

BOWIE COUNTY CRIMINAL DISTRICT ATTORNEY

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OPINION COMMITTEE

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May 5, 2008

FILE # AL-45677-08
I.D. # 45677

Mr. Greg Abbott
Texas Attorney General
Opinions Committee
Austin, Texas 78711-2548

RQ-0717-GA

Dear Attorney General Abbott:

As you may be aware, the City of Texarkana, Texas, is located on the state line adjacent to the City of Texarkana, Arkansas. This situation creates several complexities as it relates to law enforcement operations and peace officer jurisdiction across the state line.

The Texarkana, Texas Police Department in cooperation with the Texarkana, Arkansas Police Department operates a Bi-State Narcotics Task Force and a Metro Swat Team. These units were created for the purpose of having seamless law enforcement operations in the Texarkana area. The governing bodies of each City have passed an ordinance establishing an Interlocal Cooperation Agreement for mutual assistance in law enforcement. A copy of this ordinance is attached for your review. Additionally, the Attorney General of the State of Arkansas, Mike Beebe, issued Opinion 2006-175 regarding the jurisdiction of Texas peace officers operating in the State of Arkansas. A copy of the Arkansas Attorney General's opinion is also attached for your review.

Although relevant Texas Statutes and the Arkansas Attorney General's opinion have been helpful in clarifying these jurisdictional complications, there remain some questions regarding the interstate authority of the Texarkana Metro SWAT Team.

Specifically, our questions are as follows:

Do peace officers employed by the Texarkana, Texas Police Department have legal authority to use deadly force in the State of Arkansas while deployed as a part of the Texarkana Metro SWAT Team in the state?

Do peace officers employed by the Texarkana, Arkansas Police Department have legal authority to use deadly force in the State of Texas while deployed as a part of the Texarkana Metro SWAT Team in that state?

Do peace officers employed by the Texarkana, Texas Police Department have peace officer powers in the State of Arkansas outside the territorial city limits of the City of Texarkana, Arkansas, i.e., anywhere in Miller County or other Arkansas counties?

Do peace officers employed by the Texarkana, Arkansas Police Department have peace officers powers in the State of Texas outside the territorial city limits of the City of Texarkana, Texas, i.e., anywhere in Bowie County or other Texas counties?

If members of the Texarkana Metro SWAT Team do have peace officer powers and/or the authority to use deadly force in an adjoining state, specifically how far do those peace officer powers extend?

I would appreciate an opinion from you office regarding these interstate jurisdiction questions.

If you need additional information, please contact me at 903-735-4800

Respectfully,



Bobby Lockhart
District Attorney

BL/dl

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MAY 28 2008

OPINION COMMITTEE



FILE # ML-45677-08
I.D. # 45718

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May 25, 2008

Ms. Nancy S. Fuller
Chair, Opinion Committee
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0717-GA

Dear Ms. Fuller:

As per your letter dated May 14, 2008, please consider this letter as the brief in support of this office's opinion request.

Background

Texarkana, Texas, is a border city to Texarkana, Arkansas. The only thing which separates the two cities is a four lane street, State Line Avenue. Each city has it's own government, its own police departments, fire departments, and city services.

The Texarkana, Texas Police Department in cooperation with the Texarkana, Arkansas Police Department operates a Bi-State Narcotics Task Force and a Metro Swat Team. These units were created for the purpose of having seamless law enforcement operations in the Texarkana area. The governing bodies of each city have passed an ordinance establishing an Interlocal Cooperation Agreement for mutual assistance in law enforcement.

Questions Presented

- 1.) Do peace officers employed by the Texarkana, Texas Police Department have legal authority to use deadly force in the State of Arkansas while deployed as a part of the Texarkana Metro SWAT Team in that state?
- 2.) Do peace officers employed by the Texarkana, Arkansas Police Department have legal authority to use deadly force in the State of Texas while deployed as a part of the Texarkana Metro SWAT Team in that state?
- 3.) Do peace officers employed by the Texarkana, Texas Police Department have peace officer powers in the State of Arkansas outside the territorial city limits of the City of Texarkana, Arkansas, i.e., anywhere in Miller County or other Arkansas counties?
- 4.) Do peace officers employed by the Texarkana, Arkansas Police Department have peace officers powers in the State of Texas outside the territorial city limits of the City of Texarkana, Texas, i.e., anywhere in Bowie County of other Texas counties?
- 5.) If members of the Texarkana Metro SWAT Team do have peace officer powers and/or the authority to use deadly force in an adjoining state, specifically how far do those peace officer powers extend?

Legal Analysis

Both Texas and Arkansas have enacted statutes which address the powers of certified law enforcement officers in adjoining states working in municipalities within one mile of that state's border. Tex. Code of Crim.Procedure.Art. 2.124(b) states:

A commissioned peace officer of a state of the United States of America adjoining this state, while the officer is in this state, has under this subsection the same powers, duties, and immunities as a peace officer of this state who is acting in the discharge of an official duty, but only in a municipality some part of municipal limits of which are within one mile of the boundary between this state and the adjoining state and only at a time the peace officer is regularly assigned to duty in a county, parish, or municipality that adjoins this state. A peace officer described by this subsection may also as part of the officer's powers in this state enforce the ordinances of a Texas municipality described by this subsection but only after the governing body of the municipality authorizes that enforcement by majority vote at an open meeting.

Pursuant to the requirement of Art. 2.124, the City of Texarkana, Texas, has along with the City of Texarkana, Arkansas enacted an Interlocal Cooperation Agreement for Mutual Assistance in Law Enforcement. A copy of that agreement is attached hereto and incorporated herein by reference.

The State of Arkansas has enacted similar legislation which is codified in A.C.A. 16-81-115. The relevant part of that code reads as follows:

- (a) A certified law enforcement officer from an adjoining state who is in Arkansas shall have the authorization to act as described in subsection (b) of this section if the officer is:
- 1.) Regularly assigned to duty in a municipality that is within one (1) mile of an Arkansas border;
 - 2.) On the duty in his or her regularly assigned municipality at the time he or she enters the city limits of the Arkansas municipality; and
 - 3.) Within the city limits of the Arkansas municipality that adjoins the municipality to which the officer is regularly assigned.
- (b) If the governing body of an Arkansas municipality authorizes it, a certified law enforcement officer who meets the requirements of subsection (a) of this section:
- 1.) Has the same powers, duties, and immunities as a certified law enforcement officer of Arkansas who is acting in the discharge of an official duty; and
 - 2.) May enforce Arkansas law and the ordinances of an Arkansas municipality.

Additionally the Attorney General of the State of Arkansas issued Opinion 2006-175 regarding A.C.A.16-81-106. A copy of that opinion is attached hereto and incorporated herein by reference.

The law appears to be clear that law enforcement officers from either state have the authority to make arrests in either state as long as they are performing their duties within the confines of the enacted statutes.

The questions presented in which this office seeking clarification are:

1.) Can deadly force be used by either state's law enforcement officer in the city state?

Tex. Code of Crim Procedure, Art 2.124 states that a commissioned police officer from adjoining state has the same powers, duties, and immunities as a Texas police officer, but then that article sets specific limits, i.e. physical custody of an inmate at medical facility; transporting an inmate; regain physical custody. The statute is silent on the issue of deadly force and on the issue of cooperative ventures of a narcotics task force or SWAT team. After researching the Texas statutes and case law, this office has not been able to determine whether powers, duties, and immunities would extend to the Bi-State Narcotics Task Force or the Metro SWAT Team.

2.) How far does a law enforcement officer's duties extend into the other state?


Each state's relevant statutes appear to limit that territory to one mile from each state's border as long as within the municipality's limits. If this is an accurate interpretation of each statute, then it appears that neither agency can go beyond the one mile even if the city's limits extend more than one mile from the border. If this analysis is correct, then the narcotics task force and the SWAT team are severely limited as to where they can operate. This office has found no other statutes which would expand this one-mile limitation. The law appears clear that neither state's law enforcement officers can operate outside the municipality's limits. Additionally, this office has not been able to determine whether it is permissible for a law enforcement officer to operate outside the one-mile limit, but still within the municipality's limit.

Conclusion

There are statutes enacted in each state in which law enforcement officers can claim the powers, duties, and immunities of the adjoining states; however, the statutes speak in terms of transporting prisoners, making arrests, and other limits duties. There is no specific power given to use deadly force.

Each state's statute limits the distance in which a police office can act to within one (1) mile of the state's border. There is no provision for a law enforcement officer to outside of the municipality and extend in the respective counties.

Sincerely,


Bobby Lockhart

BL/dl