texas Constitution (ID# 16451)

Dear Mr. Kirkendall:

You have asked whether a county may provide its county attorney with county-paid employees to assist the attorney in his or her private law practice, without violating article III, section 52 of the Texas Constitution. You provide the following factual background:

[S]everal of the county attorneys in my district . . . have, in addition to their salary from individual counties, a county-paid employee furnished to them. By informal agreement with the commissioners court, they use that county paid employee not only as the secretary doing the work of the office of the county attorney, but also to perform private work in their individual law practices. The private work performed by these secretaries has nothing to do with the work of the county attorney's office or any public matter; it is simply participation in a private business. Neither the secretaries nor the county is reimbursed by the county attorney for any time spent by the employee on private matters.

As a threshold matter, we note that section 41.011 of the Government Code expressly permits "[a] district or county attorney who is not prohibited by law from engaging in the private practice of law [to], at the discretion of the commissioners court of a particular county, conduct a private practice of law using the district or county office provided by that county for conducting his [or her] official duties." Generally, we are to construe the words used in a statute in accordance with common usage. *See* Gov't Code § 311.011(a). Even if, however, a word as used in a statute appears unambiguous, we may consider the sense in which the legislature intended to use the word, as indicated by,

among other things, the object the legislature sought to accomplish and legislative history. *See id.* § 311.023. If we rely solely on common usage, the word "office," as section 41.011 of the Government Code uses it, might appear to refer merely to the facilities the county or district provides the county attorney. *See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY* 820 (1987) (defining "office"). By examining the legislative history of section 41.011, however, we find that the legislature apparently intended a broader definition of the word.

The legislature added section 41.011 to the Government Code in 1987. *See Acts 1987, 70th Leg., ch. 213, § 1, at 1502.* The purpose of this bill was to statutorily authorize the long-standing practice of many counties, particularly rural counties, of this state. Hearings on S.B. 748 Before the Senate Comm. on Criminal Justice, 70th Leg. (Apr. 21, 1987) (statement of Senator Glasgow, sponsor of the bill) (tape available from Senate Staff Services); Debate on S.B. 748 on the Floor of the Senate, 70th Leg. (Apr. 24, 1987) (testimony of "the Senator from Erath") (tape available from Senate Staff Services). In passing the bill, the legislature recognized that, frequently, rural counties must provide incentives to attract an attorney to the county attorney position. *See id.* According to the bill's sponsor, Senate Bill 748 "makes clear that a district or county attorney, at the discretion of the county commissioners court, can use the county facilities, that is, office space, secretaries, and telephones, to practice private law." Hearings on S.B. 748 Before the Senate Comm. on Criminal Justice, 70th Leg. (Apr. 21, 1987) (statement of Senator Glasgow, sponsor of the bill) (tape available from Senate Staff Services); *see also* Debate on S.B. 748 on the Floor of the Senate, 70th Leg. (Apr. 24, 1987) (testimony of "the Senator from Erath") (tape available from Senate Staff Services).

The legislature statutorily may authorize a subdivision of the state to provide its employees with some benefit as part of the employees' compensation for services the employees have rendered to the subdivision. Attorney General Opinion M-582 (1970) at 7 (quoting *Byrd v. City of Dallas*, 6 S.W.2d 738 (1938)). In our opinion, section 41.011 of the Government Code authorizes a county commissioners court to compensate in-kind its county or district attorney with the use of office space, secretaries, and telephones. This decision is not unlike a county commissioners court's decision to provide county employees with group health insurance coverage. *See id.*; *see also* Attorney General Opinions M-595 (1970) at 4; H-1227 (1978) at 1.

You specifically ask whether such a practice violates article III, section 52 of the Texas Constitution. That provision generally prohibits the use of public funds for private purposes. Attorney General Opinions DM-66 (1991) at 3; JM-1199 at 1, JM-1194 at 3 (1990). The question you ask does not, however, raise the public purpose question, so long as the county commissioners court approves the expenditure of county funds for office space and personnel for the county or district attorney prior to the attorney's

rendition of services.<sup>1</sup> Instead, your question involves a consideration of whether a county may compensate its attorney by providing office space and personnel.

### S U M M A R Y

Pursuant to the legislative intent behind section 41.011 of the Government Code, a county attorney may use county-paid employees to perform private work in the county attorney's private practice of law, so long as the county commissioners court has approved the practice prior to the time the attorney renders services to the county.

Very truly yours,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>You state that the county attorney receives a county-paid employee to assist in the attorney's private practice "by informal agreement with the commissioners court." In public hearings regarding the enactment of Senate Bill 748, Senator Glasgow, the sponsor of the bill, stated that such benefits could be provided with the consent of the commissioners court. Hearings on S.B. 748 Before the Senate Comm. on Criminal Justice, 70th Leg. (Apr. 21, 1987) (tape available from Senate Staff Services). On its face, section 41.011 of the Government Code provides that the decision of whether a district or county attorney could use the district or county office provided by the county for the attorney's private practice falls within "the discretion of the commissioners court." Section 41.011 does not expressly require the district or county attorney and the county commissioners court to execute a formal, written agreement on this subject. We note, however, that section 152.011 of the Local Government Code requires a commissioners court to "set the amount of the compensation, office and travel expenses, and all other allowances for county . . . officers and employees who are paid wholly from county funds." As you do not ask whether the county commissioners court may, by informal agreement, approve the expenditure of county funds for the district or county attorney's private office expenses, we do not answer that question.