

# County of Potter

STATE OF TEXAS

AMARILLO, TEXAS

GERALD ALAN JOY  
COUNTY AUDITOR  
(806) 379-2240

RQ-712



601 S. TAYLOR  
AMARILLO, TEXAS 79101

June 14, 1994

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Opinion Committee

SJS  
File # ML-27082-94  
ID # 27082

The Honorable Dan Morales  
Attorney General of Texas  
300 West 15th  
12th Floor, W. P. Clements Building  
Austin, Texas 78701

Dear General Morales:

A matter has arisen recently within Potter County government which requires that I seek legal advice from your office.

I am aware of the procedure established for requests from a county auditor for an Attorney General Opinion and am aware that I am not following that procedure. If you choose to return my request unanswered, I will respect your decision.

Neither the County Attorney nor the District Attorney has rendered an opinion on this matter; so, there is no formal opinion with which I or any other county official disagrees. I understand that the County Attorney's office has sent a request for an Attorney General Opinion; but, I have not seen a copy of it.

The County Judge has asked that I either request an Attorney General Opinion or put the questioned bill in line for payment. Since I can't, in good conscience, approve the payment, I am sending you this request.

Since 1991 the County has employed a forensic pathologist to perform autopsies in questionable deaths. During that period, two doctors have held that position. The last one resigned effective March 31, 1994.

Prior to and since the last resignation, the County Judge and the Commissioners have contacted and been contacted by a number of candidates for the position. In April, the County Judge, in a good faith effort to hold down County expenses, arranged with a local travel agency to have a plane ticket delivered to one of the candidates with the expectation that the County would pay for it. He knew that it would be cheaper to fly the doctor up here from Birmingham, Alabama than for the Judge and another official to fly down there for an interview.

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When I received the bill for payment, I questioned it. Some of my assistants informed me that some time prior to my appointment as auditor, a similar situation had occurred. At that time, the District Judges had someone flown in from somewhere in Texas to be interviewed for the position of Director of the Community Supervision and Corrections Department. The County Auditor then serving refused to pay those expenses contending that it was unlawful to do so. I believe that the matter was finally resolved by the District Judges contributing their personal funds to pay those travel expenses.

The legal authority that I used in reaching my decision is Attorney General Opinion M-223(1968). This opinion was also relied upon by my predecessor in his decision. Although this opinion was rendered at the request of a hospital district, the primary legal authority cited in it is Article 3, Section 52 of the Texas Constitution. Since this section specifically mentions counties, I believe that it also applies to our situation.

To the best of my knowledge, Attorney General Opinion M-223 has not been withdrawn or superseded. And the language of Texas Constitution Article 3, Section 52 still seems to me to support the position taken in that opinion. Therefore, I contend that Attorney General Opinion M-223 applies to our situation as well.

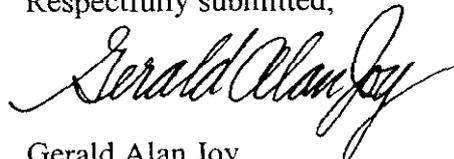
This situation is contradictory in that it may cost more to send (a) county official(s) to another location to interview a job candidate than to bring the candidate to the county seat. Nevertheless, in my opinion, the one act is lawful while the other is unlawful.

I respectfully request your legal opinion on the following question:

**QUESTION:** Is it lawful for Potter County to spend public funds to pay the transportation and other travel costs of a job candidate to come to the county seat to be interviewed for employment by the county?

If you need any clarification of anything in this request or if you need any other information, please let me know.

Respectfully submitted,



Gerald Alan Joy  
Potter County Auditor