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Attorney General of Texas
Attn: Opinion Committee
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Via Email: Opinion.committee@texasattorneygeneral.gov

Request for Attorney General Opinion on behalf of the Grimes County Constables

Dear Chairman and Members of the Committee:

At the request of the elected Constables of Grimes County, Texas for Precincts 1,2,3, & 4, I am requesting an attorney general opinion on the following issue(s):

1. May a Commissioners' Court impose a vehicle policy (such as attached to this request) on the elected Constable which regulates the use, deployment, recording, and tracking of vehicles allocated to the use of the Constable's office in order to perform his Constitutional and statutory duties?

If the answer is yes, the first issue is that the Commissioners' Court may impose such a vehicle policy on the Constables, then I request an opinion on the sub issues identified below regarding the following issues on behalf of the Grimes County Constables, the specific issues are presented:

- a) May a Commissioners' Court regulate the use of all vehicles operated in the course of Grimes County business (including vehicles allocated to the Constable) regardless of whether the vehicle is purchased, leased, awarded by grant funds, or legally seized and/or forfeited to the County (or subdivision of the County) by a county law enforcement agency by the appropriate judicial body?
- b) Once the vehicles have been allocated to the elected Constable through the budgetary process may a Commissioners Court maintain the option to deny use of a county vehicle assigned to the individual at any time including when such an individual fails to utilize the vehicle in the manner specified by the Commissioners' Court policy?
- c) Once the vehicles have been allocated to the elected Constable may a Commissioners' Court regulate the off-duty use of County vehicles that have been allocated to a Constable. And if so, what limitations may they impose?
- d) Once the vehicles have been allocated to the elected Constable may a Commissioners Court require an elected Constable to annually provide the County Auditor or Commissioners' Court

with a list identifying how said County vehicles are assigned? (See VIII A)

e) May a Commissioners Court review each assignment of a county vehicle, once allocated to the elected Constable of the vehicle to an employee of said agency or office to ensure it meets the criteria of the county vehicle policy? (See attached the proposed Grimes County vehicle policy)

f) May a Commissioners Court require the elected Constable to report to the Commissioners Court and address any inconsistency with the county vehicle policy that is pointed out to said elected official from their review as described in question (e) above?

g) May a Commissioners Court require an elected Constable pursuant to an adopted county vehicle policy to place a GPS vehicle tracking device on a vehicle allocated to the elected Constable?

h) May the Commissioners Court, individual commissioner, Auditor, County Judge, or any other county employee other than the elected Constable or their employees disclose or be required to disclose any vehicle GPS tracking information on a vehicle that is allocated to the elected Constable to Commissioners Court, the Auditor, County Judge, or any other county employee not employed by the Constable?

i) May a Commissioners Court, once a vehicle is allocated to the Constable, institute a county vehicle policy which forbids a Constable or employee of a Constable, that forbids from using a vehicle while enroute to or from work or during a break during work hours from running a personal errand while in the county vehicle?

j) May a Commissioners Court, once a vehicle is allocated to the Constable, institute a county policy which regulates the Constable or his/her employees ability to authorize an employee to have a take home vehicle?

k) May a Commissioners Court pursuant to a county vehicle policy require the Constable to provide the Commissioners Court with a list of authorized users of the county vehicle within the Constable's agency?

2. May a Commissioners Court require, pursuant to a county vehicle policy for an elected official, to impose discipline on one of its employees for alleged violation of vehicle policy?

If additional information and clarification is needed, please do not hesitate to contact me.

Sincerely,



Andria Bender
District Attorney
Grimes County, Texas

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Request for Attorney General Opinion on behalf of the Grimes County Constables

STATEMENT OF FACTS

On March 24, 2025, the Grimes County Commissioners Court considered a new proposed county vehicle policy. The matter was tabled and a committee of elected officials and county employees were appointed by the Commissioners Court to consider a proposed county vehicle policy and make recommendations to the Court on the issue. A meeting date was set for April 21, 2025 for a meeting of the appointed committee members. A proposed revised policy was sent out to committee members on March 24, 2025. The proposed policy is attached to this Request for Attorney General Opinion. On March 26, 2025 a Commissioners Court meeting was requested by one commissioner, an agenda was issued by the County Judge's office for consideration of a proposed policy and a new policy regarding GPS vehicle tracking devices on County vehicles was published. (See copy of proposed agenda items attached to this opinion request). The three elected Constables are elected officials covered by the proposed policy.

The vehicle policy by its terms seeks to regulate the use of the elected Constables vehicles, requires specific reporting requirements, an additional proposed policy would require installation of GPS tracking devices on county vehicles including the Constable offices vehicles, and allow access to that vehicle GPS tracking records by Commissioners or other county employees outside of the Constables office.

ARGUMENT

A commissioners court's responsibility for county business and to make the county's budget is a legislative function, and the commissioners court has broad discretion to oversee the county's fiscal operations and policies. *Griffin v. Birkman*, 266 S.W.3d 189, 194-95 (Tex. App.-Austin 2008, pet. denied). The principal power of the Commissioners Court with respect to other county offices, like the Constables, is the power of the purse strings. Tex. Att'y Gen. JC0214 at 2. Duties expressly assigned to the commissioners court include the implied authority to exercise powers necessary to accomplish those duties. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003). At the same time, the constitution and statutes grant other independent, elected county officers a sphere of county authority "within which the Commissioners Court may not interfere or usurp." *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961). The courts have held this allocation of the county's authority to the commissioners court and to other county officers creates a "delicate system of checks and balances." *Smith v. McCoy*, 533 S.W.2d 457, 459 (Tex. Civ. App.-Dallas 1976, writ dismissed). Meanwhile the limitation on a commissioners court's powers with respect to other elected county officials derives from "the policy that elected officers ... discharge the public trust and carry the responsibility for the proper discharge of that trust." *Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App.-Austin 1997, writ denied). However, an elected county official's exclusive sphere of authority consists only of the officer's core duties under the Texas Constitution and statutes. See *Griffin*, 266 S.W.3d at 197.

The Texas Constitution creates the constables office. Art. V, § 18. The general powers and duties of a constable are specified in the local government code (a) A constable shall execute and return as provided by law each process, warrant, and precept that is directed to the constable and

is delivered by a lawful officer. Notices required by Section 24.005, Property Code, relating to eviction actions are process for purposes of this section that may be executed by a constable and (e) The constable shall attend each justice court held in the precinct. Tex. Loc. Gov't Code Ann. § 86.021 (West 2008). A constable's duties arise from a variety of sources, but mainly from Local Government Code chapter 86 and from article 2 of the Code of Criminal Procedure.⁷ Local Government Code chapter 86 requires a constable to "execute and return as provided by law each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer." TEX. LOC. GOV'T CODE § 86.021(a); see also id. § 86.021(e) (also requiring a constable to "attend each justice court held in the precinct"). Under chapter 86, a constable's duty to serve legal papers includes the duty to execute and return warrants. See id. § 86.021(a). To the extent such authority includes an arrest warrant, a court would likely conclude that the execution of a warrant implies the duty to maintain law and order for an area such that it constitutes policing as we have defined it above. TEX. CODE CRIM. PROC. art. 15.01 (providing for warrant of arrest). Additionally, as peace officers, constables and deputy constables have the additional statutory duty to "preserve the peace within the officer's jurisdiction." Id. arts. 2.12(2), 2.13(a). Courts generally describe this duty as a "duty to prevent crime and arrest offenders." *City of Dallas v. Half Price Books, Recs., Mags., Inc.*, 883 S.W.2d 374, 376 (Tex. App.—Dallas 1994, no writ). Article 2.13 identifies some specific actions required of a peace officer to "effect this purpose" of preserving the peace. TEX. CODE CRIM. PROC. art. 2.13(a). A peace officer shall "interfere . . . to prevent or suppress crime," notify magistrates of penal law offenses, and arrest offenders. Id. art. 2.13(b). This authority under article 2.13 partly justified the Texas Supreme Court's decision that deputy constables are police officers without distinction from county sheriffs for purposes of the Texas Collective Bargaining

Act. See *Jefferson Cnty.*, 546 S.W.3d at 673. A court would likely conclude that the duty to preserve the peace involves some element of “policing,” “criminal investigation,” or “answering calls for service” as we defined those terms above. Thus, even if a constable’s chapter 86 duties factually do not constitute “policing, criminal investigation, and answering calls for service,” the constable’s peace officer duties likely always will. See generally *Garza v. Harrison*, 574 S.W.3d 389, 403 (Tex. 2019) (recognizing that “[p]eace officers retain their status as peace officers twenty-four hours a day” (quoting *Blackwell v. Harris Cnty.*, 909 S.W.2d 135, 139 (Tex. App.—Houston [14th Dist.] 1995, writ denied)). Thus, accordingly, a court would likely conclude that a constable’s duties under Local Government Code chapter 86 and Code of Criminal Procedure chapter 2 constitute policing, criminal investigation, and answer calls for service under subsection 120.002(a)(1) Court or other county employees outside the office of the elected Constable.

In KP-0111, the Attorney General’s Office addressed the question of whether a Commissioners Court could impose a vehicle policy on the sheriff of Llano County, Texas. *KP-0111 Atty. Gen. Opinion* (2016). It was the opinion of the Attorney General that a county could not impose a vehicle policy on the sheriff due to citing *Vondy II*, that a commissioners court “what it cannot do is “prevent the elected official from performing those duties required of him.” *Vondy II*, 714 S.W.2d at 422. However, if the question is whether the commissioners court may substitute its judgment for that of another constitutional officer in determining how to deploy the resources placed at his disposal, such a substitution would in our view amount to an invasion of that “sphere of authority, which is delegated to him by the Constitution and laws within which another officer may not interfere or *usurp*.” *Renken v. Harris County*, 808 S.W.2d at 226; accord *Abbott v. Pollock*, 946 S.W.2d at 517. For the same reason, it is the elected Constables position that Commissioners Court may

not micro-manage their deployment of cars already provided to the elected Constables to perform their Constitutional and statutory duties.

It is the law in Texas that an elected officer occupies a sphere of authority, which is delegated to him by the Constitution and laws, within which another officer may not interfere or usurp.” *Renken v. Harris County*, 808 S.W.2d222,226 (Tex. App.-Houston [14thDist.] 1991, no writ). Based on this statement of the law, the Attorney General’s office has said:

A commissioners court, which sets the budgetary priorities of a county and can decide generally how much of the county’s funds to dedicate to each of the county’s purposes, has thereby a considerable ability to shape the ways in which an elected county official uses the resources of his office. But it cannot make those decisions for him. It may, in effect, tell that official what resources it will place at his disposal. But it may not micro-manage his decisions as to the use of those resources. Tex. Att’y Gen. Op. No. JC-0214 (2000) at 3.

And, as a court has elaborated, “[a] sheriff is under as much obligation to conduct his office lawfully as is the commissioners’ court its duties.” *Tarrant County v. Smith*, 81 S.W.2d 537, 538 (Tex. Civ. App.-Fort Worth 1935, writ refd). Thus, the sheriff, and not the commissioners court, is responsible for seeing that the sheriff’s deputies use patrol vehicles only for lawful purposes. *Atty. Gen. Op. No. GA-0480*. Similarly, Constables, like the sheriffs, are constitutionally mandated officers and through statute have both civil process responsibilities and law enforcement duties charged with keeping the peace, policing, prevent and suppress crime, answering calls for service, and along with the civil duties imposed Constitutionally and by statute, thus, the commissioners court, just like with a sheriff, should not prevent the elected official from performing his duties or usurp their sphere of authority. The responsibility to see that constable vehicles are used for a lawful purpose lies with the elected Constables sphere of authority not with the Commissioners Court.

Furthermore, the issue of "May a Commissioners' Court impose a vehicle policy provision on the Constables Office requiring the Sheriff to equip certain vehicles with GPS tracking systems to which the Commissioners Court, individual commissioners, County Judge, County Auditor, and/or another county employee outside of the office the Constables there are

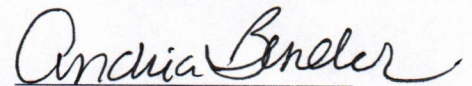
very practical reasons why this provision should not be imposed on the Constable's Office. As the conservator of the peace there are many law enforcement operations which are confidential in nature such as surveillance of criminal elements, meetings with people providing information to law enforcement, and patterns of patrol operations. In addition, Constables are frequently serving individuals who are subject to a lawsuit, divorce & other family law proceedings, evictions, and confiscation of property in satisfaction of a judgment all of which involve issues of privacy for those individuals and a breach of confidentiality of that information could violate those individuals privacy rights, as well as, expose them to possible harm, if a disgruntled litigant chose to take matters into their own hands. Furthermore, a breach of confidentiality of the geolocation data of the officers to potential harm, including, the exposure of their home address which under multiple state law provisions are allowed to be kept confidential from the public or expose the officer to danger while going about his duties. These law enforcement operations are exemplary of items within the Constable's sphere of authority in which limited information should be available to others and only shared on a "need to know" basis. Allowing others outside the Constable's sphere of authority to have unlimited access to movement of vehicles is to allow those without a need to oversee the specific law enforcement functions conducted by the conservator of the peace of the county and the statutory duty to serve civil service of process. Such information could result in reports generated which could be subject to public information requests when placed in hands other than the Constable's Office personnel. This information could seriously hamper law enforcement efforts, endanger people providing information to law enforcement, endanger victims of crime, endanger victims of domestic violence, as well as witnesses to criminal activity, and also threaten the safety of law enforcement officers. Any GPS tracking device installation on a vehicle in the Constables' fleets should be a decision made

by that elected official and that information is necessary for the Constable to perform his constitutional duties and within the discretion of the Constable and no other constitutional officer or department head.

SUMMARY

The Commissioners Court does not have the authority to impose a vehicle policy on the Constables which have been allocated for their use. Furthermore, Commissioners Court cannot impose a policy which requires the Constables to install vehicle GPS tracking devices or reveal that information to Commissioners Court or anyone who is not an employee of the Constables Office and to do so would impinge on the execution of their duties under the Texas Constitution, their statutory duties as law enforcement officers, and impermissibly impinges on their sphere of authority as elected officials.

Respectfully submitted,

A handwritten signature in cursive script that reads "Andria Bender". The signature is written in dark ink and is positioned above the printed name and title.

Andria Bender
District Attorney
Grimes County, Texas