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

Attention: Opinion Committee

Ladies and Gentlemen:

Please provide an opinion on the following questions:

1. Are reserve deputy constables and reserve deputy sheriffs within the purview of recently enacted, Act of May 21, 1997 75th Leg., R.S. [is in a pamphlet], to be codified as Tex. Gov't Code Ann. § 612.004?
2. Does Tex. Gov't Code Ann. § 612.004 authorize a commissioners court to promulgate a policy regarding the use of county owned, leased or otherwise controlled vehicles used by county employees, and elected officials and their appointed deputies?

Our memorandum brief is enclosed.

Sincerely,

MICHAEL P. FLEMING
County Attorney

By DORI A. WIND
Assistant County Attorney
Bureau Chief - Social Services

MPF:DAW:jbb

MEMORANDUM BRIEF

1. Are reserve deputy constables and reserve deputy sheriffs within the purview of recently enacted, Act of May 21, 1997 75th Leg., R.S. [is in a pamphlet], to be codified as Tex. Gov't Code Ann. § 612.004?
2. Does Tex. Gov't Code Ann. § 612.004 authorize a commissioners court to promulgate a policy regarding the use of county owned, leased or otherwise controlled vehicles used by county employees, and elected officials and their appointed deputies?

Tex. Gov't Code § 612.004 provides in pertinent part as follows:

- (a) In this section, "law enforcement officer" means a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law.
- (b) The governing body of a political subdivision shall provide for insuring each law enforcement officer appointed or employed by the political subdivision against liability to third persons arising out of the officer's operation of a motor vehicle owned, leased, or otherwise controlled by the political subdivision at any time that the officer is authorized to operate the vehicle, including times that the officer is authorized to operate the vehicle while off duty.

A review of Tex. Code Crim. Proc. Ann. art. 2.12 (Vernon 1987) shows that reserve deputy sheriffs and constables are not listed as peace officers within that statute. However, "other laws", including Tex. Loc. Gov't Code Ann. § 85.004 (Vernon 1987) and Tex. Loc. Gov't Code Ann. § 86.012 (Vernon 1987) provide for appointment of reserve deputy sheriffs and reserve deputy constables, respectively. These laws also provide that when a reserve officer is on active duty by appointment of the sheriff or constable and engaged in assigned tasks, a reserve officer has the same rights, privileges and duties as any peace officer of the state. Inasmuch as a reserve officer cannot be off duty and still have the rights, privileges and duties of a "peace officer," the language "including times that the officer is authorized to operate the vehicle while off duty," cannot apply to a reserve officer.

If the statute is applicable to a reserve officer who is on duty, then it appears to repeal by implication several other Texas laws and overrule a recent Texas Supreme Court decision. Tex. Loc. Gov't Code § 152.075 provides as follows:

- (a) The commissioners court of a county may compensate a reserve deputy sheriff as provided by law for the compensation of a deputy sheriff.

- (b) The commissioners court may reimburse a reserve deputy sheriff for reasonable and necessary expenses incurred in the performance of official duties.

Similar language is used in Tex. Loc. Gov't Code § 152.902 in regard to reserve constables.

The Attorney General has opined that compensation for uniforms and equipment for reserve deputy sheriffs is entirely discretionary with commissioners court in Op. Tex. Atty. Gen. No. M-1026 (1971). The Harris County Commissioners Court has chosen not to compensate any reserve officers.

Additionally, since the Supreme Court has opined in Harris County v. Dillard, 883 S.W.2d 166 (Tex. 1994), that a county is not liable for the acts of a volunteer pursuant to Tex. Civ. Prac. & Rem. Code Chap. 102, then it is absurd that Tex. Loc. Gov't Code § 612.004 would require a county to purchase insurance for persons for whom it is not liable. Statutes should not be interpreted in a manner to correct legislature of foolish and futile action. State ex rel. Childress v. School Trustees of Shelby County, 239 S.W. 2d 777, 150 Tex. 238 (Tex. 1951). Unless there is no alternative, a statute will not be interpreted so as to lead to a foolish or absurd result. McKinney v. Blankenship, 282 S.W. 2d 691, 154 Tex. 632 (Tex. 1955).

It appears that the purpose of Tex. Loc. Gov't Code § 612.004 is to ensure that automobile insurance is provided for law enforcement officers employed by a political subdivision and who use a car owned, leased or otherwise controlled by the political subdivision. This purpose has already been satisfied for all full-time officers arising from the operation or maintenance of county owned or county-leased motor vehicles under Tex. Loc. Gov't Code § 157.042. The new law adds that officers can now be insured when they are off-duty, and to insure cars that are "otherwise controlled" by the political subdivision. To allow an employee to drive a county car to and from work appears to be a purely personal benefit in violation of the Texas Constitution, Article III, § 52.

In Op. Tex. Att'y Gen. No. JM-879, the Attorney General opined that travel from a residence to the courthouse by a member of the commissioners court for the purpose of attending meetings is not normally reimbursable by the county. The opinion further stated that "the allowance *must be reasonably related to official county business*; secondly the amounts must be reasonable in relation to expenses actually incurred or to be incurred" (emphasis added). In Op. Tex. Atty. Gen. No. H-992, it was also concluded that travel between home and office is not official travel subject to reimbursement in normal circumstances. See also Evans v. Illinois Employers Insurance of Wausau, 790 S.W. 2d 302 (Tex. 1990).

If the intention of this new law is to deprive a commissioners court of its discretionary power to compensate or pay expenses of volunteer reserve officers, then the law should have expressly stated that it included reserve officers. Or, it could have stated that in the event of a conflict with other laws, that it would take precedence. The legislature did not see fit to expressly repeal the discretion of a commissioners court granted in Tex. Loc. Gov't Code Ann. §§ 152.075 and 152.902. Accordingly, reserve deputy officers should not be included within the purview of Tex. Loc. Gov't Code § 612.004. When a new statute is passed dealing with a subject covered by old law, if there is no express repeal, presumption is that in enacting new law, the legislature intended the old statute to remain in operation.

Driscoll v. Harris County Comrs. Court, 688 S.W.2d 569 (Tex. App.-Houston [14th Dist.] 1984, writ ref. n.r.e.).

For the foregoing reasons, it does not appear that reserve officers are included within the purview of § 612.004, but are covered by the separate statutes specifically providing for them.

With regard to the second question, a commissioners court exercises authority over the budget of a county. The court also sets the amount of compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds. Tex. Loc. Gov't Code Ann. § 152.011 (Vernon 1988). Inasmuch as the commissioners court controls all monetary expenses of county and precinct officers, then it would have authority to set a county-wide policy for the use of automobiles owned, leased or otherwise controlled by the county and assigned to county and precinct officials and employees. Such a policy is an integral part of maintaining cost accountability for the use of the automobiles and affects the county's budget.

In Hooten v. Enriquez, 863 S.W. 2d 522 (Tex. App. - El Paso 1993, no writ), the court considered whether a commissioners court may designate the duties and responsibilities of deputy clerks or infringe on the responsibilities of those who have been constitutionally elected by the people to discharge the public trust. The Court concluded that commissioners court has authority to determine budgetary issues. In this instance, commissioners court would not be designating duties and responsibilities of elected officials and their deputies, but rather implementing a county-wide policy that county cars are to be used only during regular work hours for county business. The language in the new statute also provides that the "governing body of a political subdivision" shall provide for the insurance for a motor vehicle "owned, leased or otherwise controlled by the political subdivision." It appears from the language in this statute that it is contemplated that the governing body, commissioners court, must be able to exercise its discretion with regard to the cost, type of insurance provided, and control of the vehicles. An independently elected official still has the authority to use the car in the performance of his duties during regular work hours.

Conclusion

A reserve law enforcement officer is not within the purview of Tex. Gov't Code Ann. § 612.004. Section 612.004 does not repeal expressly or impliedly several other laws regarding reserve officers.

A commissioners court may implement a county-wide policy which generally states that county cars should be used during work hours for official county business as such policy is related to budgetary issues of the county and does not usurp a sheriff or constable's authority in determining how the officer and his deputies must perform their duties.