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District 144
House of Representatives

OPINION COMMITTEE

April 2, 2004

FILE # ML-43617-04
I.D. # 43617

RQ-0206-GA

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Attn: Ms. Nancy Fuller, Chair, Opinion Committee

Dear General Abbott:

It is a long-standing practice of Texas commissioned peace officers employed by the state and by political subdivisions of the state to supplement their incomes as commissioned peace officers by working during their off-duty hours as private security guards. Indeed, the Texas Legislature has recognized and approved the practice, as least impliedly with respect to peace officers employed by political subdivisions in this state, *see* TEX. OCCUPATION CODE Ann. §1702.322, and expressly with respect to peace officers employed by the Texas Department of Public Safety. *See* TEX. GOV'T. CODE ANN. §§ 411.077,.078. *See* Tex. Att'y. Gen. Op. No. JC-0466 (2002) (holding, *inter alia*, that attorney general is not aware of any state or federal law prohibiting a commissioned peace officer from wearing his uniform and badge while working off-duty and suggesting that the peace officer's employer's employment policies regarding off-duty employment be consulted). Recently, however, it has been suggested that this long-standing practice violates section 36.07 (a) of the Texas Penal Code, which prohibits the acceptance of honoraria by public servants and provides the following:

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in connection for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

TEX. PENAL CODE ANN. § 36.07 (a). An offense under this section is a Class A misdemeanor. TEX. PENAL CODE ANN. § 37.06(c).



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In my capacity as Chair of the Committee on Urban Affairs of the Texas House of Representatives, I request an official opinion of your office regarding whether commissioned peace officers employed by the state or political subdivisions of the state who are also employed off duty as private security guards violate the Texas Penal Code provision prohibiting the acceptance of honoraria by accepting compensation for their off-duty employment.

Thank you for your attention to this request. If you or your staff require any additional information, please do not hesitate to contact me or my staff.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Talton".

Robert E. Talton
State Representative
Chair - Committee on Urban Affairs

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