



Office of County Attorney
MOORE COUNTY, TEXAS

RECEIVED

NOV 18 1997

Opinion Committee

AREA CODE 806
935-2407 OR
935-2646

715 DUMAS AVENUE
COURTHOUSE, RM. #208
DUMAS, TX 79029

November 10, 1997

99-1032

The Honorable Dan Morales
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-39916-97
I.D. # 39916

Dear Sir,

At the request of the Moore County Commissioner's Court and the Moore County Judge, I am requesting an opinion of the Attorney General.

QUESTION:

Does V.T.C.A., Government Code § 41.011, which allows a county attorney to conduct a private practice of law using the county office provided by that county for conducting his official duties, also allow the Assistant County Attorney to conduct a private practice of law using the same county office?

STATEMENT OF FACTS:

The Moore County Attorney's Office consists of two attorneys, the County Attorney and the Assistant County Attorney, along with their staff. The official offices of the County Attorney are located on the second floor of the Moore County Courthouse.

The Assistant County Attorney was hired in December of 1996. The Assistant County Attorney has a limited private practice and is currently practicing out of the official offices of the County Attorney with the consent and approval of the Commissioner's Court.

CONTACTS:

Thank you for your assistance. If additional information or clarification of any statement is needed please contact the Moore County Attorney at (806) 935-2407 or the Moore County Judge at (806) 935-5588.

Sincerely,

Rayford Ratliff,
Moore County Attorney

BRIEF
FOR THE ATTORNEY GENERAL
REGARDING PRIVATE USE OF HIS OFFICIAL OFFICE BY
THE ASSISTANT COUNTY ATTORNEY

QUESTION:

Does *V.T.C.A., Government Code § 41.011*, which allows a County Attorney to conduct a private practice of law using the county office provided by that county for conducting his official duties, also allow the Assistant County Attorney to conduct a private practice of law using the same county office.

APPLICABLE LAW:

V.T.C.A., Government Code § 41.011 Private Practice in County or District Office

A district or County Attorney who is not prohibited by law from engaging in the private practice of law may, at the discretion of the commissioners court of a particular county, conduct a private practice of law using the district or county office provided by that county for conducting his official duties.

Office of the Attorney General.

V.T.C.A., Government Code § 41.103 Assistant Prosecuting Attorneys

- (a) An assistant prosecuting attorney must be licensed to practice law in this state and shall take the constitutional oath of office.
- (b) An assistant prosecuting attorney may perform all duties imposed by law on the prosecuting attorney.

V.T.C.A., Government Code § 45.002 Appointment and Oath of Assistant

- (a) The qualifications for an Assistant County Attorney are the same as for the County Attorney who appoints him.
- (b) Before beginning any duties, an Assistant County Attorney must take the official oath of office, which must be endorsed on his written appointment.
- (c) The appointment and oath of an Assistant County Attorney shall be recorded and deposited in the county clerk's office.

Op. Tex. Att'y Gen. No. LO 93-51

Op. Tex. Att'y Gen. No. LO 96-141

STATEMENT OF FACTS:

The Moore County Attorney's Office consists of two attorneys, the County Attorney and the Assistant County Attorney, along with their staff. The official offices of the County Attorney are located on the second floor of the Moore County Courthouse.

The Assistant County Attorney was hired in December of 1996. The Assistant County Attorney has a limited private practice and is currently practicing out of the official offices of the County Attorney with the consent and approval of the Commissioner's Court.

Dumas, the county seat of Moore County is located in the Northern Panhandle. It has a population of approximately 13,000 people. There are four other significantly smaller communities located in Moore County. Moore County is a predominantly rural county with a large part of the economy dependent on Farming, Ranching, Beef Processing and Oil operations.

ANALYSIS:

It is clear from *V.T.C.A., Government Code § 41.011* that the County Attorney subject to certain requirements may conduct a private practice out of the county office provided for conducting his official duties. This statute has been examined in two attorney general opinions.

Op. Tex. Att'y Gen. No. LO 93-51 examined the legislative intent behind § 41.011 of the Government Code and decided that a County Attorney may use county-paid employees to perform private work in the County Attorney's private practice of law so long as the County Commissioner's approve such practice.

Op. Tex. Att'y Gen. No. LO 96-141 reexamined both § 41.011 and *Op. Tex. Att'y Gen. No. LO 93-51* before concluding that a commissioners court is authorized to designate a private office as the County Attorney's official office if the commissioner's court determines that the additional office space is necessary. This opinion also held that a commissioner's court may provide the County Attorney with a county -paid employee and county-owned computer to use in the County Attorney's private practice pursuant to *Government Code § 41.011*, provided that this arrangement constitutes part of the County Attorney's compensation for official services rendered to the county and that the county receives a reasonable return for the total compensation it provides the County Attorney.

The main element of the question in issue is whether *Government Code, §41.011* applies to Assistant County Attorneys. *Op. Tex. Att'y Gen. No. LO 93-51* is relevant to this question. LO 93-51 states that "Even if, however, a word as used in a statute appears unambiguous, we may consider the sense in which the legislature intended to use the word, as indicated by, among other things, the object the legislature sought to accomplish and legislative history."

Even if the legislature did not use "Assistant County Attorney" in their wording of § 41.011 it is still possible to consider whether legislative intent could broaden the literal meaning of County Attorney to include Assistant County Attorneys.

In discussing the legislative intent behind § 41.011, LO 93-51 goes on to say that "The purpose of this bill was to statutorily authorize the long-standing practice of many counties, particularly rural counties, of this state. ... In passing the bill, the legislature recognized that, frequently, rural counties must provide incentives to attract an Attorney to the County Attorney position."

When the legislative intent is applied to the current question it is likely that the same goals should apply to Assistant County Attorneys. In a largely rural county where it is difficult to attract Attorneys to the County Attorney position it would be no less difficult to attract Attorneys to the Assistant County Attorney position. This would be particularly true in smaller rural counties because not only would the monetary compensation offered be less than a similar position in a larger entity but the chances for advancement would also be virtually non-existent. The Office of the County Attorney in Moore County consists of only two Attorneys, the County Attorney and the Assistant County Attorney. The only possibility of advancement would be to run against the County Attorney for his seat in an election.

The Assistant County Attorney in Moore County is largely responsible for the day to day operation of the County Attorney's Office. These duties, (case intake, various hearings and court appearances, case and witness preparation, availability to the public and county employees for related legal advice, legal opinions and advice to the Sheriff's Office, the Police Department, the Department of Public Safety, the Adult Probation office, the Juvenile Probation Office, the Justices of the Peace and the Texas Department of Protective and Regulatory Services) would be difficult to perform if part of the work day had to be spent at a different office at which the relevant case files, research material and sufficient staff would not be available.

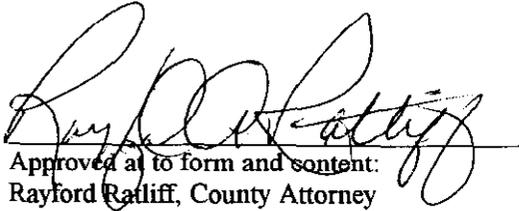
Government Code § 45.002 details the qualifications of an Assistant County Attorney, "The qualifications for an Assistant County Attorney are the same as for the County Attorney who appoints him." "An assistant prosecuting attorney may perform all duties imposed by law on the prosecuting attorney." *V.T.C.A., Government Code § 41.103*. An Assistant County Attorney must be as qualified as his boss in addition he may perform all duties imposed by law on the prosecuting attorney. This lends further credence to the idea that §41.011 should be extended to include Assistant County Attorney. It is ludicrous to believe that you could find an attorney who is as qualified as the County Attorney and will in all probability perform all the functions of the office and yet deny the Assistant County Attorney the same *privilege of practicing out of his office as is available to the County Attorney*.

CONCLUSION:

Government Code § 41.011 should be read to allow an Assistant County Attorney to use his official office in the private practice of law. The legislative intent of § 41.011 should be extrapolated to Assistant County Attorneys because in a small rural county it would be no less difficult to obtain qualified attorneys to perform all the duties of the County Attorney without providing similar incentives. Providing that an Assistant County Attorney perform his limited private practice at a separate office would be to the detriment of the public because it would decrease the availability of the Assistant County Attorney in the day to day operations of the office and would in turn be less available to all the public, municipal, county, and state entities that often consult with the Office of the County Attorney.



Prepared by:
Richard Villarreal, Assistant County Attorney



Approved as to form and content:
Rayford Ratliff, County Attorney