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OPINION COMMITTEE



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July 13, 2005

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I.D. # 044282

Greg Abbot
Office of Attorney General
Attorney General Opinion Division
300 W 15th Street, Suite 205
Austin, Texas 78711-2548

RQ-0366-GA

Dear General Abbot,

I hereby request an opinion on the following matter.

Question: Is the elected Sheriff of a County, or a deputy hired by him, "an individual who acts in any capacity for a permitting authority" as defined by the Texas Administration Code Title 30 Chapter 285-On-Site Sewage Facilities or Chapter 30, subchapter A and G Licenses and Responsibilities?

Facts: 1. The permitting authority in Kimble County, Texas is Delbert Roberts.
2. TCEQ Region 8, representative Mark Finch has cited Bethel Standley, Designated Representative for Kimble County, for allowing an individual who acts in any capacity of the permitting authority to work as an OSSF installer.

3. Mr. Finch cited Marcus Thomas, a Kimble County deputy sheriff for the same violation.

Brief: The case of *Abbott v. Pollock*, cause No. 03-96-00149-cv. In the Third District of the Texas Court of Appeals (946 SW 2nd 513) contains a lengthy discussion of the position of a Sheriff and his employees in relation to the Commissioner's Court. As a part of the opinion it is stated that section 85.003 of the Texas Local Government Code unequivocally states that deputy sheriffs serve at the pleasure of the Sheriff, and are not employees if the County.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence F. Harrison".

Lawrence F. Harrison