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**OPINION COMMITTEE**

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November 17, 2010

Via CMRRR # 70081830000244542695  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

**RE: Request for Opinion**

Dear Attorney General:

The question has been proposed to our office as to who has command authority of a traffic accident scene? Specifically does the fire department or the sheriff's office have final say on where to land a helicopter? Please find our office's attached brief and supporting material regarding this matter.

Sincerely,

R. Lowell Thompson  
Criminal District Attorney

## REQUEST FOR OPINION

### I. Question

Does the fire department or the sheriff's department have the command decision at a traffic accident scene?

### II. Facts

On Saturday August 21, 2010 Navarro County Dispatch was alerted to a traffic accident between a passenger car and a motorcycle. A sheriff's deputy was dispatched to the scene of the accident. The deputy arrived at approximately the same time as the paramedics. However, the Navarro Mills Volunteer Fire Department was already on the scene. A State Trooper was also dispatched to perform the crash scene investigation which is the normal procedure for the county. Once all parties were on scene working, it was determined that some people involved in the accident should be transported to the hospital via helicopter. At which point the fire department and the sheriff's deputy began to argue regarding the placement of the landing site for the helicopter. Also the fire department's report states that the deputy asked a civilian to move one of the fire trucks in order to get the helicopter to land. The sheriff's deputy was of the opinion that he had command decision authority due to the traffic accident scene. The fire department chief asserted he had command based on his experience and the need to transport the patients to the hospital via helicopter. *See attached State's Exhibit 1* for the sheriff's deputy's version of the events. *See attached State's Exhibit 2* for the fire chief's version of the events.

After this incident has occurred the Sheriff's Office informed the Fire Department if they interfered with a deputy again the firemen would be taken to jail for violating *Tex. Pen. Code § 38.15(a)(1)*. However, there is a potential for the deputy to violate *Tex. Pen. Code § 38.15(a)(2)* during the execution of his duties as a peace officer.

This request for an opinion is submitted at the request of the Navarro County Criminal District Attorney's Office pursuant to *Tex. Gov't. Code § 402.043*.

### **III. Argument**

In order to adequately analyze this issue one must look at the respective positions of the parties and the legal authorities. Once a peace officer is notified of a traffic accident with serious injuries or death, the peace officer has a duty to investigate the crash scene. *See Tex. Trans. Code §550.041*. Furthermore, participants in a vehicle accident with injury or death have a duty to report the accident to the nearest law enforcement agency. *See Tex. Trans. Code §550.026*. Therefore, once a peace officer arrives on the scene of a traffic accident involving injury or death that peace officer is investigating a potential crime scene. *Tex. Crim. Proc. Code § 2.17* states the sheriff has a duty to keep the peace in the county and by inference enforce the laws of the State of Texas. By inference this requires the sheriff and his deputies to perform investigations of criminal activities. Additionally *Tex. Crim. Proc. Code § 2.20* states that all the duties and powers imposed on the sheriff also apply to any deputy of the sheriff. Therefore, the deputy sheriff has the authority to enforce the laws of the State of Texas at the scene of a traffic accident. Additionally, a peace officer may summon civilians to aid him in the execution of his duties and those who refuse to comply are subject to prosecution for their refusal. *See Tex. Crim. Proc. Code §2.14 and 2.15*. In this situation the sheriff's deputy appears to have summoned a civilian to ask him to move one of the fire trucks in order to designate a place for the helicopter to land. *See State's Exhibit 2*. Thus, the thrust of the sheriff's argument would be that the deputy was investigating a potential crime scene and peace officers have the responsibility of public safety and the flow of traffic therefore should be in command of the accident scene.

Of additional concern to the sheriff deputy and the Navarro County Criminal District Attorney's Office are the requirements of *Tex. Crim. Proc. Code § 2.03*. This section requires the Criminal District Attorney of Navarro County to charge an officer that has not executed his duty and *Tex. Pen. Code § 38.15* may require either the sheriff's deputy or the fireman to be charged with a crime if this situation presents itself again.

On the other hand, Navarro County has contracts with local volunteer fire departments to provide fire and emergency medical services to distant parts of the county pursuant to *Tex. Loc. Gov't. Code § 352.001*. Common sense would also dictate that the fire and emergency medical personnel would have the ability to make medical decisions on the scene. Furthermore, as a practice when a helicopter is called they are in contact with the fire and emergency service personnel via radio.

#### **IV. Conclusion**

It is the position of the Navarro County Criminal District Attorney, that the peace officer on the accident scene has command authority over the traffic accident scene. It is also the position of the Navarro County District Attorney that fire and emergency personnel should have authority to make medical decisions on the scene. However, clarification is needed on this issue.

## Offence Report

On Saturday 8/21/10 at 0958 HRS Dispatch sent medical personal to FM 744 at FM 667 reference to a major accident with injuries. Dispatch advised it was a vehicle verses motorcycle roadway was blocked. Deputy Lane advised he would be in route from HWY 31 at FM 667. Dispatch stated the Trooper was in route from the Rice area.

Deputy Lane arrived on scene as the Corsicana Medics arrived. Deputy Lane observed Navarro Mills Volunteer fire department on scene. Deputy Lane began assessing the situation. Dispatch advised that PHI medical Helicopter had launched and was enroute.

Phil Calvin Chief of Navarro Mills Fire Department approached deputy Lane. Phil demanded Deputy Lane move his patrol unit and clear the area for the landing zone. Deputy Lane checked the area and observed several sets of power lines close to the area as well as several other vehicles and witnesses.

Deputy Lane made a command decision to move the landing Zone to the west of the ambulance were only one set of wires were close and a more suitable area. All fire personal was occupied at the time. Deputy Lane moved a grass truck that belong to Navarro Mills and blocked the roadway with it. Deputy Lane walked back to the accident.

At that point Perry Calvin Phil's son walked by and said, " We need to clear the area for the landing zone". Deputy Lane told Perry I had set up a spot to the west of the accident and it was ready. Perry stated "who decided to change the spot and why?" Deputy Lane told him "I made the decision to move it for safety reasons.

At that time Phil began to become upset over Deputy Lane's command decision. Phil stated to Deputy Lane "That's fine that you moved it and you are now responsible for anything that happens" Deputy Lane told Phil " I understand that and that's why it was moved"

Deputy lane then began securing the scene for the Trooper to investigate the accident. Deputy Lane collected several photographs for the Trooper due to medical personal having to work in the accident area.

At that time the Corsicana Medics stated they were not able to fly the victim due to her crashing in the ambulance. Medics stated they needed the area cleared because they had to drive her to the hospital. Deputy Lane cleared the roadway for the medics. Trooper Williamson arrived on location.

Deputy Lane then had people move vehicles so at least one lane could be opened for traffic. Phil and Perry Calvin were asked to remain on scene once cleared so Deputy Lane had a chance to talk with them.

Once the roadway was opened and the vehicles were removed Deputy Lane had a chance to speak with Phil and Perry. Deputy Lane advised them that the Sheriff's Department has the authority to make command decision at the scene of motor vehicle accidents.

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Deputy Lane told them that a decision was made to move the landing zone. Deputy Lane explained that one of the locations they attempted to put the helicopter at was extremely dangerous due to having multiple power lines crossing the roadway to the south and east of the area.

Deputy Lane then explained that in some situations such as today the ambulance may need to leave before the helicopter and if they would have landed it where they wanted too, we would have had to wait on the helicopter to power back up and leave before getting the ambulance through.

Phil stated he felt Deputy Lane overstepped his authority as a law enforcement officer and advised he was in command of the accident scene. Deputy Lane told Phil that the safeties of the public as well as emergency workers and traffic control were a Law enforcements duty. Phil told Deputy Lane he has landed more helicopters and worked more accidents than Deputy Lane and he was tired of the Sheriff's Department officers always acting as if they are in command of the fire departments scene.

Deputy Lane attempted to explain that a motor vehicle accident that happened on a public right of way was a law enforcements responsibility and at that time and point the Law enforcement agency that was on scene is in charge.

Phil continued to disagree with Deputy Lane. Deputy Lane told Phil that we would just have to agree to disagree. Deputy Lane gave Phil a Business card and advised him to contact Chief Mike Cox on Monday if he was unclear of the Sheriff's Department responsibility. Deputy Lane cleared with no further incident.

End of Report

Saturday August 21, 2010 Navarro Mills VFD was toned out to a van vs motorcycle accident, with injuries, on FM 744 .2 of a mile west of RM 667. Upon arrival we had 2 patients on the ground. We put a brush truck on either side of the accident to control traffic and had 2 people directing traffic. After a scene size up we had Navarro Mills VFD personnel attending both people down. One was critical.

When Corsicana FD ambulance on scene we loaded female in the ambulance. PHI had been notified. I evaluated the scene and decided to set up a LZ at the FM 667 and FM 744 intersection. By this time a Navarro Co. Sheriff's deputy had arrived on scene, he was parked behind the ambulance. I asked him if he wanted to move his car back to the intersection or if he wanted me to have one of my men take a fire truck back there to block the road so we could set up a landing zone. My reasons being that to the west was a natural gas pipeline and strong winds coming down the pipeline right of way as well as power lines on the south of FM 744 and a fence on the north. At the intersection there were also power lines on the south but unobstructed areas to the north, east and west. This area would have been seconds away from scene.

Navarro County deputy Gary Lane informed me he was landing the helicopter to the west. When I tried to tell him it was safer to the east he informed me he was in command and had already talked to the ambulance personnel and was setting up landing zone to the west. Neither of the Corsicana medics were aware of the crosswinds, power lines or natural gas pipeline. At this time deputy Lane had a man move one of our fire trucks who was neither a firefighter nor a deputy about 100 yards down the roadway. Neither deputy Lane nor this individual had authority to move this vehicle.

After both patients were taken to Navarro Regional Hospital and scene was cleared deputy Lane came to me and informed me he had made a "command decision" to land the helicopter where he did. When we pointed out about the wind, power lines, pipeline and fence, he said he had aviation experience and there was no danger.

He said that we would have to agree to disagree and if we didn't like his decision we could contact Mike Cox. At this time we cleared scene.

According to Mike Cox at a Navarro County fire fighters meeting several years ago his deputies were to assist emergency personnel with traffic control and crowd control and he absolutely did not want the liability of taking over an emergency where people were injured and needed life support.

I believe deputy Lane over stepped his authority when he took "command" of my scene. I believe he should have been there to assist us where we needed help instead of taking over.

  
Phil W. Calvin Chief  
Navarro Mills VFD

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