



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2020

The Honorable James White
Chair, House Committee on Corrections
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0343

Re: Whether a peace officer has a duty to intervene to prevent another peace officer from violating the rights of a citizen (RQ-0357-KP)

Dear Representative White:

You ask about the duties of Texas peace officers.¹ You describe the policy approach of some police departments requiring “law enforcement officers to intervene to stop colleagues from using unreasonable force, i.e., violating a citizen’s constitutional and civil rights.” Request Letter at 1. You tell us “there seems to be an assumption that since there is not *specific* state statutory guidance for one Texas peace officer to ascertain if another peace officer is violating the rights of a detainee . . . there is not a requirement of any Texas peace officer to guarantee any constitutional protections.” *Id.* at 1–2. You ask specifically about two state statutes and question whether they may indirectly create a duty to intervene, and we limit the opinion accordingly. *See id.* at 2.

You first ask about Code of Criminal Procedure article 2.13, which establishes “the duty of every peace officer to preserve the peace within the officer’s jurisdiction.” TEX. CODE CRIM. PROC. art. 2.13(a); *see also id.* art. 2.12 (listing the various officers that are “peace officers”). Pursuant to that duty, a peace officer “shall . . . interfere without warrant to prevent or suppress crime” when authorized. *Id.* art. 2.13(b)(1); *see also* TEX. GOV’T CODE § 311.016(2) (explaining that “shall” generally imposes a duty when used by the Legislature). Thus, if a peace officer observes a crime in progress, whether committed by a member of the public or another officer, the peace officer has a duty to prevent or suppress that crime. *See Garza v. Harrison*, 574 S.W.3d 389, 403 (Tex. 2019) (“Peace officers are also expected to stop crime *whenever* it occurs.”).

You also ask about Penal Code section 39.03. Request Letter at 2. Section 39.03 provides, in relevant part:

¹*See* Letter from Honorable James White, Chair, House Comm. on Corrs., to Honorable Ken Paxton, Tex. Att’y Gen. at 2–3 (June 14, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0357KP.pdf> (“Request Letter”).

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful

TEX. PENAL CODE § 39.03(a). Peace officers, like any other public servants, are subject to prosecution for official oppression if they violate this provision.² *See, e.g., Ryser v. State*, 453 S.W.3d 17, 27 (Tex. App.—Houston [1st Dist.] 2014, pet ref'd).

While the two provisions about which you ask could apply to peace officers generally, whether they create a duty in a specific situation will involve fact questions beyond the scope of an attorney general opinion. *See* Tex. Att’y Gen. Op. No. GA-0956 (2012) at 3 (“Whether a person has committed a crime in any particular circumstance is a question of fact that cannot be resolved in an attorney general opinion.”); *see also* Tex. Att’y Gen. Op. Nos. GA-0774 (2010) at 7 (stating that proof of a person’s culpable mental state under section 39.02 of the Penal Code is a fact question that cannot be resolved in an attorney general opinion), GA-0326 (2005) at 6, JC-0020 (1999) at 2, DM-98 (1992) at 3, H-56 (1973) at 3. Moreover, you do not cite to any judicial opinion, and we find none, in which a court applied Code of Criminal Procedure article 2.13 or Penal Code section 39.03 to seek civil or criminal redress against a peace officer for failure to intervene. Thus, we cannot conclude that there is an absolute duty for an officer to intervene under the circumstances you describe.

²“Although not explicitly included in the Penal Code definition of a ‘public servant,’ courts have interpreted public servant to include a police officer.” *Carriere v. State*, 84 S.W.3d 753, 757 (Tex. App.—Houston [1st Dist.] 2002, pet. ref’d) (citing *Bryson v. State*, 807 S.W.2d 742, 745–46 (Tex. Crim. App. 1991), and *McCoy v. State*, 932 S.W.2d 720, 723 (Tex. App.—Fort Worth 1996, pet. ref’d)).

S U M M A R Y

Article 2.13(a) of the Code of Criminal Procedure makes it “the duty of every peace officer to preserve the peace within the officer’s jurisdiction.” Section 39.03 of the Penal Code makes it a criminal offense for a public servant to deny or impede “another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.” You do not cite to any judicial opinion, and we find none, in which a court applied Code of Criminal Procedure article 2.13 or Penal Code section 39.03 to seek civil or criminal redress against a peace officer for failure to intervene. Thus, we cannot conclude that there is an absolute duty for an officer to intervene under the circumstances you describe.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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