



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 19, 1996

The Honorable Carlos Lara  
Dimmit County Auditor  
103 North Fifth Street  
Carrizo Springs, Texas 78834

Letter Opinion No. 96-141

Re: Whether a commissioners court is authorized to move the county attorney's official office from the county courthouse to a private office and to provide the county attorney with a county-paid employee and county-owned computer to use in the county attorney's private practice (ID# 38838)

Dear Mr. Lara:

On behalf of the county judge of Dimmit County, you ask whether the Dimmit County Commissioners Court (the "commissioners court") is authorized to move the county attorney's official office from the county courthouse to a private office and to provide the county attorney with a county-paid employee and county-owned computer to use in the county attorney's private practice in the new office space. You describe the following sequence of events: In 1994, the commissioners court authorized the county attorney to use the official office of the county attorney in the county courthouse for purposes of his private practice. More recently, the commissioners court passed a resolution authorizing the county attorney to move his official office from the county courthouse to a private office. The commissioners court's resolution also authorizes the county attorney to use this office and the office equipment, telephones, and staff in the conduct of his private practice. Apparently, the county is not charged any rent for the use of the private office as the official office of the county attorney, nor is it charged for faxes and copies generated by the county attorney in conducting county business. The county continues to pay for the secretary's salary and benefits, a telephone line, and office supplies.

In Letter Opinion No. 93-51, this office considered the scope of section 41.011 of the Government Code, which 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 . . . conduct a private practice of law using the district or county office provided by that county for conducting his [or her] official duties," and concluded that it authorizes a commissioners court "to compensate in-kind its county or district attorney with the use of office space, secretaries, and telephones." Letter Opinion No. 93-51 (1993) at 2. On the basis of this interpretation, we conclude that section 41.011 authorizes the commissioners court to permit the county attorney to use the official county attorney's office, office equipment, telephones, and staff in the conduct of his private practice.

As you point out, section 41.011 does not speak to whether a commissioners court may move the official county attorney's office from the county courthouse to a private office, nor does Letter Opinion No. 93-51 specifically address whether section 41.011 authorizes a commissioners court to compensate in-kind its county or district attorney with the use of office space, secretaries, and

telephones in such quarters. Apparently, the commissioners court believes that the office move is authorized by section 292.001 of the Local Government Code. Subsection (a) of that statute provides in pertinent part that a commissioners court “may purchase, construct, *or provide by other means*, or may reconstruct, improve or equip a building or rooms, other than the courthouse, for the housing of county or district offices . . . if the commissioners court determines that the additional building or rooms are necessary.” Local Gov’t Code § 292.001(a) (emphasis added).<sup>1</sup> The language “or provide by other means” is very broad and certainly does not limit a county to purchasing or constructing county office space. We believe that this broad language authorizes the commissioners court to provide for a county office in space owned by a private person if the commissioners court makes the determination that the additional office space is “necessary.” The determination whether the additional office space is necessary is for the commissioners court to make in the first instance, subject to judicial review.

With respect to section 41.011 of the Government Code, nothing in Letter Opinion No. 93-51 suggests that the legislature intended to limit a commissioners court’s authority to provide in-kind compensation to a county attorney to county resources located in the county courthouse as opposed to other county facilities. Indeed, the legislative history recounted in the letter opinion supports the opposite conclusion. *See* Letter Opinion No. 93-51 at 2 (quoting sponsor of the provision as stating that it “makes clear that a district or county attorney, at the discretion of the county commissioners court, can use county facilities, that is, office space, secretaries, and telephones, to practice private law”).

For the reasons stated above, the arrangement you describe is authorized by Government Code, section 41.001 and Local Government Code, section 292.001. You suggest that the present arrangement between the commissioners court and the county attorney may violate article III, section 52 of the Texas Constitution. Provided that the arrangement constitutes part of the county attorney’s compensation for official services rendered to the county and that the county receives a reasonable return for the total compensation it provides the county attorney, the arrangement serves a public purpose and does not run afoul of article III, section 52.

---

<sup>1</sup>With the exception of county jail facilities, county buildings and offices procured under this section must be located in the county seat. Local Gov’t Code § 292.001(b); *see also id.* § 291.002 (county attorney must keep office at county seat).

**S U M M A R Y**

A commissioners court is authorized to designate a private office as the county attorney's official office if the commissioners court determines that the additional office space is necessary. See Local Gov't Code, § 291.001(a). A commissioners court may provide the county attorney with a county-paid employee and county-owned computer to use in the county attorney's private practice pursuant to Government Code, section 41.011. Provided that this arrangement constitutes part of the county attorney's compensation for official services rendered to the county and that the county receives a reasonable return for the total compensation it provides the county attorney, the arrangement does not run afoul of article III, section 52 of the Texas Constitution.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee