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SJS
FILE # ML-25428-94
I.D.# 25428

Re: AG Opinion concerning the letting of private contracts for the collection of bond forfeiture judgments

Dear Sir or Madam:

The Commissioners' Court of Collin County, Texas is contemplating entering into a contract with a private party (bonding company) for the collection of outstanding bond forfeitures that have been reduced to final judgment. I am requesting an Attorney General Opinion on the propriety of such a contract.

Government Code §44.143 contains the enabling legislation for the office of Criminal District Attorney of Collin County, Texas. Subsection "a" of that section provides that the Criminal District Attorney "shall represent the state in all criminal and civil cases in the courts in the county unless otherwise provided by law." Subsection "b" of the above quoted section also provides that the criminal district attorney has "all the powers, duties and privileges in Collin County relating to criminal or civil matters involving the county or state that are conferred by law on county and district attorneys in the various counties and districts." A general description of those duties can be found in articles 2.01 and 2.02 of the Code of Criminal Procedure. Neither of those provisions refer specifically to the prosecution or collection of bond forfeitures. However, other enabling legislation for district attorneys in other counties does specifically provide for the prosecution of bond forfeiture cases. For example, §43.181, Gov't Code, provides that the voters of the 268th Judicial District shall elect a district attorney and that he shall represent the state in all matters directly relating to criminal cases including "bond forfeitures proceedings through judgment other than collection of a final judgment on a bond forfeiture". Thus, by virtue of the language of Subsection (b) of the enabling legislation referenced above, it appears that the Criminal District

Attorney of Collin County, Texas would have the power, authority and responsibility to handle bond forfeiture cases up to the point of reducing them to judgment, *at the very least*. Whether the Collin County Criminal District Attorney *must* handle the *collection* of those judgments is unclear.

Because the enabling legislation mandates that the Criminal District Attorney of Collin County, Texas "shall represent the State unless otherwise provided by law", the exclusivity of the Criminal District Attorney's power seems relatively clear. Therefore, it would appear that the responsibility for the collection of bond forfeiture judgments rests exclusively with the Criminal District Attorney of Collin County, absent specific statutory authority granting that power to another person or entity. Such other statutory authority does not appear to exist.

Provisions in Chapter 103 of the Code of Criminal Procedure give further implied support for this conclusion. They suggest that collection of bond forfeiture judgments is the duty of the Criminal District Attorney. Though Chapter 103 seems, at first blush, to deal only with the collection of court costs, Art. 103.004 makes specific reference to the collection of bail bonds and forfeitures. Furthermore, it assumes that such collection is made by an "officer". An officer is defined in Art. 103.003 - "District and county attorneys ... may collect money payable under this article."

The conclusion of our research is that the Commissioners' Court may not contract with a private party for the collection of bond forfeiture judgments.

Please contact me if you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom O'Connell', with a stylized flourish at the end.

Tom O'Connell
Criminal District Attorney
Collin County, Texas