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OPINION COMMITTEE

FILE #ML-45777-08

Representative Joe Driver # 45777
Texas State Legislature
House of Representatives
Austin, Texas

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Chairman,
Committee on
Law Enforcement

July 25, 2008

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

RQ-0730-GA

Re: Request for Attorney General Opinion

Dear General Abbott:

It has come to my attention that some County Attorneys are commissioning reserve or non-paid peace officers. I am concerned that this practice has not been authorized by the Texas Legislature. Tex. Code Crim. Proc. Art. 2.12, which defines who are peace officers in this state, does not grant county attorneys the authority to carry commissions for reserve investigators. In contrast, Art. 2.12 does specifically grant authority to sheriffs, constables, and municipalities to retain reserve police officers. Likewise, Tex. Loc. Gov't Code sections 85.004, 86.012, and 341.012 set out the requirements for reserve officers respectively for sheriffs, constables, and municipalities, with no provision for county attorneys. Tex. Occupation Code section 1701.061 (6) defines reserve law enforcement officers in reference to Tex. Loc. Gov't Code sections 85.004, 86.012, 341.012, and Tex. Water Code section 60.0775. In summary, it appears that Texas statutes do not authorize a county attorney to have reserve or nonpaid officers/investigators. I am concerned about this because of its potential for abuse. If allowed County Attorneys can commission reserve or nonpaid officers and give them an identification card, without appropriate qualifications, since they are not subject to the requirements for reserve officers as set forth in Tex. Loc. Gov't Code 85.004, 86.012, 341.012 for sheriffs, constables, and municipalities. Instead, peace officer identifications can be provided to unqualified individuals as a reward for political support. This creates a risk of danger to the public and damages the professional reputation of peace officers in this state.

Therefore, I respectfully request an Attorney General Opinion on whether county attorneys have the authority to issue commissions for reserve or nonpaid peace officers.

Sincerely,

Joe Driver
Chairman, Law Enforcement Committee