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August 14, 1991

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Opinion Committee

The Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711

Re: Request for Attorney General's Opinion concerning the authority of a county sheriff to operate outside the county of his election and outside of the State of Texas and the disposition of funds received by sheriff from such operations

Dear Attorney General Morales:

We are hereby requesting an opinion from your office concerning the authority of a county sheriff to operate outside of the county in which he was elected and to operate outside of the State of Texas. We are also requesting an opinion concerning the disposition of funds received by the sheriff from such out-of-county and out-of-state operations.

The sheriff of Midland County has, for the past several years, engaged in various drug investigations and arrests in various Texas counties and in at least four other states. These operations are what are termed "reverse-stings" in which law enforcement agents pose as drug dealers and agree to sell confiscated narcotics to willing buyers. When the "buyers" produce the funds for the purchase of the drugs, they are arrested and the monies are seized. Subsequently, these seized funds are forfeited to the sheriff's department and other arresting agencies.

It is the position of the sheriff that he is entitled to conduct his law enforcement operations anywhere in the State of Texas as well as in other states, which in this case have included Arizona, Oklahoma, Indiana, and Illinois. It is also the position of the sheriff that any funds awarded as a result of such operations belong solely to the sheriff's office to be used as set forth in Chapter 59 of the Texas Code of Criminal Procedure. It is the position of the commissioners' court that the sheriff is to generally conduct his operations within the boundaries of Midland County and that general criminal investigations outside of Midland County are unauthorized. It is further the position of the commissioners' court that any monies awarded for extra-jurisdictional operations are to be deposited in the general fund. We are seeking your opinion as to the resolution for both of these questions.

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The office of sheriff is created under Article 5, Section 23, of the Texas Constitution, which provides, in relevant part:

There shall be elected by the qualified voters of each county a sheriff . . . whose duties . . . shall be prescribed by the Legislature.

Article 2.17, Texas Code of Criminal Procedure, generally sets forth the duties of the county sheriff as "[e]ach sheriff shall be a conservator of the peace in his county."

In addressing the question of whether a sheriff possessed authority to make arrests outside of his county, your office held, in Tex. Atty. Gen. Opinion No. H-1016 (1977), that generally a sheriff should not make arrests outside his county for offenses committed outside his county. In rendering such opinion, your office relied upon Henson v. State, 49 S.W.2d 463 (Tex. Crim. App. 1932), which generally examined the authority of a sheriff to make arrests outside of his county. In Henson, the Court of Criminal Appeals found that:

[Current Article 15.06, Texas Code of Criminal Procedure], authorizing the execution of a warrant of arrest by a sheriff under the conditions stated in the article in any county in the state, is not deemed to have the effect to extend generally the jurisdiction of a sheriff beyond the borders of his county.

. . . A public officer appointed as a conservator of the peace for a particular county or municipality as a general rule has no official power to apprehend offenders beyond the boundaries of the county or district for which he has been appointed. Id. at 465.

See also Landrum v. State, 751 S.W.2d 530, 531 (Tex. App.-Dallas 1988, pet. ref'd.) ("A county sheriff's jurisdiction is county-wide.")

Attorney General Opinion No. H-1016 also relied upon former article 4413(11)(4), Texas Civil Statutes, which is now codified in Section 411.022 of the Texas Government Code and which now provides, in relevant part, that:

(a) An officer of the Texas Rangers is governed by the law regulating the powers and duties of sheriffs performing similar duties, except that the officer may make arrests [and] execute process in a criminal case in any county

This provision was construed as a legislative implication that sheriffs have narrower territorial jurisdiction than Texas Rangers, specifically a jurisdiction limited by the boundaries of the county from which they are elected.

Section 411.009, Texas Government Code, also provides for local cooperation between sheriffs and constables with the Texas Department of Public Safety. Importantly, subsection (b) of Section 411.009 provides, in relevant part, that:

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The director may require a sheriff or other police officer in a county or municipality, within the limits of the officer's jurisdiction, to aid or assist in the performance of a duty imposed by this chapter (emphasis supplied).

The conclusion that a sheriff is limited to exercising his authority in the county of his election appears to be supported by Chapter 362 of the Texas Local Government Code. This chapter authorizes counties, by resolution or order, to provide law enforcement assistance to another county in the event of a civil emergency. It also authorizes a county, by resolution or order, to agree to engage in criminal investigations and law enforcement with a contiguous county and authorizes arrests to be made by such non-county officers, including sheriffs, in such a contiguous county. It should be noted that in the present case, there exist no such resolutions or orders and, further, the out-of-county operations conducted by the sheriff were generally not conducted in contiguous counties.

It appears that, in light of the authority set forth above, a county sheriff has no authority to initiate or investigate criminal activities outside the county of his election, or to make arrests outside the county of his election, except in those cases involving joint operations with contiguous counties entered into by agreement authorized under Chapter 362 of the Local Government Code. If the sheriff lacks such authority to act outside the county of his election, he would necessarily lack authority to act outside of the State of Texas.

As set forth, however, the sheriff has engaged in numerous operations in various counties within Texas and in at least four other states. As a result of such operations, the sheriff has been awarded monies as a result of the forfeiture of the proceeds of criminal arrests. It is the position of the sheriff that all of these proceeds are to be deposited in a special fund to be administered solely by the sheriff in accordance with the provisions of Chapter 59, Texas Code of Criminal Procedure.

Chapter 59 generally provides for the forfeiture of money or other property utilized in the conduct of criminal activity. Article 59.06, Texas Code of Criminal Procedure, provides for the execution of a "local agreement" between the attorney for the state and law enforcement agencies for the distribution of money or property seized under Chapter 59. In the case of operations conducted solely within Midland County, there exists no question as to the proper distribution of such property under any local agreement. However, in light of the apparent lack of authority of a sheriff to act outside the county of his election, does the sheriff possess any authority to enter into an out-of-county "local agreement?" Further, if the sheriff is authorized to obtain such forfeitures, are they to be deposited in the special fund created under Chapter 59 or should they properly be placed in the general fund of the county?

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Generally, a county officer, such as the sheriff, is required to pay all fees earned into the county treasury for the benefit of the general salary fund. Article XVI, Section 61, Texas Constitution. This constitutional provision has been held to "indicate[] an intention that all fees of every character collected by an officer officially . . . shall become fees of office. . . ." State v. Glass, 167 S.W.2d 296, 297 (Tex. Civ.App.-Galveston 1942, writ ref'd.). It has also been held that fees collected by a county sheriff outside the scope of his official duties belong to the general fund of the county. Seale v. State, 67 S.W.2d 1060 (Tex.Civ.App.-El Paso 1934, no writ) (fees earned by sheriff for housing federal prisoners and for serving out of county process belong to county). Accordingly, in the absence of specific statutory authority, all monies received by a county official as a result of the performance of his official duties should be deposited in the county treasury for the benefit of the general fund.

Chapter 59 of the Texas Code of Criminal Procedure creates an exception to this general rule by providing for the distribution of seized and forfeited property and funds to the attorney representing the state and to the seizing law enforcement agencies. This seized property is to be distributed according to a "local agreement" entered into between the attorney representing the state and law enforcement agencies. The statute identifies the attorney representing the state as "the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held." However, it does not address the question of whether such agreement may be entered into only by law enforcement agencies located within the county where the forfeiture proceeding occurs. In the absence of such a restrictive definition, it is the position of the sheriff that out-of-county law enforcement agencies are not prohibited from entering into such a local agreement and are permitted to participate in the award of any forfeited monies or property. It is further the position of the sheriff that such forfeited funds are to be deposited in a special account under the provisions of Article 59.06, Texas Code of Criminal Procedure.

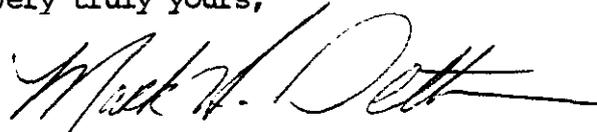
The commissioners' court is of the opinion that such funds should properly be deposited in the general fund of the county for reimbursement of the costs associated with such out-of-county operations. The salaries, expenses, and equipment utilized for such out-of-county operations are paid for out of the general fund and the commissioners' court is of the opinion that the taxpayers of Midland County should not bear the cost of such extra-jurisdictional operations. In support of their position, Section 362.003, Texas Local Government Code, provides for reimbursement to the county supplying law enforcement to a contiguous county under an interlocal agreement. The commissioners' court is of the opinion that this demonstrates a legislative intent to provide reimbursement to the local taxpayers when local law enforcement operates outside of the county. The method of reimbursement would be, according to the commissioners' court, for all forfeited funds and property awarded from such out-of-county operations to be deposited in the general fund.

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The final question raised concerns the proper disposition of those funds awarded from out-of-state operations. As noted, the sheriff's department has conducted "reverse stings" in Arizona, Oklahoma, Indiana, and Illinois. As a result of these operations, the sheriff's department has been awarded substantial forfeiture funds. It is the sheriff's position that these funds are to be deposited in a special account to be administered under Section 59.06, Texas Code of Criminal Procedure. It is the position of the commissioners' court that such monies should be placed in the general fund, for the reasons outlined above for out-of-county forfeitures, and for the additional reason that, in the absence of specific statutory authority, all monies received by a county official in his official capacity should be deposited in the general fund of the county. In the case of operations conducted outside of the State of Texas, there exists no statutory authority for the sheriff to administer such funds.

In summary, we would appreciate your opinion concerning the authority of the sheriff to conduct criminal investigations and make arrests outside of Midland County and outside of the State of Texas. Further, as to monies and property forfeited to the sheriff's department from such operations, we would appreciate your opinion as to the proper disposition of such funds. Thank you for your assistance in these matters.

Very truly yours,



MARK H. DETMAN  
County Attorney

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