

BOWIE COUNTY CRIMINAL DISTRICT ATTORNEY

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Leslie Daniel

January 12, 2011

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ARTICLE NO. 7001 1940 0004 6121 2268

AND

VIA FAX TRANSMISSION

FAX NO. (512) 463-2063

RECEIVED

JAN 13 2011

OPINION COMMITTEE

FILE # ML-46655-11
I.D. # 46655

RQ-0940-GA

Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
209 West 14th Street, 7th Floor
Austin, Texas 78711-2548

Re: Request for Opinion

Dear Attorney General Abbott:

It has been brought to my attention via public concerns and complaints, of a situation that has presented itself at the county courthouse. In an attempt to address these concerns, and in an effort to avoid any conflicts as the Bowie County Criminal District Attorney, I am requesting an opinion from your office regarding the following:

1. Whether the County Judge for Bowie County, Texas has the authority to contract with a "personal consultant" absent Commissioner's Court approval.
2. Does the County Judge violate the competitive bidding statutes by unilaterally contracting with a "personal consultant" and paid from the County Auditor's office?

Honorable Greg Abbott
Attorney General of Texas
January 11, 2011
Page: 2

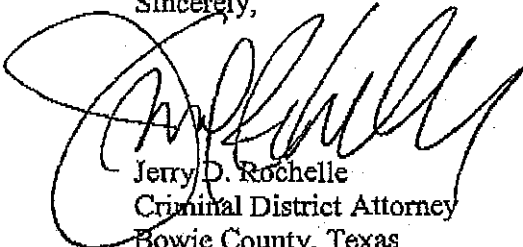
3. Does the County Judge's "personal consultant" have legal authority to review each elected official's office in order to prepare a manual for the County Judge on how that elected official's office should be run?

I am also enclosing the Brief in Support of Request for Attorney General Opinion.

Based upon this letter and the accompanying Brief, the Bowie County Criminal District Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to these questions.

Thank you for your attention to this matter and if your office should require additional information, please advise.

Sincerely,



Jerry D. Rochelle
Criminal District Attorney
Bowie County, Texas

JDR:lb
Enclosure

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**BRIEF IN SUPPORT OF
REQUEST FOR ATTORNEY GENERAL OPINION**

The Brief in Support of Request for Attorney General Opinion is filed herein with the accompany letter request of January 12, 2011.

QUESTIONS

1. Whether the County Judge for Bowie County, Texas has the authority to contract with a "personal consultant" absent Commissioner's Court approval.
2. Does the County Judge violate the competitive bidding statutes by unilaterally contracting with a "personal consultant" and paid from the County Auditor's office?
3. Does the County Judge's "personal consultant" have legal authority to review each elected official's office in order to prepare a manual for the County Judge on how that elected official's office should be run?

BACKGROUND AND FACTS

The newly-elected County Judge for Bowie County, Texas was sworn in on January 1, 2011. On or about January 3, 2011, the County Judge entered into an agreement for services by a "personal consultant" at the rate of \$50.00 per hour. The "personal consultant" was not approved by the Commissioner's Court, nor was the "personal consultant" hired as an employee of the County Judge's office. The individual was not placed on the county payroll as an employee, nor is the individual participating in the Texas Retirement System, nor is he on the county insurance plan. This office has no record of any qualifications in consulting this individual may possess. The Commissioner's Court has not appropriated funds for the "personal consultant" for the County Judge.

The County Judge's "personal consultant" is presently reviewing each office in the county, including elected officials, in order to prepare a manual on how each office should be run. The type of information the "personal consultant" is requesting includes job descriptions, personnel positions, and day to day operations of each office. The Commissioner's Court has not authorized such a study into the daily operations of county offices. This study is being instituted by the County Judge.

LEGAL AUTHORITIES

Tex. Const. Art. V 18(b) states in part:

The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

Tex. Loc. Gov't. Code, § 262.024 states in part:

A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the Commissioner's Court by order grants the exemption:

(4.) A personal or professional service.

Tex. Gov't. Code, § 2254 defines a county as a "Governmental entity" but does not define a County Judge as a "Governmental entity" nor does it list a "personal consultant" within the definitions of "Professional services."

An elected county officer "occupies a sphere of authority, ...within which another officer may not interfere or usurp." *Renkin v. Harris County*, 808 S.W. 2d 222, 226 (Tex. App. - Houston [14th Dist.] 1991, no writ)

Tex. Loc. Gov't. Code, § 262.034.

DISCUSSION

A county may enter into a contract for the purchase of any item that is exempt from the bid process established by Tex. Loc. Gov't. Code, § 262.023 if that item falls within one of the exemptions granted in Tex. Loc. Gov't. Code, § 262.024 and the Commissioner's Court grants the exemption. In the present case, the County Judge has unilaterally entered into a contract with an individual offering consulting services for \$50.00 per hour. The Commissioner's Court has not granted an exemption; thus, it appears that the County Judge's actions violate the competitive bidding statutes; therefore, the Commissioner's Court could not order the payment of those consultant

fees. Furthermore, the professional and consulting services provisions of Tex. Gov't. Code, § 2254 have not been followed, should that provision even apply to the facts at hand.

Tex. Loc. Gov't. Code, § 262.034 specifically sets out criminal penalties for a county office or employee who intentionally or knowingly violates the competitive bidding statutes of which Tex. Loc. Gov't. Code, § 262.024 is a part.

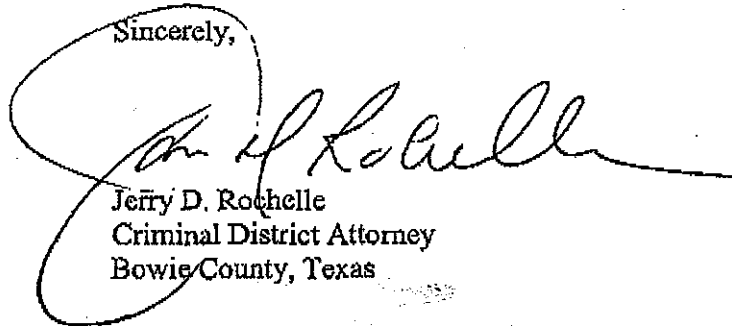
Should it be determined that the County Judge has the authority to contract with a "personal consultant" without an exemption being granted by the Commissioner's Court, then the "personal consultant" nor the County Judge have no authority to develop manuals on how each county office is to be run. It is well settled that an elected county officer "occupies a sphere of authority, ...within which another officer may not interfere or usurp." *Renkin v. Harris County*, 808 S.W. 2d 222, 226 (Tex. App. – Houston [14th Dist.] 1991, no writ) (citing *Pritchard & Abbott v. McKenna*, 350 S.W. 2d 333, 335 (Tex. 1961). The "sphere of authority" consists of those duties the Texas Constitution and statutes delegate to an officer. Research into this issue has found no authority by which a County Judge may direct how a county office is run.

REQUEST FOR LEGAL OPINION

Based upon the foregoing, the Bowie County District Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to the questions present.

Thank you for your attention to this matter.

Sincerely,



Jerry D. Rochelle
Criminal District Attorney
Bowie County, Texas

JDR:lb