



Office of the Attorney General
State of Texas

April 26, 1994

DAN MORALES
ATTORNEY GENERAL

Honorable John Vance
Dallas County District Attorney
Frank Crowley Courts Building
Dallas, Texas 75207-4313

Letter Opinion No. 94-040

Re: Whether the County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to chapter 59 of the Code of Criminal Procedure; clarification of Attorney General Opinion DM-246 (1993) (ID# 22527)

Dear Mr. Vance:

You ask whether the County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds. For the following reasons we conclude that it does.

As you pointed out in your letter, the applicable statutes are (1) the County Purchasing Act, which is codified at subchapter C of chapter 262 of the Local Government Code; (2) section 140.003 of the Local Government Code, which, *inter alia*, makes the County Purchasing Act (the "act") applicable to a purchase by a "specialized local entity"; and (3) chapter 59 of the Code of Criminal Procedure, which deals with forfeiture of contraband and disposition of forfeited property. In Attorney General Opinion DM-246 (1993), we answered affirmatively the question of whether the act applies to purchases made with funds generated by forfeitures under chapter 59. The facts of the request in Attorney General Opinion DM-246, however, were limited to purchases by a county attorney with felony responsibility (that is, a county attorney in a county that does not have a district attorney¹), so we did not analyze specifically the reason that purchases by a district attorney or criminal district attorney, like those of a county attorney with felony responsibility, would fall under the act (although our conclusion² implicitly included those officers).

¹The requestor in Attorney General Opinion DM-246 was the county attorney of Cameron County, which is in the 103rd, 107th, and 138th judicial districts. See Gov't Code §§ 24.205, .209, .240. These districts do not have a district attorney. See *id.* ch. 43 *passim*. Therefore, the county attorney of Cameron County has the duties of a district attorney. See Tex. Const. art. V, § 21; see also Gov't Code § 46.002(3) (referring to "county attorneys performing the duties of district attorneys in . . . Cameron" and several other counties).

²In Attorney General Opinion DM-246, at 9, we concluded "that the act does apply to purchases made out of the special fund in the county treasury for the benefit of the attorney representing the state as provided by article 59.06 of the Code of Criminal Procedure." Article 59.01(1) of the Code of Criminal

Section 140.003 of the Local Government Code provides, in pertinent part:

(a) In this section, "specialized local entity" means:

(1) a district or criminal district attorney;

....

(b) A specialized local entity shall purchase items in accordance with the same procedures and subject to the same requirements applicable to a county under Subchapter C, Chapter 262. For the purposes of this section, a specialized local entity is treated as if it were a county. [Footnote omitted.]

This statute thus expressly imposes the requirements of the act on purchases made by district attorneys and criminal district attorneys. Purchases made with felony forfeiture funds pursuant to chapter 59 of the Code of Criminal Procedure are not an exception to the act.

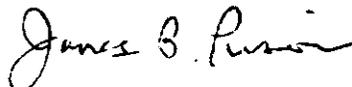
The act is readily harmonized with the purchasing authority granted to prosecuting attorneys and law enforcement agencies under article 59.06. The attorney or law enforcement agency generally has authority to decide what prosecutorial or law enforcement purposes to spend forfeiture funds for, but in so doing it must deal with the suppliers selected by the commissioners court through the bidding process provided in the act.

Attorney General Opinion DM-246 at 9 (footnote omitted).

S U M M A R Y

The County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to chapter 59 of the Code of Criminal Procedure.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

(footnote continued)

Procedure defines *attorney representing the state* as the felony prosecutor in the county in which the forfeiture proceeding was held.