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**Motley County Attorney  
TEMPIE T. FRANCIS**

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March 24, 2003

FILE # ML-43038-03  
I.D. # 43038

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MAR 26 2003  
OPINION COMMITTEE

The Honorable Gregg Abbott  
Attorney General of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

Re: Whether or not a county attorney is limited in the physical location of their private practice if earning less than 80% of the benchmark amount paid to the District Judge and therefore not covered by the Professional Prosecutor's Act.

To the Honorable Attorney General Abbott:

I am the elected Motley County Attorney. Motley County pays an annual salary of approximately \$12,000.00 per year. The State has paid a subsidy in the amount of \$16,950.00 for a total salary in the amount of \$38,950.00. The total amount of annual salary is less than 80% of the benchmark salary of the District Judge whose salary is \$101,700.

The following are the latest facts posted by the U. S. Census Bureau for Motley County, Texas:

Population:	1338
Between ages 18 and 65:	47.4%.
Average Residence Cost:	\$30,100.00
Annual Average Income:	\$16,584.00
Below Poverty:	19.4%

It is very difficult to foresee enough economic activity in Motley County, Texas to support a law office. Therefore, it is necessary to look to outlying communities generate additional income.

**Gregg Abbott, Attorney General**

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**I respectfully request an opinion to the following:**

**Whether or not I am limited to the location of any private practice office. For example, would I be allowed to maintain my prosecution office in Motley County and have a civil practice office in both Motley and Floyd counties?**

**A memorandum brief is attached.**

**Sincerely,**

**TEMPIE T. FRANCIS  
Motley County Attorney**

**TTF/ttf**

**CC: File**

## MEMORANDUM BRIEF

### Facts

The Motley County Attorney maintains an office in the Motley County Courthouse and is paid a salary in the amount of \$12,000.00. The State currently subsidizes the salary in the amount of 16,950.00 for a total salary of \$38,950.00. This amount could be stopped in the near future. The current benchmark salary is \$81,360. The Motley County Attorney receives less than the benchmark salary.

Motley County is part of the 110<sup>th</sup> Judicial District which is a four county district. The District Attorney is located in Floyd County and has felony jurisdiction. Motley County Attorney prosecutes the misdemeanor cases.

There are less than 1400 residence Motley County. Many of those residents either do not need the services of an attorney or cannot afford one. Therefore, to have a private practice, it is necessary to have offices in other counties.

### Authorities

The Texas Government Code restricts a County Attorney from having a private practice if all of the combine salary received is equal to or over 80 percent of the benchmark salary. See Sec. 46.005 Tex. Gov. The current amount of the benchmark salary is \$101,700.00 See General Appropriations Act, 77th Leg., R.S., ch. 1515, art. IV, 2001 Tex. Gen. Laws 5411, 5935. 'County prosecutor' means a constitutional county attorney who does not have general felony jurisdiction and who is not a state prosecutor. 'Benchmark salary' means the salary that is provided for a district judge in the General Appropriations Act." See Sec. 46.02 Tex. Gov. It applies to all county prosecutors. See Sec. 46.001 Tex. Gov.

### Arguments

The statutes are clear that if a county attorney who prosecutes misdemeanor cases does not receive a gross amount of \$81,360.00 he or she may engage in private practice. There are no express limitations on the type or location of private practice. Therefore, the county prosecutor may open an office outside the county where the prosecutorial office is located.

I receive a total of \$38,950.00 to represent the State in all misdemeanor cases. I am allowed to have a private practice in addition to being the Motley County Attorney. I do have some clients in Motley County and maintain a civil practice within the county but it is not able to generate sufficient income to maintain a law practice. The purpose for allowing a civil practice is a realization by the legislature that the rural counties are not able to pay the same amount as earned by other prosecutors so the prosecutors are allowed to do extra work in order to equalize the salary gap. In order to enjoy the ability to have a private practice it is necessary in the rural areas to extend said practice to adjoining counties.

Summary

So long as a county prosecutor does not earn more than 80% of the benchmark amount paid to a district judge the prosecutor may engage in private practice. There are no express limitations on the location of the private practice. A private practice operated by a county attorney may be located in a county other than where the attorney prosecutes. Therefore, as the Motley County Attorney at may have a law practice in Floyd County, Texas which adjoins Motley County.

Respectfully submitted,



Tempie T. Francis

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