

Carlos A. Deveda, Jr
County Auditor

COUNTY OF MAVERICK



370 N. Monroe St., Suite 1
Eagle Pass, Texas 78852
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OPINION COMMITTEE

FILE # ML-44609-06
I.D. # 44609

January 31, 2006

The Honorable Gregg Abbott
Attorney General
State of Texas
Post Office Box 12548
Austin, TX 78711-2548

RQ-0444-GA

Dear General Abbot:

I respectfully request your formal opinion concerning the ability to pay the sheriff, constable or any elected official associated with law enforcement for additional compensation after the salary has been set at the beginning of the budget.

The Sheriff has requested that under the Bryne Justice Assistance Grant funds be used to pay overtime (or additional compensation) for sheriffs or other elected officials (constables) working on the Operation Linebacker.

A memo is enclosed which states that the monies are exempt from the Texas Administrative Code (TAC) Section 3.75 (3) (a) and (c) in regard to funding compensation to an elected official and to paying overtime.

However, under the Local Government Code 152.013 (a) the Commissioners Court sets the salary and compensation for the elected official during the budget process and any increase must be properly published before it can be voted on. Once the salary is set, it may not be increased or decreased until the following budget process.

The question is therefore, State Law prohibits additional compensation once the salary is set, therefore can the sheriff and constable be paid additional compensation from the linebacker grant which is derived from the Department of Justice funds.

Thank you for assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Pereda, Jr.', with a stylized flourish at the end.

Carlos A. Pereda, Jr.

MEMORANDUM

To: Carlos Pereda
Maverick County Auditor

From: Ricardo Ramos
Maverick County Attorney

Date: January 12, 2005

Re: Overtime Pay to Sheriff Working on Operation Linebacker

SUBJECT: Overtime Payment to an Elected Official

The purpose of this memo is to provide you with a legal opinion on the question of whether it is permissible for Byrne Justice Assistance Grant (JAG) funds to be used to pay overtime for sheriffs working on Operation Linebacker. The general rule is that Elected Officials generally do not get paid overtime. However, there are exceptions to the rule and the Texas Administrative Code has carved an exception for elected officials such as the Sheriff. This exception can be found under the Texas Administrative Code §3.75 (c).

Section 3.75 (c) of the Texas Administrative Code states that Grantees may not use grant funds to provide overtime pay. Overtime pay is remuneration for hours worked in excess of full-time on a Criminal Justice Division (CJD) grant project. Grants under the Drug Court Program and the Local Law Enforcement Block Grant Program are exempt from this subsection. Grants under the Byrne Formula Grant Program are exempt from this subsection and instead CJD may approve requests to pay overtime in accordance with agency policy only for law enforcement officers assigned to a multi-jurisdictional task force and only from program income that is not used toward the minimum cash match requirement.

As stated in the code, Grants under the Byrne Formula Grant Program are exempt and CJD may approve requests to pay overtime in accordance with agency policy only for law enforcement officers assigned to a multi-jurisdictional task force and only from program income that is not used toward the minimum cash match requirement.

As we look at the facts before us, Operation Linebacker is a multi-jurisdictional task force being funded under Byrne Grant funds. It is my assumption that program income is funds provided directly from the Byrne Grant. Therefore, overtime pay is allowed for the Sheriff who is a law enforcement official and the overtime pay comes from program income.

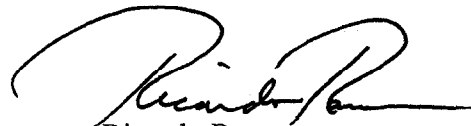
Operation Linebacker is a federally funded program administered by the Department of Homeland Security providing security to our borders.

The Texas Border Sheriff's Coalition had previously requested guidance from the Office of the Governor, Criminal Justice Division on the matter of overtime compensation for the Sheriffs. The response was that the border counties receiving JAG funds from the Office of the Governor, CJD to participate in Operation Linebacker are exempt from Texas Administrative Code §3.75 (3) (a) and (c) in regard to funding compensation to an elected official and to paying overtime. Please letter from Office of the Governor attached as exhibit A.

Deputy Sheriff Officers working on Operation Linebacker are currently receiving overtime compensation. These deputies are not operating in a vacuum. The Sheriff is the officer-in-charge for command and control purposes. The Sheriff has spent numerous hours supervising his deputies working on Operation Linebacker. Therefore, it is my legal opinion based on Texas Administrative Code §3.75 (c), the Sheriff should be paid overtime from the Byrne Grant being used to fund Operation Linebacker.

If you have any questions or require additional information, please contact me at 773-3520. Trusting that the above meets your approval and understanding, I remain. . .

Sincerely,

A handwritten signature in black ink, appearing to read "Ricardo Ramos", with a stylized flourish at the end.

Ricardo Ramos
County Attorney

Exhibit "A"



STATE OF TEXAS
OFFICE OF THE GOVERNOR
CRIMINAL JUSTICE DIVISION

RICK PERRY
GOVERNOR

December 12, 2005

Texas Border Sheriff's Coalition
c/o the Honorable Sigifredo "Sigi" Gonzalez, Jr.
Zapata County Sheriff
2311 STOP 23A
Zapata, Texas 78076-2810

Dear Sheriff Gonzalez and Coalition Sheriffs:

The Office of the Governor has received your inquiry as to whether it is permissible for Byrne Justice Assistance Grant (JAG) funds to be used to pay overtime for sheriffs working on Operation Linebacker.

The border counties receiving JAG funds from the Office of the Governor, Criminal Justice Division (CJD) to participate in Operation Linebacker are hereby exempted from Texas Administrative Code (TAC) Section 3.75 (3) (a) and (c) in regard to funding compensation to an elected official and to paying overtime. Overtime compensation for sheriffs, sheriffs' deputies, and other personnel may be paid with grant funds, providing the time is spent on Operation Linebacker activities. This exception to the Texas Administrative Code is made for the sole purpose of facilitating the Homeland Security components of Operation Linebacker. Please note that all other TAC requirements are in effect, including Section 3.75 (3) (b), which describes personal activity reports that must be maintained for personnel compensated with grant funds.

Please feel free to contact me if you have any questions.

Sincerely,

Ken C. Nicolas
Executive Director

cc: Steve McCraw, Director, Governor's Office of Homeland Security



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OPINION COMMITTEE

J. STEVE HOUSTON
COUNTY ATTORNEY

PH. 432-837-3520
FAX 432-837-7393

BREWSTER COUNTY ATTORNEY
107 W. Ave. E, #7
Alpine, Texas 79830

February 14, 2006

FILE # ML-44628-DL
I.D. # 44.628

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OPEN RECORDS DIV

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

RQ-0444-GA

Attn: Opinion Committee

Re: Can the Criminal Justice Division of The Office Of The Governor use
Byrne Justice Assistance Grant funds to pay overtime for sheriffs working
on Operation Linebacker?

Dear General Abbot:

On January 17, 2006, Brewster County Sheriff, Ronny Dodson, brought me the December 12, 2005 letter from the Executive Director of the Governor's Criminal Justice Division to the Texas Border Sheriff's Coalition (Exhibit A). Sheriff Dodson asked me if the letter meant that he could receive overtime pay from the grant funds for Operation Linebacker. That same day, I faxed a request to the Executive Director (Exhibit B) requesting a copy of the directive, order or statute exempting Sheriff Dodson from TAC § 3.75 (3) (a) and (c). The Executive Director subsequently called me and advised me that he had the power to exempt the sheriffs. However, he could not cite me to any authority which allows him to exempt the sheriffs.

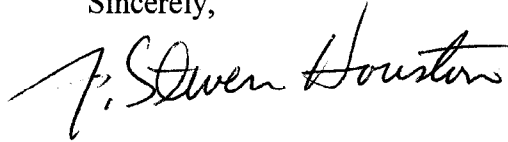
Subsequently, I informed Sheriff Dodson that it was my opinion that the sheriffs could not accept overtime pay from the Operation Linebacker grant funds. On January 25, Rick Glancey, Interim Executive Director of the Texas Border Sheriff's Coalition, e-mailed the border sheriffs to cease and desist from using grant funds from Operation Linebacker to pay overtime to elected sheriffs. (Exhibit C).

Enclosed is a copy of a news story dated February 2, 2006, regarding Operation Linebacker and the Texas Border Sheriff's Coalition (Exhibit D). I have been asked by the sheriffs to request an opinion from your office as whether:

1. TAC § 3.75 (3) (a) and (c) apply to the Operation Linebacker grant funds;
2. Can the Executive Director exempt the elected sheriffs from TAC § 3.75 (3) (a) and (c); and
3. If the Executive Director can exempt the elected sheriffs, is there any other federal or state statute which would prevent the elected sheriffs from receiving overtime pay?

Thank you for your prompt consideration of this matter.

Sincerely,



J. Steven Houston
County Attorney

cc: Ken C. Nicolas
Executive Director
Office Of The Governor
Criminal Justice Division
P.O. Box 12428
Austin, Tx 78711

Rick Glancey
Interim Executive Director
Texas Border Sheriff's Coalition
P.O. Box 221546
El Paso, Tx 79913

JSH/amh