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OPINION COMMITTEE

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OFFICE OF THE
COUNTY ATTORNEY
DAVID T. GARCIA

January 16, 2002

Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0501-JC

FILE # ML-42389-DZ
I.D. # 42389

RE: Request for Attorney General Opinion

Honorable John Cornyn:

In reviewing the existing state law, there appears to be a conflict as to whether an elected or appointed Constable, who is not licensed as a peace officer during the first 270 days he holds office, has the authority to carry out the duties of a peace officer. The situation has become apparent in my county as you can see from the following facts.

Brooks County is presently served by three, out of the four, Constables who do not hold permanent peace officer's licenses pursuant to Section 1701.301 et seq. of the Occupational Code (originally Chapter 415, of the Government Code.) Initially, these three individuals were elected and failed to obtain their licenses within the first 270 days of having taken office, as required by Section 86.0021 of the Texas Government Code. After a *Petition for Leave to File Information in Quo Warranto* was filed in District Court, by my office, to declare those particular Constable Offices vacant, the affected Constables resigned. Thereafter, each one was appointed to the same office by the Commissioner's Court, which I understand allows them an additional 270 days from the date of taking office to obtain a peace officer's license.

The issue is whether these Constables, who do not hold a peace officers license, and are within the first 270 days of holding their office, are peace officers as defined by Article 2.12 (2) of the Texas Code of Criminal Procedure? Also, during the portion of the 270 day period in which they do not have an actual license, does each Constable have the authority and responsibility to act as a peace officer? Further, are they entitled to the same protection as peace officers? Please elaborate on their actual authority to wear a badge or uniform, carry a weapon, effect an arrest, or serve civil citations.

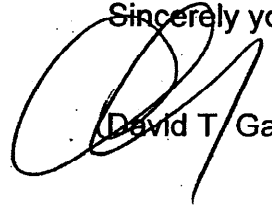
The conflict seems to result from the reading of Section (c) of 86.0021 of the Local Government Code which states that it supercedes the license requirements of Section 415.053 of the Texas Government Code (now contained in Section 1701.301 et. seq. of the Occupational Code) and Article 2.12 (2) of the Texas Code of Criminal Procedure, which defines peace officers as Constables who hold a permanent peace officers license.

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A.G. Opinion request

Please review this matter and issue an opinion answer to the question posed herein.

Thank you very much for your attention to this matter.

Sincerely yours,



David T. Garcia

DTG:bcr

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