

Trinity County Attorney
Joe Warner Bell

RECEIVED

JUL 23 1999

Opinion Committee
First @ Main
P. O. Box 979
Groveton, Texas 75845

Phone 409-642-1725
Fax 409-642-2362
Email trinity@lcc.net

Attorney General
Opinions
P.O. Box 12548
Austin, Texas 78711

RQ-0091-JC

Monday, July 19, 1999
FILE # ML-40918-98
I.D. # 40918

Re: Residency Requirements of Deputy Constables

Dear Sir,

In Opinion O 1121, the Attorney General ruled that a deputy constable must reside in the precinct for which he was appointed; in Opinion M-308 the Attorney General said that there were no statutory residence requirements for deputy constables. The question remains, are there constitutional requirements of residency under Article XVI Section 14 constraining residence.

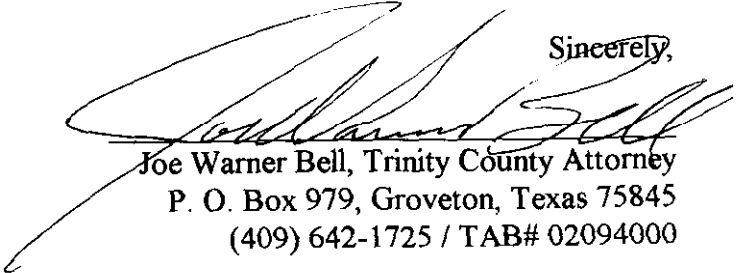
Most of the opinions in this area rely on certain tests to separate officers from employees. Often the decision turns on whether an office involves not only the authority to perform certain sovereign functions, but also the authority to perform these functions largely independent of the control of others. In other words, individuals who perform sovereign functions under the direction of another are not officers." Tex. Att'y Gen. Op. No. DM-212 (1993), cited in JC-0029.

The problem is that while deputy constables are employed by a constable to serve at his will and direction, they are also peace officers who can exercise the sovereign power of search, seizure and arrest for even the most minor offenses, independently of the prior direction and supervision of the constable, See Texas Code of Criminal Procedure Art. 14.01(b) & 14.03. Courthouse clerks lack this broad discretion to exercise sovereign authority unsupervised.

Perhaps that is why they are classified as "peace officers" instead of peace employees. See TCCP art. 2.12.

Deputy Constables appear to have the minimum characteristics of officers within the current definition and would be required to reside in the county pursuant to Texas Const. Art. XVI Sec. 14.

Sincerely,


Joe Warner Bell, Trinity County Attorney
P. O. Box 979, Groveton, Texas 75845
(409) 642-1725 / TAB# 02094000