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**OPINION COMMITTEE**



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February 15, 2011

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Investigators

The Honorable Greg Abbott  
Office of the Texas Attorney General  
Attn: Opinion Request Division  
P.O. Box 12548  
Austin, TX 78711-2548

**RQ-0944-BA**

FILE # MJ-466667-11  
I.D. # 466667

RE: Request for Attorney General Opinion

Dear Attorney General Abbott:

In Waller County, Texas the constable for precinct three annually receives funds as provided for by Chapter 1701 of the *Texas Occupations Code*. More specifically, section 1701.157 of said code provides these funds for the continuing education of local law enforcement officers. The Constable receives said funds and maintains them in a separate bank account over which he has sole control and access. Furthermore, the account is at a bank which does not have an official contract as a depository for county funds with the Waller County Commissioners' Court/Treasurer.

The Waller County auditor routinely requests copies of these bank statements, with information on deposits and expenditures from this account for the purpose of what she feels is her responsibility and duty as outlined in *Texas Local Government Code* section 112.006. More specifically, she feels that she must do so as part of her "general oversight of the books and records of a county...officer authorized or required by law to receive...money...that is intended for the use of the county or that belongs to the county."

The constable for precinct three does not want to provide her with these records and relies on JC-0190 which touches on a 1997 amended which deleted the previous requirement that counties and municipalities conduct their own audit of those funds.

I therefore respectfully request your opinion on these questions:

Laurie A. Sellers  
Assistant D.A.

Edna Hernandez  
Assistant D.A.

Ross Macha  
Assistant D.A.

Tiffany Bradshaw  
Assistant D.A.

Tia Williams  
Victim's Asst.

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Clarice Garcia  
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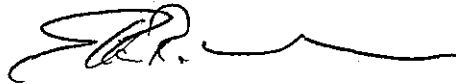
Lori Pfeffer  
Legal Assistant

- 1) Does the county auditor have general oversight of the books and records of the constable which are related to LEOSE funds made available under section 1701.157 of the *Texas Occupations Code*?
- 2) Must the county constable maintain said funds in a bank that has a contract with the county as an official depository of county funds?
- 3) Even if the county auditor does not have general oversight of the books and records of the constable which are related to LEOSE funds, would not the constable be required to provide the records under the Public Information Act if a written request for the same was received from the auditor?

I believe that an argument can be made that even though the LEOSE funds are state funds, they are transmitted to the county constable for the purposes of continuing the education of county constables and their deputies. Educating the constable and deputy constables is a county use of the funds by a county official. However, there is also an argument to be made that section 1701.157 specifically states that these funds are subject to audit by the comptroller and the state auditor. A plain reading of the statute indicates that the auditors for these funds are at the state level and not the county level.

Therefore, having this dispute between the county auditor and the county constable, and realizing that legal arguments can be made for both of their positions, I respectfully request your opinions on the questions above phrased. Do not hesitate to contact me with any questions or concerns that you may have.

Sincerely yours,



Elton R. Mathis  
Waller County Criminal District Attorney

Cc: Waller County Constable Duke Ali Shariff-Bey  
Waller County Auditor Vickie Tyson Hall