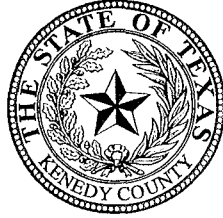


Jaime E. Tijerina
Kenedy County Attorney

Kenedy County Courthouse
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RECEIVED

DEC 01 2011

OPINION COMMITTEE

November 09, 2011

RQ-1023-CA

FILE # ML-46889-11
ID. # 46889

Honorable Gregg Abbott
Office of the Attorney General
C/O Jason Boatright, Chairman
Opinion Request Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Mr. Abbott:

Please accept this letter as a request for an opinion regarding whether the Kenedy County Elections Administrator may be assigned additional duties regarding 911 addressing and map preparation to facilitate the location of 911 addresses and to assist in the preparation of new redistricting Maps. (See attached letter from County Judge) I also ask whether it would matter if additional duties were done before and after normal working hours and whether the Elections Administrator was paid for additional duties or not.

I have attached a brief that includes a statement of facts, questions and argument.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Jaime Tijerina
Kenedy County Attorney


JET/tjm
Enclosures

STATEMENT OF FACTS

Kenedy County was the last county created in the State of Texas in 1921. It has a population of 416 as of the 2010 census.

Kenedy County commissioners' court created the position of Elections Administrator September 6, 2006. County elections commission filled the position shortly thereafter.

On May 12, 2008 911 addressing agent was hired and 911 addressing standards were adopted on September 8, 2008. 911 addressing in the county is largely complete. The current 911 addressing agent has indicated that he will be resigning in November, 2011.

The Kenedy County commissioners' court has expressed a desire to hire the Elections Administrator to perform the duties of the 911 addressing agent and pay the Elections Administrator an additional sum of \$500.00 per month.

QUESTION

Can an Elections Administrator perform the duties of 911 addressing agent for additional pay? Does it matter whether he performs the duties before and after normal working hours? Does it matter whether or not he receives additional compensation?

ARGUMENT

In pertinent part, Texas Election Code 31.043 reads:

The county elections administrator shall perform:

- (1) the duties and functions of the voter registrar;
- (2) the duties and functions placed on the county clerk by this code;
- (3) the duties and functions relating to elections that are placed on the county clerk by statutes outside this code, subject to Section 31.044; and
- (4) the duties and functions placed on the administrator under Sections 31.044 and 31.045.

The principle of expression unius est exclusion alterius, meaning that the naming of one implies the exclusions of others. As it relates to the facts at hand, the specific inclusion of the duties of the elections administrator in the election code implies that all other duties are excluded.

The inclusion of other duties would also violate the doctrine of incompatibility. Your office wrote in LO-88-62:

“That statutory scheme indicates that the legislature intended the elections administrator to be largely independent of both the commissioners court and the elections commission.”

If the commissioners court was allowed to offer additional compensation to the elections administrator by as little as a 3-2 vote it would potentially corrupt the office and would be ripe for abuse. Accordingly, additional duties for additional compensation would be incompatible with the duties of the elections administrator.

CONCLUSION

The elections administrator may not assume the duties of 911 addressing agent because the elections administrator's duties are specifically enumerated in the code, excluding all others. Additionally, the assumption of additional duties would violate the doctrine of incompatibility. Because the additional duties are incompatible, it does not matter whether they are performed before and after normal working hours or without compensation.

Louis E. Turcotte, III

Kenedy County Judge

Gayle Cordell
Court Administrator &
Director of County Operations



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October 20, 2011

Jaime Tijerina
Kenedy County Attorney
Sarita, Texas 78385

Re: Attorney General's Opinion Assignment of
911 and Mapping Duties to The Election's
Administrator

Dear Jaime:

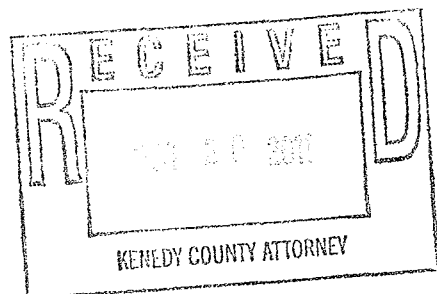
The Commissioner's Court would appreciate you obtaining an Attorney General's Opinion on the above referenced matter.

On July 11, 2001, the Kenedy County Commissioner's Court voted to request an Attorney General's Opinion whether the Elections Administrator may be assigned additional duties regarding 911 addressing and map preparation to facilitate the location of 911 addresses and to assist in the preparation of new Redistricting Maps.

The Election Administrator's present duties are governed by Election Code Title 3, Chapter 31.

Bill Fuller, the prior Kenedy County Appraiser, has been training the Election Administrator in the task of 911 addressing and in map preparation. The Election Administrator is willing to start and end his work day prior to 8:00 am and continue after 5:00 pm if necessary.

12:01 pm



Respectfully,

A handwritten signature in black ink, appearing to read "Louis E. Turcotte, III".

Louis E. Turcotte, III
County Judge
Kenedy County, Texas