



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1995

Honorable James D. Ross
Midland County Auditor
200 West Wall
Midland, Texas 79701

Letter Opinion No. 95-013

Re: Whether county funds may be
used as "flash money" in a "drug sting"
operation (ID# 29417)

Dear Mr. Ross:

You ask whether the county commissioners court has "authority to authorize the use of general fund cash by the sheriff as 'flash money' in a 'drug sting' operation."¹ We do not believe that the commissioners court is prohibited as a matter of law from authorizing such use of general fund money. The key determinations to be made as to the lawfulness or wisdom of such expenditures require assessment of facts specific to the particular case.

The commissioners court has general authority to pay the "expenses" of county officials like the sheriff. Local Gov't Code § 152.011; *see* Attorney General Opinion MW-469 (1982) (county payment of sheriff's expenses in narcotics investigation). Even if such expenses are not included in the annual budget they may be appropriated by transferring budgeted funds from another item in the budget, or as "emergency expenditures" where there is "a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention." Local Gov't Code § 111.010(c), (d). Even if an appropriation for a "drug sting" operation had to be done as an "emergency expenditure," we cannot say as a matter of law that the requirements relevant thereto could not be met, even if that might rarely be the case.

We understand that there are particular concerns as to whether the use of county funds for "drug sting operations" would violate constitutional requirements that public money be expended only for public purposes. Tex. Const. art. VIII, § 3 (prohibiting levying and collecting taxes for other than public purposes); art. III, §§ 51-52; art. XI, § 3. *See generally* 35 David B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 12.7 (Texas

¹"Flash money" as we understand it is cash either displayed or actually given in exchange for illicit drugs by undercover law enforcement officers or agents with the object of apprehending drug traffickers.

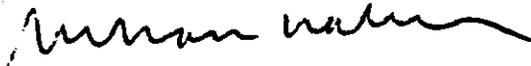
Practice 1989) (need for controls to insure expenditures of county funds will sufficiently serve public purpose of county). Clearly, law enforcement is a legitimate public purpose of the county. Even though there may be risk involved in using county funds for "drug sting" operations, the same could be said for many law enforcement expenditures. We cannot say as a matter of law that the expenditures at issue here may not serve a legitimate public purpose of the county. See Attorney General Opinions H-210 (1974) (Department of Public Safety fund for use in undercover drug "purchases"); MW-469.

We stress that we do not intend that our conclusions here be taken as findings that the particular expenditure at issue would be either lawful or wise. We cannot find or assess the relevant facts so as to be able to make such determinations. Whether the expenditures here serve a sufficient county purpose and are accompanied by controls adequate under the circumstances to reasonably assure its realization are determinations for the commissioners court to make, at least in the first instance.

S U M M A R Y

The expenditure of county funds for "flash money" in a "drug sting" operation is not unauthorized as a matter of law.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee