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OPINION COMMITTEE

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October 31, 2003

Attorney General's Office
State of Texas

RQ-0128-GA

Re: Request for Legal Opinion

Dear Sir:

In my capacity as Baylor County Attorney Pro Tem, I am respectfully requesting an Attorney General's opinion concerning interpretations of Article 2.07 (attorney pro tem) and Article 2.08 of the Texas Code of Criminal Procedure. The fact situation is as follows.

I live in Baylor County, Texas but with my law offices located in Wilbarger County, Texas. My private office is that of a general practice with emphasis on all types of civil litigation as well as criminal defense.

In the month of October, 2002, I was approached by the Baylor County Commissioner's Court to be Baylor County Attorney Pro Tem. After speaking with an attorney who is County Attorney Pro Tem for another county and who also has a criminal defense practice, I accepted the position as Baylor County Attorney Pro Tem. I signed an oath as Baylor County Attorney Pro Tem and a General Order was executed and filed naming me as Baylor County Attorney Pro Tem.

Baylor County has no elected County Attorney.

The agreement is that I would be only a prosecutor as well as handle juvenile cases. In return, I am paid \$2,600.00, the County allows the hot check collection fees to be paid to the County Attorney's office secretary as a salary as well as I personally supplement her salary.

This agreement is terminable by either party without notice.

In or about January, 2003, I felt it prudent to start filing an Oath of Office as Baylor County Attorney Pro Tem and an Order appointing me as Baylor County Attorney Pro Tem in each individual case. This procedure is in effect as of the date of this request.

I have and continue to practice criminal defense. However, except for one case that I was appointed on at least two years ago, I do not practice criminal defense in Baylor County and it's judicial district (50th). On each criminal defense case, I expressly advise prospective clients that I am Baylor County Attorney Pro Tem and what my duties are.

In the latter part of July, 2003, the District Attorney's office for the 46th Judicial District expressed concern of whether I am disqualified to act as defense counsel. I contacted the Attorney General's Office as well as the Texas District and County Attorney Association and their respective representatives' impression was that I am not disqualified in doing a criminal defense practice as well as being appointed as Baylor County Attorney Pro Tem.

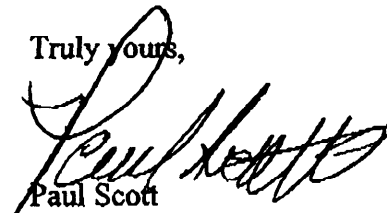
Article 2.08 of the Texas Code of Criminal Procedure states that county attorneys shall not be of counsel adverse to the State in any case. I interpret this to mean an elected official when you construe it with Article 2.07 (attorney pro tem). Article 2.07(a) refers to "any competent attorney" as well as Article 2.07(c).

The issue is whether an attorney is disqualified from acting as a criminal defense counsel when he is also appointed as county attorney pro tem in another county and in another judicial district.

Your attention and consideration to this matter is greatly appreciated. Of course, should you need additional information of clarification, please do not hesitate to call.

With best regards, I am,

Truly yours,



Paul Scott

PS:jab
cc: Hon. Tom Neely