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FEB 21 2007
OPINION COMMITTEE



FILE # ML-45129-07
I.D. # 45129

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February 16, 2007

The Honorable Greg Abbott
Attorney General
State of Texas
PO Box 12548
Austin, TX 78711-2548

RQ-0571-GA

Request for Attorney General Opinion re: Interpretation of §81.032, Local Gov't Code

Dear General Abbott:

Pursuant to section 402.043 of the Government Code, I request your opinion concerning the posed legal questions.

Factual Background

The District Attorney desires to supplement the compensation received by her employees. She has formed the intent to use her personal funds for this purpose. Her desire arises from the fact that despite their hard work on behalf of the District Attorney's Office and level of skill, the Cooke County Commissioners have so far refused to approve any real increase in the salaries of the employees (after adjustments for inflation). The salaries paid are no longer competitive even with other public sector jobs.

Understandably, the District Attorney would like to be able to avoid the payment of Federal Income Tax on the monies she uses for this purpose. As a result, she has proposed to create a non-profit corporation (exempt from Federal Income Tax under §501 (c)(3) of the Internal Revenue Code) whose purpose would be to accept deductible contributions which are then donated to Cooke County or the District Attorney for the express purpose of being used to either increase the compensation paid to the district attorney's employees for their services or otherwise to reward those employees.

The following questions are presented for your determination.

1. May the District Attorney accept donations of funds and use them at her discretion to pay

her employees for services or the work they perform (much like funds are disbursed from the fund created by fees collected under art. 102.007 of the Code of Criminal Procedure)? See Tex. Att'y Gen. Op. DM-357 (1995). If so, must the money be temporarily placed in the county treasury/depository and be subject to audit by the County Auditor? See Tex. Att'y Gen. Op. GA-0053 (2003).

2. If the District Attorney cannot accept and administer such donations, can (or must) *the proposed gifts* be accepted by the Cooke County Commissioners Court to be effectual, and would the donor's intent and any directions as to their use be binding (that is, not subject to change or diversion through the county budget process)?

Brief

In Tex. Att'y Gen. Op. No. GA-0229 (2004), it was determined that since no statute authorized the Smith County Sheriff to accept donated property, "the commissioners court is the proper body to accept property donations [to any county official] on the county's behalf." This ruling would appear to prohibit the District Attorney from accepting donations of money and then distributing them to her employees (if such action were deemed to involve property being gifted "on the county's behalf" and if the District Attorney is considered to be a "county official."). In that same opinion, it was stated that prior to enactment of §81.032 of the Local Government Code, a county "could not accept gifts of money . . . to use for county purposes." Presumably this refers to money which would normally be covered by the budget law. Ch. 111, Subch. A of the Local Government Code. Compensation of its employees would be considered a "county purpose." By implication, this means the only donations which a county may presently accept are those "for the purpose of performing a function conferred by law on the county or a county officer." It should also be noted that the county commissioners generally set the amount of the compensation given county employees who are paid *wholly* from county funds. §152.011, Local Gov't Code. Sec. 81.032 fails to address whether the donor's intent or precatory instructions as to use or specific purpose of the gifted funds must be followed by the Commissioners Court in accepting the gift.

Should you have questions or require additional information, please do not hesitate to let me know. I thank you in advance for your assistance in this regard.

Sincerely,



CINDY STORMER
District Attorney

CS/aml