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Opinion Committee

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county attorney

September 9, 1994

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Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

SJS

ML-29050-94
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Re: Under what circumstances is Harris County authorized to provide legal counsel to a county employee pursuant to TEX. LOC. GOV'T CODE ANN. §157.901 C. A. 46,127

Ladies and Gentlemen:

The Harris County Attorney requests your opinion on the following specific questions:

(1) Does TEX. LOC. GOV'T CODE ANN. §157.901, as amended, ("Section 157.901") authorize the Harris County Attorney when representing a county employee or official in an action arising from the performance of a public duty to prosecute a counterclaim on behalf of such employee or official which asserts a personal cause of action such as defamation or malicious prosecution and seeks to recover money damages for the employee or official? Is the Commissioners Court authorized to employ and pay private counsel to prosecute similar causes of action on behalf of county officials and employees?

(2) If a county employee or official does not accept the legal counsel made available to represent him or her pursuant to section 157.901, may the county reimburse the employee or official for his or her legal expenses incurred or pay any outstanding amounts he or she owes at the conclusion of the suit?

(3) May Harris County ratify a contract entered into by a county employee or official and a private attorney for legal services previously provided to the employee or official in a suit involving an action arising from the

First Assistant: Marsha L. Floyd • Bureau Chiefs: James E. McKnight, Admin. Services, Jerry B. Schank,
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Rock W.A. Owens, Frank E. Sanders, Richard S. Hill, Rosalinda Garcia

performance of a public duty if the contract was not entered into on the county's behalf?

(4) In order for Harris County to employ and pay a private attorney under Section 157.901(b), must the Harris County Attorney first request additional counsel or decline from representing the county official or employee?

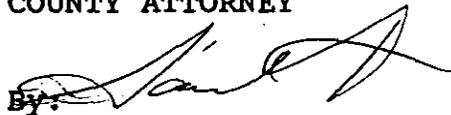
(5) Who chooses the private counsel to assist the county attorney under section 157.901?

Our Memorandum Brief is enclosed.

Please furnish us with your opinion on the above question.

Sincerely,

MIKE DRISCOLL
COUNTY ATTORNEY

By: 

Sandra D. Hachem
Assistant County Attorney