RECEIVED
MAR 02 2004
OPINION COMMITTEE

Susan D. Reed
Criminal District Attorney
Bexar County, Texas

FILE # ML-43548-04
I.D. # 43548

March 2, 2004

Honorable Greg Abbott
Attorney General
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0189-GA

Re: Request for opinion on whether deputy sheriffs are "police officers" for purposes of collective bargaining under Local Government Code Chapter 174

Dear Attorney General Abbott:

The Commissioners Court of Bexar County, Texas (the "County") has received a petition presented by the Deputy Sheriff's Association of Bexar County[1] to conduct an election under Local Government Code ("LGC") Chapter 174 to determine whether deputy sheriffs as "fire fighters, police officers, or both" shall be entitled to collectively bargain with the County.[2] The Commissioners Court has responded to the petition and called an election of the issue for May 15, 2004, the next uniform election date.

**Issue:**

We are requesting your opinion, pursuant to Gov't Code 402.043, on the whether deputy sheriffs are "police officers" for purposes of collective bargaining under LGC Chapter 174.[3]

Both Local Government Code Section 174.003(3) and its statutory predecessor, Article 5451c-1, define "police officer" as a paid employee who is sworn,

[1] There are two organizations representing deputy sheriffs in the County. The other organization is the Bexar County Sheriff's Deputies Law Enforcement Organization
[2] The County has never previously adopted these provisions or the provisions of its predecessor.
[3] For purposes of this request we are not questioning the validity of the petition and other acts leading to its presentation to the Commissioners Court.

certified, and full-time, and who regularly serves in a professional law-enforcement capacity in the police department of a political subdivision. The narrower issue becomes whether the position of Sheriff, a constitutionally-created office[4] with duties prescribed by the legislature, is a police department.

**Case Law:**

There appear to be no cases construing the relevant section of LGC Chapter 174; however, there are four appellate cases, two each out of El Paso and San Antonio, and an AG opinion that involve its statutory predecessor, Article 5451c-1, which was moved to the LGC without substantive changes.[5]

The three earlier cases and the AG opinion seem to support the inclusion of deputy sheriffs in the definition of "police officers" for purposes of Article 5451c-1:

> Commissioners' Court of El Paso County vs. El Paso County Sheriff's Deputies Association, 620 S.W.2d 900 (Tex.App. – El Paso 1981, ref'd n.r.e). The court liberally construed Article 5154c-1, holding that deputy sheriffs and their public employers were covered by that statute.
>
> JM-469 (1986). Finding that airport fire and crash personnel were within the provisions of 5154c-1, Attorney General Mattox opined that the El Paso court had determined deputy sheriffs were "policemen" for purposes of that statutory provision.
>
> Webb County v. Webb County Deputies Ass'n, 768 S.W.2d 953 (Tex.App. – San Antonio, 1989, no writ). The issue before the 4th Court of Appeals was whether detention officers were "policemen" to be included in an existing collective bargaining unit; the court determined that they were.
>
> El Paso County Sheriff's Deputies' Association, Inc. vs. Samaniego, 803 S.W.2d 435 (Tex.App. – El Paso, 1991, no writ). The court agreed with Webb County that jailers fell under the statutory definition of "policeman" in the 5154c-1.

Although the foregoing cases seem to support the inclusion of deputy sheriffs in the definition of "police officers," the most recent case, for which writ was denied by the Texas Supreme Court, does not:

---

[4] Tex. Const. Art V, Sec. 23
[5] See attached copy of HB752 (73rd Legislature 1993).

City of San Antonio et al vs. San Antonio Park Rangers Association, 850 S.W.2d 189 (Tex.App. – San Antonio 1992, writ. den. 1993). In contrast to the above-cited opinions, the 4th Court of Appeals, relying on testimony before the legislative subcommittee that considered the bill for the 5154c-1, found that "the Texas Legislature limited this bill to include only firemen and city police officers instead of all professional law enforcement officers."[6] The Court also noted that the bill was not amended subsequently to include "other protective service employees" and has not been amended in the decade since. Accordingly, the Court found that San Antonio Park Rangers served in a professional law enforcement capacity but, by definition, were not "in the police department" and therefore could not be covered under the collective bargaining statute.

The Court went on to distinguish its earlier holding in Webb County, writing:

> "**In Webb County the right to bargain collectively was not raised or questioned** [emphasis added]. The only question on appeal was whether detention officers and jailers were included in the existing collective bargaining unit...[while] the question on appeal in the case at hand is whether San Antonio Park Rangers can bargain collectively." [7]

The distinction clarifies the limited extent of the holding in Webb County, removes any conflict in the holdings between the two cases, and is supported by the Supreme Court's denial of writ.[8] Thus, according to this most recent 4th Court opinion, it appears that sheriff's deputies are not entitled to collective bargaining under the Act.

---

[6] Id. at 192

[7] Id. at 193

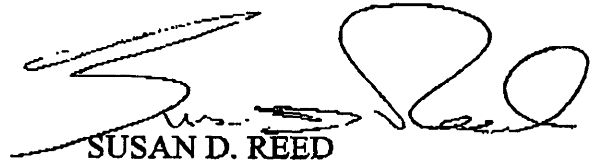
[8] In City of Antonio, writ was denied without comment on September 10, 1993. Webb County was never submitted on writ. The standard for conflicts jurisdiction is whether the rulings in two cases are "'so far upon the same state of facts that the decision of one case is necessarily conclusive of the decision in the other.'" Coastal Corp. v. Garza, 979 S.W.2d 318, 319 (Tex. 1998) (quoting Gonzalez v. Avalos, 907 S.W.2d 443, 444 (Tex. 1995)). Stating it another way: "for jurisdiction to attach on the basis of conflict[,] "the conflict must be on the very question of law actually involved and determined, in respect of an issue in both cases, the test being whether one would operate to overrule the other in case they were both rendered by the same court." Coastal, 979 S.W.2d at 319-20 (quoting Christy v. Williams, 156 Tex. 555, 298 S.W.2d 565, 567 (Tex. 1957)).

**Conclusion:**

City of San Antonio et al vs. San Antonio Park Rangers Association, for which writ was denied by the Texas Supreme Court, is strong authority for the proposition that sheriff's deputies are not "police officers" for purposes of LGC Chapter 174. The Fourth Court distinguished its earlier Webb County opinion by saying the right of deputy sheriffs to collectively bargain was not raised in that case.

Please feel free to contact to me if your office needs anything further on these matters.

Sincerely,



SUSAN D. REED

Attachment