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OPINION COMMITTEE

COUNTY AUDITOR

CAMERON COUNTY, TEXAS
1100 E. MONROE
BROWNSVILLE, TEXAS 78523
(956) 544-0822

March 10, 2010

FILE # ML-46381-10

I.D. # 46381

Martha Galarza, CPA
COUNTY AUDITOR

RQ-0873-GA

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

*Re: Attorney General Opinion Request as authorized by V.T.C.A., Govt.
Code, Sec. 402.042(a)&(b)(8).*

Dear General Abbott,

ISSUE

The Cameron County Attorney requested a purchase order for the services of a law firm to represent him in a civil suit that he filed against Cameron County. He wants to pay for the legal services from his Fund 900 account, which is his account for forfeiture proceeds.

1. Is this an authorized expenditure of those funds within the meaning of V.T.C.A., Code of Criminal Procedure, Section 59.06(c)(1)?
2. Is this an authorized expenditure of those funds within the meaning of V.T.C.A., Code of Criminal Procedure, Article 102.007 (f)?

FACTS

On December 18, 2009, the County Attorney filed an Original Petition for Declaratory Judgment and Supplemental Injunctive Relief against the Cameron County Commissioners Court, in their official capacities, and against three attorneys employed by the Cameron County Commissioners Court. A Temporary Restraining Order was issued on December 18, 2009 and was followed by an Order of Temporary Injunction entered on January 19, 2010. Defendants, Cameron County and the three attorneys filed an appeal of that Order to the Thirteenth Court of Appeals on January 19, 2010. Until this time, the County Attorney has had his civil attorneys represent him in this lawsuit. The County Attorney has now hired a law firm to assist in the above mentioned lawsuit and is requesting a purchase order to pay this law firm for legal

services. On the requisition, he listed the account used for forfeiture proceeds as the funding source. I have attached a copy of the purchase order and invoice for your review.

DUTIES OF COUNTY ATTORNEY

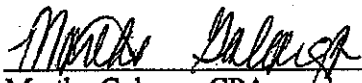
The Cameron County Attorney is elected by the people of Cameron County and commissioned by the Governor. (Texas Constitution, Article 5, Section 21) The duties of a County Attorney are set out in V.T.C.A., Code of Criminal Procedure, Article 2.02, which states that a county attorney shall represent the State in all criminal cases under examination or prosecution in said county below the grade of district court. Pursuant to V.T.C.A., Government Code, Section 46.001 and 46.002, the County Attorney in Cameron County is considered a state prosecutor, and therefore, also performs the duties of a district attorney as set out in V.T.C.A., Code of Criminal Procedure, Article 2.01.

RECENT ATTORNEY GENERAL OPINIONS

In Opinion No. GA-0755, the Attorney General in its summary stated that a district attorney is not authorized to utilize forfeiture funds under Code of Criminal Procedure Article 59.06(c)(1) to pay for the district attorney's legal defense. Although the requested expenditure by the County Attorney is not for his legal defense, it is an expenditure for legal expenses concerning a lawsuit instituted by him in a civil matter. I am not sure that this qualifies under Article 59.06(c)(1) as "official purposes of his office", and am requesting your clarification on this issue.

Thank you for your attention to the Request.

Respectfully submitted,



Martha Galarza, CPA
Cameron County Auditor

CC: Commissioners' Court
Pete Sepulveda, County Administrator

Encl.