



OFFICE OF THE FRIO COUNTY ATTORNEY

Hector M. Lozano
County Attorney

Sally M. Monsivais
Secretary

Elmira Martinez
Crime Victim Coordinator

RECEIVED

DEC 28 2001

OPINION COMMITTEE

RQ-0484-JC

December 27, 2001

FILE # ML-42344-01

I.D. # 42344

The Attorney General of the State of Texas
Supreme Court Building
Attn: Ms. Susan Gusky
Opinions Committee Chairperson
Post Office Box 12548
Austin, Texas 78711-2548
CERTIFIED MAIL NO.: 7000 0600 0023 3677 7161

Re: Request for Attorney General's opinion relative to Section 86.0021(b) of the Texas Local Government Code

Dear Ms. Gusky:

We have one constable in Frio County that has not complied with Section 86.0021(b), Texas Local Government Code. In November of 2000 Armando Rodriguez was duly elected to the position of Constable for Precinct No. 3 of Frio County, Texas. On January 1, 2001, Armando Rodriguez was sworn in to his elected position as Constable for Precinct No. 3. Armando Rodriguez took the proper oath of office.

On October 5, 2001, it came to our attention that Mr. Rodriguez had not yet notified the Commissioners Court of evidence that he had been issued a permanent peace officer's license according to section 86.0021(b) of Texas Local Government Code. We contacted the Texas Commission of Law Enforcement Standards and learned that Mr. Rodriguez was not licensed under Chapter 415 of the Government Code. In fact, Mr. Rodriguez only has a Conditional Reserve License issued by the Commission on July 6, 2001, a copy of which is attached hereto.

On October 9, 2001, Mr. Rodriguez's licensure requirement status was placed on the Commissioners Court Agenda. (See attached copy of such).

As per Section 86.0021(b) of Local Government Code, this office took the position that Constable Rodriguez had 270 days (January 1, 2001, to September 28, 2001) to provide to Commissioners Court evidence that he had been issued a permanent peace officer license under Chapter 415, Government Code. Also that his failure to do so was a forfeiture of his office. One of the Commissioners took the position that Commissioners Court had nothing to do with this licensure matter. No action was taken by Commissioners Court.

Page 2

Re: Request for Attorney General's opinion relative to Section 86.0021(b) of the Texas Local Government Code

Since Section 86.0021(b) is fairly new law, we respectfully request an opinion from your office regarding the following issues:

1. What role does the Commissioners Court play in a Constable's failure to meet the licensure requirements under Section 86.0021(b) Local Government Code?
2. Whether a Constable who fails to provide evidence of licensure under Section 86.0021(b) Local Government Code, automatically forfeits his office?
3. Whether a Constable who fails to provide evidence of licensure under Section 86.0021(b) may continue to perform his duties as a Constable until a removal in a quo warranto proceeding under Chapter 66 Civil Practice and Remedies Code. If so, who authorizes and/or initiates a Quo Warranto proceeding?
4. Whether a Constable who has been issued a Conditional Reserve Officer License only, satisfies the licensure requirements under Chapter 415, Government Code? Does the Conditional Reserve License authorize the Constable to carry a weapon.
5. If an apparent conflict of interest exist between the County Attorney and Constable based on prior attorney - client representations, who may petition the District Court to file an information in the nature of quo warranto?
6. Whether said constable, who fails to meet the licensure requirements of 86.0021(b), Local Government Code, is subject to prosecution under Section 37.11 of the Texas Penal Code for Impersonating a Public Servant?

Sincerely,



HECTOR M. LOZANO

HML/ymm

xc: Files

Encls: as stated