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OPINION COMMITTEE

September 15, 2011

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

Dear Attorney General Abbott:

This letter requests an opinion on whether a justice of the peace may hear truancy cases filed by a school district at the same time that the justice of the peace and the school district participate in an interlocal agreement whereby the services and compensation of an employee are shared jointly between the justice of the peace court and the school district for purposes of handling and facilitating truancy cases.

Background

The Laredo Independent School District ("LISD") employs school attendance officers as authorized by Tex. Educ. Code Sec. 25.088.¹ The school attendance officers employed by LISD are not commissioned peace officers. The attendance officers perform on behalf of the school district the responsibilities set forth in Tex. Educ. Code Sec. 25.091(b). Those responsibilities including filing cases against parents and students for violations of the compulsory school attendance laws. *See Tex. Educ. Code Sec. 25.091(b)*. The truancy cases are filed by the school district in the justice of the peace courts in precincts located within the school district's geographic boundaries, as provided by Tex. Educ. Code Sec. 25.094(b)(2).

Interlocal Agreement

In past years, LISD has entered into an Interlocal Agreement with Webb County ("County") by which the school attendance officers would simultaneously serve as "Juvenile Court Coordinators" in the justice of the peace courts in which LISD filed its truancy cases. A copy of the most recent executed *Interlocal Agreement Between Webb County and Laredo Independent School District for Juvenile J.P. Court Coordinators* ("Interlocal Agreement") is attached hereto as Exhibit "A". LISD is evaluating whether it may continue to enter into such an Interlocal Agreement with the County.

¹ TEC Sec. 25.088. SCHOOL ATTENDANCE OFFICER. The school attendance officer may be selected by: [...] (2) the board of trustees of any school district or the boards of trustees of two or more school districts jointly; [...].



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The language of the Interlocal Agreement between the County and LISD provides that LISD will designate a school attendance officer to serve as a “Juvenile Court Coordinator” for a Justice of the Peace court. *See Exhibit “A”*. Among other specified duties, the Interlocal Agreement provides that the Juvenile Court Coordinator will file truancy cases on behalf of LISD at certain times of the week and will also “assist the Justice of the Peace with truancy cases” at other times of the week. *Id.*, *Section II, Duties*. The Interlocal Agreement further provides that a Juvenile Court Coordinator will perform “other duties assigned by the Justice of the Peace [...]” *Id.*

The Interlocal Agreement specifies that the Juvenile Court Coordinators “shall at all times be employees of LISD and not employees of Webb County.” The Interlocal Agreement further provides that the compensation of the Juvenile Court Coordinators will be shared equally between the County and LISD.

Is a Juvenile Court Coordinator “an Officer of the Juvenile Court of the County”?

Relevant to this question is Tex. Educ. Code Section 25.089, which provides,

Sec. 25.089. COMPENSATION OF ATTENDANCE OFFICER; DUAL SERVICE.

- (a) An attendance officer may be compensated from the funds of the county, independent school district, or open-enrollment charter school, as applicable.
- (b) An attendance officer may be the probation officer or an officer of the juvenile court of the county.

Attempting to apply Section 25.089(b) to the school attendance officers/Juvenile Court Coordinators made the subject of the Interlocal Agreement, the attendance officers are not probation officers. The question remains whether they may be considered “officer[s] of the juvenile court of the county.”

A specific definition of an officer of a justice of the peace court could not be identified. However, the term “officer” is defined in the Texas Occupations Code as “a peace officer or reserve law enforcement officer.” *Tex. Occupations Code Sec. 1701.001(3)*. Again, LISD’s school attendance officers are not commissioned peace officers.

A “juvenile court” is defined in the Texas Family Code as “a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.” *Tex. Family Code Sec. 51.02(6)*.

Section 51.04 of the Family Code provides,

Sec. 51.04. JURISDICTION. (a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a

person who was a child within the meaning of this title at the time the person engaged in the conduct, and, except as provided by Subsection (h), the juvenile court has exclusive original jurisdiction over proceedings under this title.

(b) In each county, the county's juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsections (c) and (d) of this section.

(c) If the county court is designated as a juvenile court, at least one other court shall be designated as the juvenile court. A county court does not have jurisdiction of a proceeding involving a petition approved by a grand jury under Section 53.045 of this code.

(d) If the judge of a court designated in Subsection (b) or (c) of this section is not an attorney licensed in this state, there shall also be designated an alternate court, the judge of which is an attorney licensed in this state.

Although Section 51.04(h) provides that, in counties with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Education Code Section 25.094, that subsection is inapplicable to this analysis because LISD is located in Webb County, which has a population of approximately 249,000. *Tex. Fam. Code Sec. 51.04(h)*.

Code of Judicial Conduct

If Education Code Section 25.089 does not apply to an attendance officer acting as a Juvenile Court Coordinator for a justice of the peace court under the Interlocal Agreement, and is therefore not a statutory exception to the conflict of interest rules applicable to justices of the peace, then there is a concern that the Interlocal Agreement between the school district and the justices of the peace creates a conflict of interest for the justices of the peace that may provide a basis for a parent or student to challenge an order or decision of the justices of the peace in LISD's truancy cases.

The sharing of the Juvenile Court Coordinators' work on truancy cases between the school district and the justice of the peace courts appears to implicate the following Canons of the Texas Code of Judicial Conduct:

CANON 2 **Avoiding Impropriety and the Appearance of Impropriety** **In All of the Judge's Activities**

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

CANON 3

Performing the Duties of Judicial Office Impartially and Diligently

B. Adjudicative Responsibilities.

[...]

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

CANON 4

Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

D. Financial Activities.


(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. [...]

The Code of Judicial Conduct provides that each of the above-referenced provisions applies to justices of the peace. *See Texas Code of Judicial Conduct, Canon 6(C)(1)(a)-(b).*

Conclusion

The foregoing summarizes what is understood to be the relevant factual information and legal framework of the question presented to your office. Please let me know if you require any additional information for your consideration of this issue.

Sincerely,



Richard Peña Raymond
Committee Chairman

Enclosure

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