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OCT 16 1997

State of Texas
House of Representatives

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 LEGISLATIVE COUNCIL

October 14, 1997

RQ-1013
ML

Honorable Dan Morales
Attorney General, State of Texas
Price Daniel Building, 8th Floor
209 W. 14th Street
Austin, Texas 78701

FILE # 39839 - 97
I.D.# 39839

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Opinion Committee

RE: Request for Attorney General's Opinion

Dear Attorney General Morales:

I would like to request an Attorney General's Opinion with regard to the following question:

Under Chapter 791 of the Government Code, the Interlocal Cooperation Act (the "Interlocal Cooperation Act"), may a municipal utility district and a county contract with each other for the provision of additional security patrols within the district?

Factual Summary

Districts and counties are authorized to enter into interlocal agreements under the authority of the Interlocal Cooperation Act. One of the authorized purposes of an interlocal agreement is to provide police protection and detention services. Under the terms of an interlocal agreement, a county may provide additional security patrols of the property within a district during high-risk periods. These agreements benefit both parties by protecting the public interest and the public health, safety, and welfare. Districts are authorized to provide police protection under Section 49.216, Texas Water Code.

Additional patrol services provided to a district under an interlocal agreement may be provided by deputy constables or sheriffs employed by a county, who are under the control and supervision of the county. The deputies may provide services under an interlocal agreement in the same

manner as if providing patrol services within the district in the absence of an agreement, and may wear their county uniforms and utilize marked patrol cars and equipment while providing services.

For the additional patrol services, the district pays the deputies a fixed hourly amount per hour of patrol service. The district also pays the county a fixed hourly amount for the patrol vehicle used by the deputy. The county authorizes the district to pay all sums for patrol services directly to the deputy providing the services. The sums due for vehicle usage are paid to the county. The county issues a time sheet to each deputy indicating (a) the total hours of additional patrol services rendered by the deputy, and (b) the county's approval of the services, and forwards the time sheet to the district for payment. The district makes its payments out of current revenues as is required by the Interlocal Cooperation Act. Furthermore, the district issues IRS forms 1099 to each deputy providing services, setting forth the total sum paid to the deputy for each calendar year in which services are performed.

Legal Summary

The Interlocal Cooperation Act states that the purpose of the chapter is "to increase the efficiency and effectiveness of local governments by authorizing them to contract to the greatest possible extent, with one another and with agencies of the state." V.T.C.A., Government Code 791,001. Under the provisions of 791.011, "a local government may contract or agree with another local government to perform governmental functions and services." Pursuant to 791.003, "local government" includes a... "special district or other political subdivision of this state," and "government functions and services" includes all or part of a "function or service for police protection and detention services..."

The Interlocal Cooperation Act and a recent Attorney General Opinion appear to be in conflict. In Letter Opinion No. 97-069, referencing Attorney General Opinions JM-462 (1986), your office stated that "it is a well established common-law principle ... that peace officers acting within the scope of their official duties may not receive compensation from third parties." Additionally, your office's opinion stated that "a regular or reserve deputy constable who provides security for an event sponsored by a separate governmental or private entity within the scope of his or her official duties may not accept compensation from the event's sponsor for doing so." [emphasis added] Your office concluded that "this common-law prohibition precludes a regular or reserve deputy constable from performing official duties in exchange for any type of consideration beyond his or her regular salary ...," and a constable may not "deploy regular or reserve deputy constables to perform official duties in exchange for any type of additional consideration." Letter Opinion No. 97-069 does not address the authority for governmental entities to contract for police protection services under the Interlocal Cooperation Act.

I respectfully request that your office clarify Letter Opinion No. 97.069 by addressing the authority granted under the Interlocal Cooperation Act with regard to an ongoing agreement between a county and a district.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink that reads "Ron Lewis". The signature is written in a cursive style with a large, prominent "R" and "L".

Ron Lewis
State Representative, District 19