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63rd Judicial District

EDWARDS, KINNEY, TERRELL, VAL VERDE COUNTIES

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RQ-797

February 15, 1995

Honorable Dan Morales
Attorney General of Texas
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Austin, Texas 78711-2548

STS 33021
FILE # ML-32088-95

I.D. # 32088
33021

RECEIVED
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Attn: State and County Affairs
Re: Texas Government Code 415.053

Dear General Morales:

Opinion Committee

Constable Johnny T. Felton was elected Constable of Val Verde County Precinct #4 and took office on January 1, 1993. Constable Felton is licensed by the Texas Commission on Law Enforcement Officers Standards and Education as a county jailer but does not have a permanent peace officer's license. Because Constable Felton has failed to obtain a permanent peace officer's license within two years of taking office, citizens of my jurisdiction have requested that I file a suit to remove Felton from office.

TEX. GOV. CODE, SEC. 415.053 provides that an officer elected under the Texas Constitution must be licensed by the commission not later than two years after the date the officer takes office. The Commission shall establish requirements for licensing of such an officer. It is incompetency and a ground for removal from office under Title 100, Revised Statutes, or any other removal statute if an officer to whom this section applies does not obtain the license by the required date or does not remain licensed.

The Texas Commission on Law Enforcement Officer's Standards and Education issues several types of licenses including temporary peace officer, reserve peace officer, provisional peace officer, armed public security officer, instructor, permanent peace officer and county jailer. The T.C.L.E.O.S.E. regulations even contain a section that refers to officers elected to a constitutional office such as Sheriff or Constable and in T.C.L.E.O.S.E. Sec. 211.82 entitled "Issuance of License" it is provided in subparagraph (h) that the commission may issue a permanent peace officers license or a jailer's license to a person elected to a constitutional office. Under Subsection (i) the commission must issue a permanent peace officers license to a person

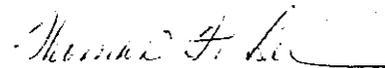
elected to a constitutional office if that person takes the proper training. Subsection (i) also provides a grandfather clause to cover those individuals elected to the office of Constable or Sheriff prior to September 1, 1985.

What the T.C.L.E.O.S.E. Regulations and the Texas Government Code fail to say is that a person elected to the position of Constable or Sheriff must obtain a permanent peace officers licence within two years of taking office. It appears, the Legislature could have easily written TEX. GOV. CODE, Sec. 415.053 to recite that such officials must obtain a permanent peace office license instead of "must be licensed," if it intended a permanent peace officers license to be the required license. It also appears that T.C.O.L.E.O.S.E. could have easily included in their regulation Section 21.82, a statement that all persons elected to a constitutional peace officer's position must obtain a permanent peace officer's license.

In a recent telephone conference with the T.C.L.E.O.S.E. licensing section I was told that the TEX. CODE. CRIM. PROC., Art. 2.12 defines peace officers and "everybody knows that peace officers must be licensed as peace officers." However, TEX. CODE. CRIM PROC. contains no provision that requires a peace officer to be licensed as a peace officer except a railroad police officer. See TEX. CODE CRIM. PROC., Art. 2.121 (e)(4). TEX. REV. CIVIL STAT. Ann., Art. 4413 which creates The Texas Commission on Law Enforcement Officer Standards and Education provides in Sec.(6)(c) that no person who is not licenced by the commission shall be appointed as a peace officer, jailer, etc. and sec. (6)(k) states that a certified peace officer, jailer, etc. may be employed or appointed by a law enforcement agency. Section (6)(p) of Art. 4413 contains the same language as TEX. GOV. CODE, Sec. 415.053 but does not limit the type of license an elected peace officer must obtain.

I'm sure the Legislature and T.E.L.E.O.S.E. would not write the law and regulations to be so vague on this point and that I must be overlooking a provision that would require a Constable to be licensed as a permanent peace officer. However, I must be satisfied on that point before I file to remove Johnny T. Felton from office and would appreciate any advise your office can give me on this matter. Thank you for your assistance.

Sincerely,



Thomas F. Lee