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WITH FELONY RESPONSIBILITY

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January 11, 2002

John Cornyn
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548
Attn: Opinions Section

FILE # ML-42383-02
I.D. # 42383

Dear General Cornyn,

I would like to request an official opinion regarding the following matter:

The Lamar County Sheriff's Department and the Reno, Texas Police Department have requested an approval from our office to enter a mutual assistance agreement pursuant to Texas Local Government Code, section 362.002. Because of a shortage of law enforcement personnel, the agreement will permit Reno Police Officers to answer ordinary calls in Lamar County, outside the Reno City Limits, on an as needed basis. The Reno Police Officer would have full enforcement authority, including traffic, when responding to such calls or providing assistance at the request of the Lamar County Sheriff's Office. I seek an official opinion from your office about whether or not this type of an agreement would comply with Texas Local Government Code, sections 362.002 and 362.003.

The pertinent parts of Texas Local Government Code, section 362.002 provides as follows:

- (a) A county, municipality, or joint airport may, by resolution or order of its governing body, provide for, or authorize its chief administrative officer, chief of police, or marshal to provide for, its regularly employed law enforcement officers to assist another county, municipality, or joint airport. **This assistance may be provided only when the mayor or other officer authorized to declare a state of civil emergency in the other county, municipality, or joint airport considers additional law enforcement officers necessary to protect health, life, and property in the county, municipality, or joint airport because of disaster, riot, threat of concealed explosives, or unlawful assembly characterized by force and violence or the threat of force and violence by three or more persons acting together or without lawful authority.**
- (b) A county, municipality, or joint airport may, by resolution or order of its governing body, enter into an agreement with a neighboring municipality, joint airport, or contiguous county to **form a mutual aid law enforcement task force to cooperate in criminal investigations and law enforcement. Peace officers employed by counties, municipalities, or joint airports covered by the agreement have only the additional**

investigative authority throughout the region as set forth in the agreement. The agreement must provide for the compensation of peace officers involved in the activities of the task force.

(c) A law enforcement officer employed by a county, municipality, or joint airport that is covered by the agreement **may make an arrest outside the county, municipality, or joint airport in which the officer is employed but within the area covered by the agreement.** The law enforcement agencies of the area where the arrest is made shall be notified of the arrest without delay, and the notified agency shall make available the notice of the arrest in the same manner as if the arrest were made by a member of that agency.

The Pertinent part of Texas Local Government Code, section 362.003 provides as follows:

(a) **While a law enforcement officer regularly employed by one county, municipality, or joint airport is in the service of another county, municipality, or joint airport according to this chapter, the officer is a peace officer of the latter county, municipality, or joint airport and is under the command of the law enforcement officer who is in charge in that county, municipality, or joint airport. The officer has all the powers of a regular law enforcement officer of that county, municipality, or joint airport as fully as if the officer were in the county, municipality, or joint airport where regularly employed.** Qualification for office in the territory of regular employment constitutes qualification for office in the other county, municipality, or joint airport and no additional oath, bond, or compensation is needed.

(b) The law enforcement officer who is ordered by the official designated by the governing body of the county, municipality, or joint airport to perform police or peace duties outside the limits of that county, municipality, or joint airport where regularly employed is entitled to the same wage, salary, pension, and other compensation and rights, including injury or death benefits, as if the service were rendered in the county, municipality, or joint airport of the officer's regular employment. The officer is also entitled to payment for any reasonable expenses incurred for travel, food, or lodging while on duty outside the limits of the territory of the officer's regular employment.

(c) The county, municipality, or joint airport regularly employing the law enforcement officer shall pay all wages and disability payments, pension payments, damages to equipment and clothing, medical expenses, and travel, food, and lodging expenses. The county, municipality, or joint airport whose authorized official requested the services shall reimburse the original county, municipality, or joint airport after the payment is made and reimbursement is requested. Each county, municipality, or joint airport may make these payments and reimbursements regardless of any provision in its charter or ordinances to the contrary.

Subsection (a) of section 362.002, above, appears to require that any such agreement be limited to a situation where "the mayor or other officer authorized to declare a state of civil emergency in the other county, municipality, or joint airport considers additional law enforcement officers necessary to protect health, life, and property in the county, municipality, or joint airport because of disaster, riot, threat of concealed explosives, or unlawful assembly characterized by force and violence or the threat of force and violence by three or more persons acting together or without lawful authority".

Subsection (a) would appear to preclude the Lamar County Sheriff's Office and the Reno Police Department from entering an agreement of the kind they seek, even with the approval of the two governing bodies, because the agreement is not be entered into for one of the enumerated emergency

reasons.

However, subsection (b) of section 362.002 says that "A county, municipality, or joint airport may, by resolution or order of its governing body, enter into an agreement with a neighboring municipality, joint airport, or contiguous county **to form a mutual aid law enforcement task force to cooperate in criminal investigations and law enforcement.** Peace officers employed by counties, municipalities, or joint airports covered by the agreement have only the additional investigative authority throughout the region as set forth in the agreement. The agreement must provide for the compensation of peace officers involved in the activities of the task force". Subsection (b) of section 362.002 would appear to permit the kind of agreement our two law enforcement entities would like have.

I think this makes our specific question, does subsection (a) limit subsection (b) of section 362.002 to the kind of situations described in subsection (a), or does subsection (b) stand-alone pointing out additional circumstances where Section 362.002 intends that cooperative agreements by law enforcement agencies may be made?

Finally, if section 362.002 does permit the kind of cooperative agreements our two law enforcement entities seek, does subsection (c) of section 362.002 and the pertinent parts of section 362.003 permit the city officer, operating in the county pursuant to the agreement, authority to make traffic stops and conduct traffic enforcement if the written agreement grants him that authority ?

Recall, that under normal circumstances, the Code of Criminal Procedure permits a peace officer such as a Sheriff or city police officer to make an arrest for a violation committed in his presence any where in the State of Texas. However, if the offense is a traffic offense, only a DPS Trooper or State Ranger has state wide authority. The other peace officers are restricted to the geographical limits of their respective jurisdictions.

Thank you for your assistance in this matter. If you have any questions, or need additional information from this office, please contact County Attorney Mark Burtner or Assistant County Attorney Larry Maninger.

Sincerely,



Mark S. Burtner