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March 3, 1992

RD-336

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Opinion Committee

Honorable Dan Morales  
 ATTORNEY GENERAL OF THE STATE OF TEXAS  
 Supreme Court Building  
 P. O. Box 12548  
 Austin, Texas 78711-2548

ATTENTION: Opinion Committee

Gentlemen:

I am respectfully requesting your opinion as to whether or not the Commissioner's Court of Grimes County, Texas, may construct its new County Jail anywhere within Grimes County, Texas, even if the location of the facility is outside of the County Seat.

The facts are as follows: The present County Jail facility is located in the unincorporated town of Anderson, Grimes County, Texas, which is the County Seat of Grimes County.

At the present time, the existing County Jail facilities are inadequate and in order to comply with the requirements promulgated by the Jail Standards Commission, many inmates are being housed in another County at great expense to Grimes County and due to the fact that the jail is substandard, a new facility must be constructed.

Two possible building sites have been located. One building site is in or near the unincorporated town of Anderson (the County Seat of Grimes County, Texas) and the other building site is located in the incorporated City of Navasota, Grimes County, Texas, which is approximately 10 miles from the County Seat.

Preliminary site studies have indicated that it will cost the County several hundred thousand dollars more to build a new jail facility in or near the County Seat than it would if the new jail facility was constructed in the City of Navasota. This is due mainly to the fact that a complete water supply system and sewage disposal system would have to be installed at the site in or near the County Seat, in order to meet jail standard requirements, whereas, if the new jail facility is constructed in the City of Navasota, it would be served by the existing water supply and sewage disposal system. Further, if the County is required to install a water supply and sewage disposal system, it would also incur the continuing cost of maintaining the systems, whereas, on the other hand, if the facility is constructed in the City of Navasota, the City already has the obligation to operate such systems.

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It is clear that under Article 11, Section 2, of the Texas Constitution, the legislature is given constitutional authority to write laws regarding the construction of County jails.

In 1957, Article 2370(b), V.A.T.S. was passed and mandated that the County jail must be located in the County Seat.

In 1979, Article 2370(b)-3, V.A.T.S. was passed indicating that the County jail may be located anywhere in a County, but this Article did not repeal the previous Article 2370(b).

My understanding is that in such cases, the usual rule where two statutes cannot be reconciled is that the latter in time controls.

In 1987, the legislature enacted the Texas Local Government Code and carried forward both Article 2370(b), V.A.T.S. and Article 2370(b)-3, V.A.T.S.

Section 292.001 as originally enacted requires that the County Jail, except for a regional jail facility built under Section 4(h), the Inter-local Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) must be located in the County Seat.

Section 292.002 provides that the Commissioner's Court of a County may provide an office building or a jail facility at a location in the County outside the County Seat.

These two sections of the local governmental Code carried forward the inconsistency as it existed in previous law.

However, in 1989, Section 292.001 of the Texas Local Government Code was amended and paragraph (b) thereof states as follows: "The building or rooms must be located in the County Seat. However, if the building or rooms are for housing County jail facilities, the building or rooms may be located anywhere in the County at the discretion of the Commissioner's Court".

Further, Section 351.001 of the Texas Local Government Code provides that the Commissioner's Court of a County shall provide safe and suitable jails for the County and, in paragraph (b) of Section 351.001, it is provided that jails must be located at the County Seat unless the County has only one jail, in which case, the jail may be located anywhere in the County at the discretion of the Commissioner's Court.

Insofar as Section 351.001 is concerned, Grimes County seeks to build only one jail.

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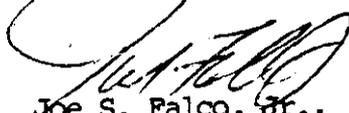
I respectfully request your written opinion as to the question posed in view of the facts and law as stated above.

If further information is needed, please feel free to contact my office at anytime.

Please send all written communication with regard to this matter to me at my Navasota address, being P. O. Box 907, Navasota, Texas 77868.

Your help and assistance in this regard is greatly appreciated.

Respectfully yours,



Joe S. Falco, Sr.,  
County Attorney in and for  
Grimes County, Texas

JSP:sa