



#17046
MJB

ECTOR COUNTY, TEXAS
TRACEY BRIGHT
ECTOR COUNTY ATTORNEY

August 10, 1992

Hon. Dan Morales
Attorney General of Texas
c/o Opinion Committee
P. O. Box 12548
Supreme Court Bldg.
Austin, Texas 78711-20548

RO 42

RECEIVED
AUG 18 1992
Opinion Committee

Issue: May the Ector County Independent School District contract with off-duty peace officers for the providing of security services?

Dear General Morales:

The Ector County Independent School District (the "District") is an independent school district created under Article 7 of the Texas Constitution and Section 1.04 of the Education Code. The District encompasses the geographic boundaries of Ector County, Texas.

The District maintains its own security department and officers pursuant to Section 4.83 of the Texas Education Code. The District has also found that it often times needs additional security officers to provide security at various school events to include, but not necessarily be limited to, football games, basketball games, play nights held at various schools, etc. To provide those services, the District has historically contracted with off-duty peace officers in the community to include off-duty City of Odessa Police Officers, Ector County Sheriff's Department Deputies, and Texas Department of Public Safety Officers. A question has recently arisen concerning the practice of dealing directly with off-duty officers (as opposed to an inter-local governmental agreement between the entities) necessitating this request for an opinion. After a review of the law it would appear that this issue has never been directly addressed by either your office or the courts of the State of Texas. The issue has given rise to the additional question of whether or not the District may contract with a private security service for the providing of such services.

In order to resolve this issue as well as let the governing body of the district know of all its available options the following issues are presented:

QUESTION NO. 1: May the District contract directly with off-duty City of Odessa Police Officers for the providing of security?

Under Article 16, Sec.40 of the Texas Constitution, no person may hold more than one civil office of emolument. A city policeman is an officer within the meaning of the constitutional provision that no person shall hold or exercise at the same time more than one civil office of emolument. Irwin v. State, 177 S.W.2d 970 (Tex. Crim. App. 1944, no petition). In Attorney General Opinion JM-57 your office considered whether a county sheriff or constable may contract with a private homeowner's association to furnish its law enforcement services. The conclusion was that a county officer may not do so. All cases cited in Opinion JM-57 deal with county officials, with the exception of Bounty Ballroom v. Bain, 211 S.W. 2d 248 (Tex. Civ. App. - Amarillo 1948, writ ref'd n.r.e.) wherein the court gave tacit approval of law enforcement by contract arrangements. Your office distinguished the case because it applied to a city rather than a county.

It is not disputed that a peace officer is not entitled to compensation, other than fees and salary, for performing acts which it is his official duty to perform. Kasling v. Morris, 9 S.W.2d 739 (Tex. 1988). However, the services discussed herein, are services that would be rendered by the officer during his off-duty hours for and on behalf of the School District pursuant to Sec.21.308 of the Texas Education Code. With regard to the dual office holding language in Art. 16, Sec.40 of the Texas Constitution, said section specifically states:

"It is further provided that a non-elective state officer may hold other non-elective offices under the state or the United States, if the other office is of benefit to the State of Texas or is required by the state or federal law, and there is no conflict with the original office for which he receives salary or compensation."

Article 5262-9(a) mirrors the constitutional exception by stating that, "a non-elective state officer or employee may hold other non-elective offices or position of honor, trust, or profit under this state or the United States, if his holding the other offices or positions is of benefit to the State of Texas or is required by state or federal law, and if

there is no conflict between his holding the office or position and his holding the original office or position for which the officer or employee receives salary or compensation."

While we have been unable to find any opinion from a court or your office directly on point, in Attorney General Opinion 1974 No. LA-81, your office held that part time employment by the Harris County Hospital District of social services workers who hold regular jobs with certain other state and local governmental agencies are not prohibited under the dual employment prohibition. Odessa Police Department officers are, as the Harris County Hospital District social service workers, non-elected officials who are seeking to contract with another local governmental subdivision, in this case the Ector County Independent School District. It would therefore appear under the reasoning of this opinion that the Ector County Independent School District would be able to contract directly with off-duty Odessa Police Department officers for security purposes.

QUESTION NO. 2: May the District contract directly with off-duty Ector County Sheriff's Department Deputies?

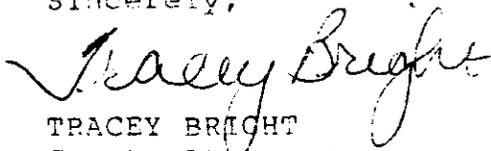
The above cited authorities would seem to also apply to this particular issue. In addition, in Attorney General Opinion No. JM-57 the issue of whether a county sheriff or constable may contract with a private homeowner's association to furnish law enforcement services was considered. Your office held that since the deputies were paid by the county they could not contract with a private source, that being the homeowner's association, for the performance of the official duty of law enforcement. It would appear however that Opinion JM-57 is distinguishable because the District is not a private source, but rather a companion political subdivision. The basis of your opinion included the statement that, the 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." These considerations are not matters of concern in the present issue. The District is a political subdivision under the State of Texas whose hiring of these officers would be only for the purpose of carrying out legitimate public purposes.

QUESTION NO. 3: May the District contract directly with a private security service?

Again, this appears to be an issue that has not been directly addressed by either your office or the Courts of the State of Texas. It would appear that under Section 21.308 of the Texas Education Code, the District would be allowed to employ private security officers.

The consideration of these issues and response thereto would be appreciated.

Sincerely,



TRACEY BRIGHT
County Attorney
Ector County, Texas

TB/ct