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**COUNTY of KLEBERG**  
KINGSVILLE, TEXAS  
FILE # ML-40143-98  
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**RQ-1109**

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MAR 11 1998

GOVERNMENTAL INQUIRY  
UNIT

April 06, 1998

The Honorable Dan Morales  
Texas Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

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MAR 12 1998

Opinion Committee

Dear Attorney General Morales:

The following question is respectfully submitted for the considered opinion the office of the Attorney General of Texas pursuant to the authority of Sections 402.042 and 402.043 of the Texas Government Code.

**QUESTION #1:**

Whether the commissioners court must enter into a contract for fire protection of the county residents located outside the municipality with a non-profit volunteer fire department prior to purchasing them fire-fighting equipment or supplementing their budget.

**CONCLUSION;** Section 352.001, Local Gov. Code., gives Commissioners Court authority to provide fire protection to county residents located outside the municipality and to purchase fire fighting equipment. Also, a contract may be

entered into between the County and a Volunteer Fire Department. Relying on the specific language of 352.001, one can conclude that any action taken by Commissioners Court under this section is not mandatory. Therefore while entering into a contract is certainly more advisable, it is not mandatory.

FACTS: The Riviera Volunteer Fire Department and the Ricardo Volunteer Fire Department are non-profit organizations which have been in operation since 1954. Kleberg County has always supplemented their budget and this fiscal year, Commissioners Court set up a budget of \$25,000 for Ricardo, TX., and \$20,000 for Riviera TX.. All purchases are accounted for by the county auditor who audits their accounts annually. All purchases are submitted to the County by the use of a purchase order. All purchase orders go through commissioners court for approval, and all expenditures come out of the General Fund.

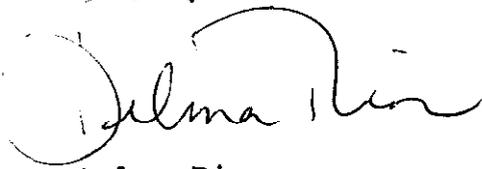
ANALYSIS: Section 352.001 (a),(b)(1), (c) of the Local Government Code, authorizes the following: "Commissioners court of a county **may** furnish fire protection or fire-fighting equipment to the residents of the county..... who live outside municipalities. Commissioners Court **may** (1) purchase fire trucks or other

fire-fighting equipment and Commissioners court of a county may contract with an incorporated volunteer fire department that is located within the county to provide fire protection to an area of the county that is located outside the municipalities in the county. Following the language of Section 352.001, one can conclude that the legislature did not make this statute mandatory. I agree with Attorney General Opinion 96-0935, p.3, footnote 3. " Article III, section 52 of the Texas Constitution, does not prohibit a county from transferring county funds to a private entity provided that the expenditure serves a public purpose, that the county receives adequate consideration, and that there are sufficient controls to ensure that the public purpose will be accomplished. While it might be possible to insure sufficient controls without a formal contract, the ordinary and most prudent method of establishing such enforceable controls would be by contract." In my opinion, the same line of reasoning would apply to Section 352.001, Local Government Code. In the case at hand, there are adequate controls to insure that the funds expended are for a public purpose.

In conclusion, it is my opinion that, if Commissioners Court desires, they may continue without a contract as long as they are assured that adequate controls are in place to

insure that the expenditures serve a public purpose.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Delma Rios". The signature is written in black ink and is positioned above the typed name and address.

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