



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 17, 1993

Honorable Keith Oakley  
Chair  
Committee on Public Safety  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 93-62

Re: Whether individuals employed by a sheriff pursuant to section 85.005 of the Local Government Code to ensure the safekeeping of prisoners are "county law enforcement officials" for purposes of article III, section 52e, of the Texas Constitution and related question (ID# 20391)

Dear Representative Oakley:

You have requested our opinion regarding the scope of article III, section 52e, of the Texas Constitution. That provision states, in pertinent part:

Each county in the State of Texas is hereby authorized to pay all medical expenses, all doctor bills and all hospital bills for Sheriffs, Deputy Sheriffs, Constables, Deputy Constables, and *other county and precinct law enforcement officials* who are injured in the course of their official duties; providing that while said Sheriff, Deputy Sheriff, Constable, Deputy Constable or *other county or precinct law enforcement official* is hospitalized or incapacitated that the county shall continue to pay his maximum salary; providing, however, that said payment of salary shall cease on the expiration of the term of office to which such official was elected or appointed. . . . [Emphasis added.]

This amendment, approved in 1967,<sup>1</sup> requires that a county pay a "county or precinct law enforcement official" his "maximum salary" if that official "is hospitalized or incapacitated" because of an injury incurred in the course of his "official duties." You first ask whether the term "other county and precinct law enforcement officials" includes within its ambit "certified jailers, detention officers, and correctional officers employed by a county."

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<sup>1</sup>Article III of the Texas Constitution includes two provisions designated section 52e. The 60th Legislature proposed the adoption of the provision quoted above. See Acts 1967, 60th Leg., at 2969. [SJR 6]. The same legislature proposed the adoption of the other provision denominated section 52e, which authorizes the issuance of bonds by Dallas County for the construction and operation of roads and turnpikes. See Acts 1967, 60th Leg., at 2973 [SJR 37].

Initially, we note that neither article III, section 52e itself, nor any other constitutional provision furnishes any guidance about the scope of article III, section 52e. Section 85.005 of the Local Government Code authorizes a sheriff to employ "guards to ensure the safekeeping of prisoners and the security of a jail." Section 415.051, *et seq.*, of the Government Code provides that, except in certain temporary and emergency situations, and in certain cases in which an individual was appointed prior to September 1, 1979, a sheriff may appoint as jailer *only* those persons who have been licensed by the Commission on Law Enforcement Officer Standards and Education.

The duties performed by county jailers employed under section 85.005 of the Local Government Code are similar to the law enforcement duties performed by deputy sheriffs. Both deputy sheriffs and county jailers perform their duties on behalf of the sheriff, and thus, they are persons "authorized to act . . . for another person, especially in administering or directing in a subordinate capacity." *See* WEBSTER'S THIRD NEW INT'L DICTIONARY 1567 (1976) (defining "official" broadly); *see generally* Local Gov't Code §§ 85.003, 85.005. Just as a deputy sheriff carries out the sheriff's duties to preserve the peace, investigate crimes, and arrest alleged offenders, a county jailer carries out the sheriff's duties to safeguard prisoners, maintain jail security, and investigate and prevent crimes that might occur within the county jail.

As a general rule, words used in the state constitution should be construed liberally and in an equitable manner, so as to achieve the purpose of the provision of which they are a part. *Brown County Water Improv. Dist. v. Austin Mill & Grain Co.*, 138 S.W.2d 523, 525 (Tex. 1940); 12 TEX. JUR. 3d *Constitutional Law* § 16, at 508-09 (1981). In particular, a remedial constitutional provision is to be construed liberally to carry out its purposes. *Ferguson v. Wilcox*, 28 S.W.2d 526 (1930); 12 TEX. JUR. 3d, *supra*, at 509. These principles of construction, even standing alone, would point us toward a construction of article III, section 52e, that is sufficiently broad to encompass licensed county jailers within its purview.

In its analysis accompanying article III, section 52e, the Texas Legislative Council (the "council") indicated that the proposed amendment was necessary in order to circumvent article III, section 52, which prohibits a grant or loan of public funds to private individuals or entities. TEXAS LEGISLATIVE COUNCIL, 6 PROPOSED CONSTITUTIONAL AMENDMENTS ANALYZED 13 (1967). The council further explained that the benefits provided to law enforcement officials by the amendment were essential to the success of county governments in attracting qualified individuals to the profession of law enforcement, particularly because, in 1967, those persons were not covered by workers' compensation insurance. *Id.*<sup>2</sup> Newspaper articles and other contemporaneous material,

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<sup>2</sup>The council's analysis states, in pertinent part:

It is becoming more and more difficult to recruit law enforcement personnel, and the knowledge that medical expenses are covered for injuries sustained in the course of duty, as made possible by this proposed amendment, should make positions in law enforcement more attractive. Any incidental

such as the voting guide published by the League of Women Voters of Texas (the "league"), pointed out that the relative danger of law enforcement work made it necessary that government provide incentives beyond those ordinarily granted to public servants. *See, e.g.*, Austin American-Statesman, Oct. 24, 1967, at 6, cols. 1-2; Houston Post, Oct. 23, 1967, at 18, col. 1; League of Women Voters of Texas, *Voter's Guide: Texas General Election* - Nov. 11, 1967, at 2, col. 1.<sup>3</sup>

In *El Paso County Sheriff's Deputies Ass'n v. Samaniego*, 803 S.W.2d 435, 436 (Tex. App.--El Paso 1991, no writ), the court of appeals declared:

Though [county] jailers are not peace officers . . . they are law enforcement officers as held in this Court's unpublished opinion *El Paso County v. Robert Rodriguez*, No. 08-90-00059-CV, delivered July 18, 1990. Within the jails, their duties are to maintain order, protect citizens, execute searches and prevent escapes. The jailers, in effect, generally "police" the jails, and enforce the laws against assaultive conduct, theft, drug abuse and other crimes in the jail area. . . . Jail riots, assaults and escapes are potential hazards to the public.

In the *Rodriguez* case referred to in *Samaniego*, the court of appeals, in an unpublished opinion, had specifically held that a person employed as a jailer or detention officer by the sheriff should be deemed a "law enforcement official" and consequently, "within the purview of the benefits provided by" article III, section 52e.

In our opinion, a combination of case law, rules of construction, and common sense make it clear that "jailers, detention officers, and correctional officers employed by a county" pursuant to section 85.005 of the Local Government Code are included within the ambit of those "other county and precinct law enforcement officials" who are among the beneficiaries of article III, section 52e.

You also ask whether a county is authorized to "reduce the amount paid to a deputy or law enforcement official under Article 3, Section 52e . . . to a sum less than the

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(footnote continued)

benefit that a county can offer a prospective applicant would be an invaluable aid in promoting effective law enforcement.

<sup>3</sup>The voter's guide published by the League states:

Law enforcement is a dangerous business. County officers often work under hazardous conditions. The medical protection provided for in this amendment is badly needed by county officers, who are not now covered by workmens compensation. Recruitment of law enforcement personnel is one of the greatest problems in the state today. Passage of this proposed amendment would enable counties to be competitive in attracting well trained, capable people. Definite guidelines for the salary continuation of officials will standardize the procedures for all counties.

employee's maximum salary because a portion of all of the monies paid the deputy/official are not subject to income tax." This question arises because a portion of the "maximum salary" payment to injured law enforcement officials is paid from the workers' compensation fund, and that portion is not subject to federal income tax. As a result, although the gross amount paid to a covered individual is equal to his "maximum salary" for a particular compensation period, the net amount he receives is somewhat greater.

Prior to 1987, an injured county law enforcement official was eligible to receive *both* his full salary *and* his statutory workers' compensation benefit, and no offset was permitted. *El Paso County v. Jeffers*, 699 S.W.2d 375 (Tex. App.--El Paso 1985, no writ). In 1987, the legislature enacted Senate Bill 439, Acts 1987, 70th Leg., ch. 111, at 256, which extensively amended the workers' compensation statutes, and one result of those amendments was to prohibit "double dipping." Section 5 of article 8309h, V.T.C.S., now provides:

The [workers'] compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases elsewhere herein. Provided further, however, that any and all sums for incapacity received in accordance with . . . statutes now in force and effect that provide for payment for incapacity to work because of injury on the job that is also covered by this Act are hereby offset as against the benefits provided under this Act to the extent applicable, *and any sums paid under Article III, Section 52e, of the Texas Constitution are offset against the week-to-week benefits otherwise payable under this Act.* [Emphasis added.]

The bill analysis prepared for Senate Bill 439 indicates that one of its purposes was to eliminate the "double benefits granted in *El Paso v. Jeffers, et al.* to law enforcement officials by reducing the amount of worker[s] compensation by the amount of salary paid through Article III, Section 52e of the Texas Constitution." *See* House Comm. on Bus. and Commerce, Bill Analysis, S.B. 439, 70th Leg. (1987).<sup>4</sup>

*Jeffers* may still be cited, however, for the proposition that no "offset" is permitted *unless* it is provided for by statute. 699 S.W.2d at 377. Nothing in the constitutional history of article III, section 52e, nor in the legislative history of article 8309h, offers even the slightest evidence that the legislature intended that the injured official's federal tax status should play any role in determining his benefits. We conclude that a county may not

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<sup>4</sup>In Attorney General Opinion JM-915, this office said that, in light of *Jeffers*, the offset provision of section 5, in so far as is it applicable to persons covered by article III, section 52e, "can be read as constitutional only if it is deemed to provide that workers compensation benefits received under article 8309h are to be reduced to the extent that benefits are received under article III, section 52e." Attorney General Opinion JM-915 (1988) at 8. Your question seems to assume, however, that it is the article III, section 52e payments which are subject to reduction. Since you have not inquired about this matter, we do not here address it.

"reduce the amount paid under article III, section 52e... to a sum less than the employee's maximum salary because a portion of all of the monies paid the deputy/official are not subject to income tax."

**S U M M A R Y**

A jailer or guard employed by a sheriff under section 85.005 of the Local Government Code is a "county law enforcement official" for purposes of article III, section 52e, of the Texas Constitution. The mandatory salary payments required under this constitutional provision may not be reduced to account for any federal tax consequences applicable to a particular individual.

Yours very truly,



Rick Gilpin  
Deputy Chief  
Opinion Committee