

ID # 15760
MBJ

CAMERON COUNTY DISTRICT ATTORNEY

CAMERON COUNTY COURTHOUSE

974 E. HARRISON STREET - BROWNSVILLE, TEXAS 78520

LUIS V. SAENZ

Cameron County
District Attorney

RQ-378

April 16, 1992

RECEIVED

APR 23 92

Opinions Committee
Office of the Texas
Attorney - General
P.O. Box 12548
Capitol Station
Austin, Texas 78711

Opinion Committee

RE: Request For Attorney -
General Opinion

TO THE COMMITTEE:

Pursuant to TEX. GOV'T CODE ANN. §402.041 et seq. (Vernon 1990), I respectfully request that the Texas Attorney General advise the undersigned in regard to the following question that has arisen in my jurisdiction concerning the application of state laws governing the expenditure of forfeited monies.

A.

THE FACTS

The Cameron County Attorney's Office regularly has proceeds awarded to it under Chapter 59 of the Texas Code of Criminal Procedure, which it uses in accordance with the restrictions of Article 59.06 of said Code, specifically for "official purposes" of this office. Occasionally, the County Attorney will purchase items, for official purposes of the office, which exceed \$10,000.00 in price. In the instant case, the County Attorney's Office desires to purchase a new phone system for the Office which will exceed \$10,000.00 in price. The County Auditor has taken the position that any purchase by a County Department over \$10,000.00 must comply with the provisions of the County Purchasing Act, Chapter 262 of the Texas Local Government Code.

B.
THE ISSUE PRESENTED

Do the provisions of the County Purchasing Act (Local Government Code, sections 262.021 et seq.) apply to purchases made with funds generated by forfeitures under Chapter 59 of the Texas Code of Criminal Procedure?

C.
THE CONTROLLING LAW

The controlling law is TEX. LOCAL GOV'T CODE ANN. §262.023(A) (Vernon Supp. 1992), which states:

"Except as provided by Subsection (d), before a county may purchase one or more items under a contract that will require an expenditure exceeding \$10,000.00 the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter. All bids or proposals must be sealed."

* * * * *

TEX CODE CRIM. PROC. ANN. art. 59.05(e) provides in part:

"If the court finds that all or any part of the property is subject to forfeiture, the judge shall forfeit the property to the state, with the attorney representing the state as the agent for the state,... . On final judgment of forfeiture, the attorney representing the state shall dispose of the property in the manner required by Article 59.06 of this code."

* * * * *

TEX CODE CRIM. PROC. ANN. art. 59.06(a) provides in part:

"All forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies... ."

* * * * *

Further, TEX. CODE CRIM. PROC. ANN. art. 59.06 (c)(1) (Vernon Supp. 1992), states in part as follows:

- (c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money ... shall be deposited according to the terms of the agreement into one or more of the following funds:

- (1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office... ."

D.

OUR ANALYSIS/CONCLUSION

The above-cited sections appear to require that all purchases in excess of \$10,000.00, made by a County, must be made through the competitive bidding procedures of the County Purchasing Act. However, a previous letter opinion, from the Attorney General has stated otherwise. In LO-88-112, the Attorney General stated that "The provisions of the County Purchasing Act do not apply to purchases made with funds under section 5.08 of article 4476-15." That letter opinion was later withdrawn by LO-88-114, and the subsequently reaffirmed by LO-89-30.

Our County auditor has cited the case of State v. \$50,600.00, 800 S.W.2d 872 (Tex. App.-- San Antonio 1990, writ denied), for the proposition that forfeited funds must be administered by the commissioners court, and therefore said funds are "county funds" which must be expended within the parameters of the County Purchasing Act.

Both, LO-88-112 and State v. \$50,600.00, were decided under TEX. REV. CIV. STAT. ANN. art. 4476-15, §§5.07 and 5.08, which was later repealed and replaced with Chapter 59 of the Texas Code of Criminal Procedure.

It is this office's opinion that the re-codification of the forfeiture statute to Chapter 59 of the Texas Code of Criminal Procedure has effectively overruled the Court of Appeal's decision in State v. \$50,600.00, to the extent that Chapter 59 now specifically provides that the property shall be administered by the attorney representing the state.

It is further our opinion that LO-88-112 has been re-affirmed through the enactment of Chapter 59 of the Code of Criminal Procedure. LO-88-112 reasoned that purchase made with forfeited funds were not subject to the provisions of the County Purchasing Act because the expenditure of such funds were "administered by the seizing agency or the office to which they are forfeited." By enacting article 59.06 of the Code of Criminal Procedure, the legislature has implicitly re-affirmed the basis for LO-88-112, because said section now reads: "All forfeited property shall be administered by the attorney representing the state....." Therefore, it is our conclusion that monies seized and forfeited under the provisions of Chapter 59 of the Texas Code of Criminal Procedure are not subject to the provisions of the County Purchasing Act.

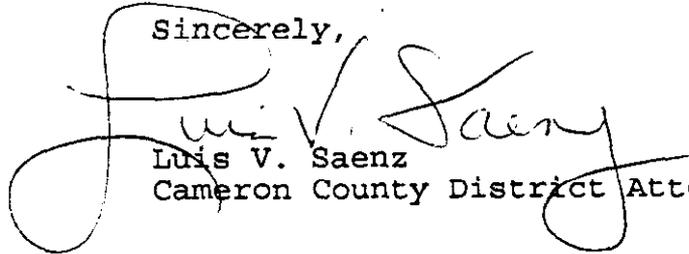
E.
CERTIFICATIONS

I hereby certify that because this office is charged with the responsibility of enforcing the provisions of the County Purchasing Act's criminal penalty provisions, that this question of law affects matters within the jurisdiction of my office and constitutes a matter in which the State is "interested". I also further certify that this matter is not currently "in litigation".

* * * * *

Should you require any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,



Luis V. Saenz
Cameron County District Attorney

LVS/mpt