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TOM GREEN COUNTY ATTORNEY'S OFFICE
CHRIS TAYLOR, COUNTY ATTORNEY

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

RQ-0464-GA

FILE # ML-44692-06
I.D. # 44692

**Re: Request for Attorney General Opinion
on applicability of Occupations Code §1702.322**

Dear Attorney General Abbott:

As County Attorney of Tom Green County and in accordance with V.T.C.A.,
Government Code § 402.043, I am requesting your opinion regarding the following issue:

Is a county jailer, who is a certified peace officer, has been appointed as a deputy
sheriff and meets the definition of peace officer as defined by Code of Criminal Procedure
Art. 2.12 and whose job description as a Jailer includes performing duties as described by
Code of Criminal Procedure Art. 2.13, covered by the law enforcement exception in
Occupations Code § 1702.322 (1) thereby allowing him to work, during his off duty hours, at
locations and functions providing security without having to meet the provisions of the Private
Security Act?

In keeping with the requirements of § 402.043, a brief on the merits of the issue has

been prepared and is enclosed. Thank you for your assistance in this matter.

Sincerely,



Chris Taylor
County Attorney for Tom Green County

**BRIEF IN SUPPORT OF OPINION REQUEST
CONCERNING APPLICABILITY OF OCCUPATIONS CODE § 1702.322**

A. Issue Presented.

Is a county jailer, who is a certified peace officer, has been appointed as a deputy sheriff and qualifies as a peace officer as defined by Code of Criminal Procedure Art.2.12 and whose job description as a Jailer includes performing duties as described by Code of Criminal Procedure Art. 2.13, covered by the law enforcement exception in Occupations Code § 1702.322 (1)?

B. Factual Background.

Tom Green County employs individuals who work under the direction of the Tom Green County Sheriff, to provide correction services at the Tom Green County Jail. The job of Jailer requires basic certification as a Corrections Officer from the Texas Commission on Law Enforcement Officer Standards and Education. Although the job of Jailer does not require certification as a peace officer some specific Jailers have also received certification as peace officers from the Texas Commission on Law Enforcement Officer Standards and Education. Jailers who have received certification as peace officers have also been appointed as Deputies of the Tom Green County Sheriff and therefore qualify as peace officers under Code of Criminal Procedure Art. 2.12.

The written job description for a Tom Green County Jailer is provided as Exhibit "A". Among the duties listed in the job description is a section under "Other Important Duties" that states:

If certified as a peace officer and appointed as a deputy by the Sheriff of Tom Green County as defined by Art. 2.12 Code of Criminal Procedure, employee will perform duties as described in Art. 2.13 Code of Criminal Procedure.

Although a jailer who is certified as a peace officer and has been appointed as a deputy by the Sheriff is empowered to perform any duty a peace officer could perform, the main job of a Jailer is to provide correction services at the Tom Green County Jail.

The Tom Green County Sheriff provides his deputies with a weapon, ammunition, uniforms and a patrol vehicle. A jailer, even if he is appointed as a deputy, is not normally provided with either a weapon, ammunition or a patrol vehicle. A Jailer may be provided a weapon and vehicle if he is assigned to the Transport Division of the Jail, which entails transporting prisoners to locations external to the jail facility. A jailer, who has been appointed as a deputy and is a certified peace officer, who is asked to patrol an area of the County outside the Jail Facilities would be provided the necessary equipment including a weapon, ammunition or patrol vehicle as needed.

C. Discussion and Analysis

Occupations Code Chapter 1702 is known as the Private Security Act. The Act contains an exception making it non-applicable to certain Law Enforcement Personnel. This would allow certain Law Enforcement Personnel to work, during their off duty hours, at locations and functions providing security without having to meet the provisions of the Private Security Act. Specifically, Occupations Code § 1702.322 (1) provides that this chapter does not apply to:

a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:

(A) is employed in an employee-employer relationship or employed on an individual contractual basis;

(B) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

Occupations Code § 1702.002 (15) defines "Peace officer" as a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

Code of Criminal Procedure Art. 2.12 states in part that:

The following are peace officers:

- (1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;"

Code of Criminal Procedure Art. 2.13 lists the duties and powers of peace officers as:

(a) It is the duty of every peace officer to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use all lawful means.

(b) The officer shall:

- (1) in every case authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime;

- (2) execute all lawful process issued to the officer by any magistrate or court;

- (3) give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and

- (4) arrest offenders without warrant in every case where the

officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

(c) It is the duty of every officer to take possession of a child under Article 63.009(g).

To be covered by the exception in Occupation Code § 1702.322 a person must have full-time employment as a peace officer and more specifically work as a peace officer on the average of at least 32 hours a week, be compensated at least the minimum wage and be entitled to all the employee benefits offered to a peace officer by the state or political subdivision. A Tom Green County Jailer who has been certified as a peace officer and appointed as a deputy by the Tom Green County Sheriff is a peace officer under Code of Criminal Procedure Art. 2.12 (1). A Jailer is a full time employee of the Tom Green County Sheriff's Department and receives at least the minimum wage. Part of the duties of a Jailer, if he is certified as a peace officer and appointed as a Deputy, include performing duties under Code of Criminal Procedure Art. 2.13 specifically preserving the peace within his jurisdiction. A Jailer who is a certified peace officer and has been appointed as deputy of the Tom Green County Sheriff is empowered to uphold the law and preserve the peace as any other deputy sheriff however patrolling the County would not be a normal part of his duty and as a Jailer he would normally be providing corrections services at the Jail.

The Tom Green County Sheriff makes certain employee benefits available to his deputies. These include furnishing the deputy with a weapon, ammunition, a uniform, and a patrol vehicle. A jailer is provided a jailer uniform, and is not normally provided with a weapon, ammunition or a patrol vehicle since actual physical patrolling outside the jail facilities is not part of a Jailer's duties. If a Jailer is assigned to the Transport Division of the

Jail he is provided with a weapon and vehicle to transport inmates to locations outside the Jail.

A jailer, who has been appointed as a deputy and is a certified peace officer, who is asked to patrol an area of the County outside the Jail Facilities would be provided the necessary equipment including a weapon, ammunition or patrol vehicle as needed.

Based on the information provided it is respectfully requested that a determination be made as to whether a jailer who is a certified peace officer, has been appointed as a deputy by the Sheriff and is therefore a peace officer under Code of Criminal Procedure Art. 2.12 would be covered by the law enforcement exception in Occupations Code § 1702.322 (1).

Respectfully submitted,



Chris Taylor
County Attorney
Tom Green County

EXHIBIT "A"

Job Description: JAILER

CLASS NO. 1407
Service Workers

EEOC CATEGORY: Protective

PAY GRADE: 16

FLSA: Nonexempt

SUMMARY OF POSITION

Provides corrections services involving the health, safety, and security of inmates and the public in the jail facility; monitors prisoners' activities; and maintains necessary records.

ORGANIZATIONAL RELATIONSHIPS

1. Reports to: Sergeant (Jail).
2. Directs: This is a non-supervisory position.
3. Other: Works with other departmental employees, other law enforcement agencies, inmates, and the general public.

EXAMPLES OF WORK

Essential Duties*

Monitors prisoner activity, using closed circuit television systems, radios, and intercom system;

Controls violent inmates, including physical restraints of inmates;

Processes incoming and outgoing prisoners and issues clothing and bedding;

Takes pictures and fingerprints of new inmates and sends information to Department of Public Safety using Automated Fingerprinting Identification System;

Maintains adequate supply of office forms;

Prepares various inmate reports;

Conducts searches, shakedowns, and inspections of prisoners as well as frequent cell searches for contraband;

Conducts cell checks hourly and inmate headcounts before and after each shift change;

Maintains accurate inmate and activity records on computer;

Prepares and distributes required medications to inmates;

Supervises inmate feeding and distribution/collection of food trays;
Supervises inmate recreation;

Counsels inmates when necessary;

Administers first aid to prisoners;

Takes phone calls from public and answers questions regarding facility and inmates;

Conducts jail facility tours when required;

Distributes inmates' mail weekly commissary goods and supplies; and

Supervises inmate visitations and telephone calls.

Other Important Duties*

May provide security for inmates hospitalized outside of jail facility;

If certified as a peace officer and appointed as a deputy by the Sheriff of Tom Green County as defined by Art. 2.12 Code of Criminal Procedure, employee will perform duties as described in Art. 2.13 Code of Criminal Procedure; and

Performs such other related duties as may be assigned.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge of: laws, departmental policies, rules, regulations, and correctional procedures regarding the custody of persons; and first aid and CPR techniques.

Skill/Ability to: produce clear and concise reports; maintain complete and accurate records; operate computer using standard word processing and data inquiry software, and radio, and security doors; establish and maintain effective working relationships with departmental employees, other county employees and officials, other law enforcement agencies, inmates, and the general public; demonstrate proficiency in both oral and written communication; and maintain appropriate necessary certifications.

ACCEPTABLE EXPERIENCE AND TRAINING

High school graduation, or its equivalent, plus at least one year of experience as a jailer.

or any equivalent combination of experience and training which provides the required knowledge, skills, and abilities.

CERTIFICATES AND LICENSES REQUIRED

Basic certification as a Corrections Officer from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).