



CAMERON COUNTY DISTRICT ATTORNEY

Armando R. Villalobos
County and District Attorney

March 9, 2005

Honorable Greg Abbott
Attorney General
Attorney General Opinion Division
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I.D. # 044153

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MAR 11 2005

OPINION COMMITTEE

RQ-0323-GA

RE: Request for an opinion concerning, whether the Cameron County Commissioners Court may create and appoint a Magistrate to a position at the County Detention Facility pursuant to section 27.055 of the Government Code.

Dear General Abbott:

This office is requesting an opinion concerning, whether the Cameron County Commissioners Court may create and appoint a Magistrate to a position at the County Detention Facility pursuant to section 27.055 of the Government Code.

The applicable statutes include the following: Texas Constitution Article 5, Section 18, Texas Code of Criminal Procedure Article 2.09, and Texas Attorney General Opinions C-235, 97-101, and JC-0083.

The Texas Constitution provides for the creation of Justice of the Peace precincts within counties based on the most recent federal census.¹ The population of Cameron County allows for the county to be divided into not less than four, and not more than eight precincts and, as a county with a population of more than 150,000, each precinct may contain more than one Justice of the Peace.² Cameron County currently has seven precincts, with four precincts containing two Justices of the Peace. While a County Commissioners Court can create a Justice of the Peace position under the Texas Constitution, the appointment of a qualified person to fill the new position, is only temporary.³ That position must be placed on the ballot at the next general election.⁴

There is no question that the Cameron County Commissioners Court has the authority to create a new Justice of the Peace position, either by creating a new precinct

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or creating a third or second Justice of the Peace position in an existing precinct, but that is not what has occurred in this situation, so it will not be addressed here.

In December of 2004, the Cameron County Commissioners Court created the new position of a Magistrate at the Carrizalez-Rucker Detention Facility in Cameron County, to assist in the functions of setting bond and giving statutory warnings to criminal defendants. This action was taken based upon a request from a Justice of the Peace advising the Commissioners Court that there was a backlog of cases at the jail that was placing a burden on the Justices of the Peace.

The Commissioners Court created the position under the authority of section 27.055 of the Government Code which states:

(b) If a justice is temporarily unable to perform official duties because of absence, recusal, illness, injury, *or other disability*, the county judge may appoint a qualified person to serve as temporary justice for the duration of the disability. The commissioners court shall compensate the temporary justice by the day, week, or month in an amount equal to the compensation of the regular justice. A temporary justice has all the rights and powers of the justice of the peace while serving in that capacity but may not make personnel decisions about, or significant changes in, the justice of the peace's office. (Emphasis added).

The Commissioners Court deemed the request from the Justice of the Peace to be a "disability" which would allow the creation of a position at the detention facility to perform "magistrate" functions at the detention facility.⁵

There is no case law directly on point as to how "disability" in section 27.055 should be defined in this instance. The case law that does exist in reference to this statute deals with Justices of the Peace excusing themselves from hearing a case due to some disqualification. This is not the situation before us.

The Attorney General's office has issued two opinions concerning section 27.055, but those opinions are not directly on point.⁶ Those opinions do, however support the temporary nature of appointments made under section 27.055.

For these reasons, we respectfully request an opinion as to whether the Cameron County Commissioners Court may create and appoint a Magistrate to a newly created position at the County Detention Facility pursuant to section 27.055 of the Government Code.

Honorable Greg Abbott
Attorney General

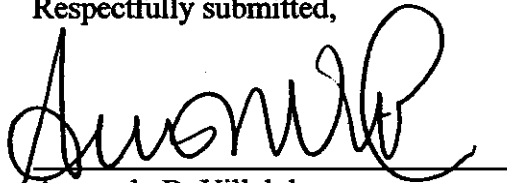
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It is respectfully requested that the Attorney General's staff prepare an Opinion on whether the Cameron County Commissioners Court may create and appoint a Magistrate to a newly created position at the County Detention Facility pursuant to section 27.055 of the Government Code. If you have any questions or need any additional information, please contact the undersigned.

Thank you for your time and attention to this request.

Respectfully submitted,



Armando R. Villalobos
County and District Attorney

¹ Texas Constitution Article 5, Section 18 (a).

² Id.

³ Texas Constitution Article 5, Section 18 (a).

⁴ Texas Attorney General Opinion C-235 (1964).

⁵ Texas Code of Criminal Procedure Article 2.09.

⁶ Texas Attorney General Letter Opinion 97-101, and Opinion JC-0083 (1999).