

County of Aransas

301 N. LIVE OAK
ROCKPORT, TEXAS 78382

Id #14589
mJ

December 19, 1991

The Honorable Dan Morales
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RD-295

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Opinion Committee

Dear General Morales:

The undersigned as County Attorney of Aransas County, Texas request a written opinion on the following question:

Can a concrete material company which is a Corporation and is owned by a serving County Commissioner of Aransas County, Texas provide services and or concrete materials to Aransas County, Texas or to another contractor for Aransas County who is performing services to Aransas County under a contract with Aransas County?

FACTS

The Commissioner of Precinct 3, Aransas County, Texas is resigning January 15, 1992. His replacement will be appointed by the County Judge and will be taking his seat on the Commissioners Court on January 16, 1992. The newly appointed Commissioner owns either the majority interest in or all of the stock in a concrete materials company. It is the only concrete material company in the county and for many miles around the county. The Commissioner's Court on December 12, 1991 approved a \$792,911.65 contract with a general contractor for extensive runway construction at the Aransas County Airport. The General Contractor will utilize many yards of concrete and asphalt which probably would have been purchased from the newly appointed Commissioner's company since it is the only company in the area. Aransas County has over many years dealt with the concrete material company before the owner became County Commissioner and wishes to continue to do so if this not a violation of law.

The undersigned has reviewed what appears to be the applicable law concerning this question, to wit: Section 81.002 Local Government Code and Section 171.004 Local Government Code, as well as Attorney General Opinion JM 1090 .

Article 171.004 of the Local Government Code appears to apply only to voting by a local public official on current matters whereas the question addressed here deals with the obligation and liability of a commissioner as described above on a contract that was in existence prior to a commissioner being on the court and upon which he did not vote.

Section 171.004(a) appears to be extremely vague in that it mandates the public official as follows: "Shall abstain from further participation "IN THE MATTER"". Do the words "in the matter" mean that the public official shall just abstain from voting or shall abstain from all participation in any other phase of the entire matter, contract or any act related thereto?

Article 81.002 of the Local Government Code deals with the oath taken by a County Commissioner that he will not be interested, directly or indirectly, in a contract with the county except a contract expressly authorized by law. This article appears to be extremely vague as to whether a contract or the performance under a contract as described above would be a "contract authorized by law".

The undersigned has found no case law on point and therefore requests that you address this matter in an opinion as soon as conveniently possible since the new commissioner will take office January 16, 1992 and the construction at the airport will start very shortly thereafter.

Respectfully requested,



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JLA, Jr.:bc