



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 25, 1998

The Honorable Ron Lewis  
Chair, Committee on County Affairs  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 98-079

Re: Whether municipal utility district may  
contract with county for provision of additional  
security patrols in district (RQ-1013)

Dear Representative Lewis:

You ask us to clarify Letter Opinion No. 97-069 as it might apply to an interlocal agreement between a municipal utility district and a county for the provision of security patrols in the district by county deputy constables or sheriffs. In Letter Opinion No. 97-069, we considered whether a constable may call regular and reserve deputy constables into service to provide security at events sponsored by separate governmental or private entities. Compensation for the deputy constables' services in that case was proposed to be collected from the entities and paid to a deputy constables' association. Relying on the well-established common-law principle that public officers acting within the scope of their official duties may not receive compensation from third parties, we concluded that "a regular or reserve deputy constable who provides security for an event sponsored by a separate governmental or private entity within the scope of his or her official duties may not accept compensation from the event's sponsor for doing so." Letter Opinion No. 97-069 (1997) at 1 (citing Attorney General Opinions JM-462 (1986) at 4; JM-57 (1983) at 5; C-661 (1966) at 3).

You ask us to clarify our conclusions in light of the Interlocal Cooperation Act, Government Code chapter 791, whose purpose is to "increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state." Gov't Code § 791.001. The act authorizes a local government--namely a county, municipality, special district, or other political subdivision--to contract or agree with another local government to perform a governmental function or service that each party to the contract is authorized to perform individually or any other governmental function in which the parties are mutually interested. *Id.* §§ 791.003, .011. An interlocal contract must, among other things, be authorized by the governing body of each party to the contract and require the party paying for the performance of the functions or services to make those payments from current revenues available to the paying party. *Id.* § 791.011. Governmental functions and services that may be contracted for include police protection and detention services. *Id.* § 791.003.

Your question relates specifically to an agreement between a county and a municipal utility district to provide additional security patrols of the property within the district during “high-risk periods.” You describe the agreement as follows:

Additional patrol services provided to a district under an interlocal agreement may be provided by deputy constables or sheriffs employed by a county, who are under the control and supervision of the county. The deputies may provide services under an interlocal agreement in the same manner as if providing patrol services within the district in the absence of an agreement, and may wear their county uniforms and utilize marked patrol cars and equipment while providing services.

For the additional patrol services, the district pays the deputies a fixed hourly amount per hour of patrol service. The district also pays the county a fixed hourly amount for the patrol vehicle used by the deputy. The county authorizes the district to pay all sums for patrol services directly to the deputy providing the services. The sums due for vehicle usage are paid to the county. The county issues a time sheet to each deputy indicating (a) the total hours of additional patrol services rendered by the deputy, and (b) the county’s approval of the services, and forwards the time sheet to the district for payment. The district makes its payments out of current revenues as is required by the Interlocal Cooperation Act. Furthermore, the district issues IRS forms 1099 to each deputy providing services, setting forth the total sum paid to the deputy for each calendar year in which services are performed.

We assume from your letter that the district’s contract is with the county commissioners court as opposed to the sheriff or constable.<sup>1</sup> We express no opinion as to whether the commissioners court, which itself has no authority to provide law enforcement services, may contract to provide the services of the county sheriff or the county constable, both of whom are independent elected officials. *See* Attorney General Opinion H-1123 (1978) at 2 (opining that while commissioners court does not have independent authority to contract to provide law enforcement services, it may provide funding for contractual law enforcement services provided by sheriff and other county officials with law enforcement authority).

A municipal utility district is authorized by section 49.216 of the Water Code to “contract for or employ its own peace officers with power to make arrests when necessary to prevent or abate the commission of: (1) any offense against the rules of the district . . . ; (2) any offense involving injury or detriment to any property owned by the district; and (3) any offense against the laws of the

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<sup>1</sup>*But see* discussion at note 3, *infra*.

state.”<sup>2</sup> At the same time, county constables and sheriffs, and their deputies, have the duty as peace officers to preserve the peace within their jurisdictions. See Code Crim. Proc. arts. 2.12, .13. A municipal utility district falls within the law enforcement jurisdiction of the county in which it is located, and county constables and sheriffs are obligated under law to preserve the peace in the district. As we said in Letter Opinion No. 97-069, and as courts and this office have long held, peace officers acting within the scope of their official duties may not receive compensation from third parties, governmental or otherwise, for the performance of their official duties. A police officer, for example, may not accept a reward for making an arrest while on duty. *Kasling v. Morris*, 9 S.W. 739, 740 (Tex. 1888). On the same grounds this office declared unconstitutional a statute authorizing counties to contract to provide law enforcement services to nongovernmental associations. See Attorney General Opinion JM-509 (1986) at 4 (finding unconstitutional Local Gov’t Code ch. 351, subch. D, which provides: “To protect the public interest, the commissioners court of a county may contract with a nongovernmental association for the provision of law enforcement services by the county on a fee basis in the geographical area represented by the association.”). We said in a prior opinion repudiating such a contract that “[t]he appearance of impropriety, the potential for conflicts of interest, and the potential for less than impartial enforcement of the law, are matters for serious consideration when law enforcement officers know that their positions are supported and funded voluntarily by persons they police.” Attorney General Opinion JM-57 (1983) at 6; cf. *Weber v. City of Sashse*, 591 S.W.2d 563, 567-68 (Tex. Civ. App.--Dallas 1979, writ dismissed w.o.j.) (holding that city did not have equal protection right to certain amount of county sheriff patrols in city; decision as to deployment of officers is left to rational discretion of sheriff).

The Interlocal Cooperation Act, however, appears to contemplate agreements between local governments for the provision of law enforcement services even where the providing entity already has a duty to maintain the peace in the area of the requesting entity. We do not find such agreements to be contrary to the principles discussed above that repugn the third-party compensation of public officers acting within the scope of their official duties. Unlike the private, nongovernmental entities at issue in Attorney General Opinions JM-509, JM-57, and Letter Opinion No. 97-069, a municipal utility district is a local government authorized by statute to itself provide the services for which it is contracting. We therefore conclude that a municipal utility district may contract pursuant to the Interlocal Cooperation Act with a county for the provision of law enforcement services in the district by county deputy constables or sheriffs.<sup>3</sup>

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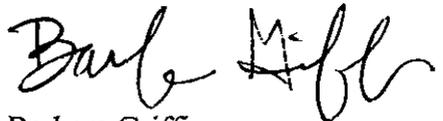
<sup>2</sup>You do not tell us whether the district contracts for or employs its own peace officers apart from its contract with the county for additional patrols during “high-risk periods.”

<sup>3</sup>We do not opine on the legality of the particular contract about which you ask. While you tell us that the contract is between the municipal utility district and the county, you also tell us that the deputy sheriffs and constables are compensated directly by the district, and that the district issues IRS 1099 forms directly to each deputy. These facts suggest that the district, not the county, is acting as the employer. It is not clear to us that the contract terms you describe are of the type contemplated by the Interlocal Cooperation Act or otherwise allowed by law. See, e.g., Local Gov’t Code § 791.011 (authorizing interlocal contracts between local governments); *id.* § 113.003 (requiring county (continued...))

S U M M A R Y

A municipal utility district may contract, pursuant to the Interlocal Cooperation Act, Government Code chapter 791, with a county for the provision of law enforcement services in the district by county deputy constables or sheriffs.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is fluid and cursive, with a prominent initial "B" and a distinct "G".

Barbara Griffin  
Assistant Attorney General  
Opinion Committee

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<sup>3</sup>(...continued)

treasurer to receive all money belonging to the county from whatever source).