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OPINION COMMITTEE

September 28, 2012

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Attorney General of Texas
Att'n: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

RQ-1087-GA

Request for Attorney General Opinion

Dear Chairmen and Members of the Committee:

At the request of the Sheriff of Clay County, Texas I am requesting an attorney general opinion on the following issues:

1. Is the Sheriff required to produce a Policy Manual to the Commissioners Court for their approval or rejection?

I have attached a brief on this issue, including a statement of facts giving rise to the situation.

If additional information or clarification is needed, please contact me by any of the methods listed above.

Thank you, in advance, for your attention to this matter.

Very truly yours,

Seth C. Slagle
SCS:sf
xc: Sheriff

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ISSUES PRESENTED

1. Is the Sheriff required to produce a Policy Manual to the Commissioners' Court for their approval or rejection?

STATEMENT OF FACTS

Two of the four Clay County Commissioners and the Clay County Auditor stated, in open Court, to the Sheriff of Clay County, Texas that his policy manual must be approved by the Court and that it must be approved yearly. Quoting from the recorded minutes kept by the Clay County Clerk (in mp3 format), Ramona Seward, Clay County Auditor, stated, in response to discussions about the Sheriff's policy manual being approved by the Commissioners' Court, "The law states that it has to be approved in Commissioners' Court." And further stating that, "The Sheriff's handbook policy has to be approved and adopted in Commissioners' Court annually." Precinct 2 Commissioner Johnnie Gee stated that "anything in the Sheriff's policy manual has to be approved in here" (meaning Commissioners' Court) In answering a question, the elected County Attorney, myself, stated, "the Commissioners' Court can't control what an elected official does within their own office." Precinct 1 Commissioner Lindy Choate responded to this statement with a simple, "wrong," followed by a hoarse chuckling laugh. The Sheriff of Clay County states that the Court has no authority over his policy manual. See Sheriff Lemons' Request letter attached, hereto and made a part of this record.

ARGUMENT

- I. **The County Commissioners' Court has no authority over the Sheriff of the County in reference to policy made by his office.**

The Constitution of the State of Texas states that the duties and qualifications of the Sheriff are prescribed by the Legislature. Tex. Const. art. V, § 23

The Legislature has defined the Sheriff's duties as follows: "Each sheriff shall be a

conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had." TX CRIM PRO Art. 2.17

There have been several Federal cases involving liability of a Sheriff or Constable as it relates to liability of the County, the following cases bear great weight in determining that the Sheriff is a separate entity apart from the County as a whole, as far as it relates to the Sheriff carrying out the duties entrusted to him by statute.

The Fifth Circuit in *Rhodes*, held that "Because of the unique structure of county government in Texas, the judge *-like other elected county officials, such as the sheriff and treasurer* -holds virtually absolute sway over the particular tasks or areas of responsibility entrusted to him by state statute and is accountable to no one other than the voters for his conduct therein. Thus, at least in those areas in which he, alone, is the final authority or ultimate repository of county power, his official conduct and decisions must necessarily be considered those of one "whose edicts or acts may fairly be said to represent official policy" for which the county may be held responsible under section 1983." *Rhode v. Denson*, 776 F.2d 107, 109 (5th Cir. 1985). The Rhode's case was a USC 1983 case in which a constable was sued for acts committed while he claimed he was in the scope of his duties and a jury held the county liable for those acts. The holding is applicable here because it states that a Sheriff is the final authority for his office.

The Fifth circuit stated in *Bennett* (Bennett involved the rape of an alleged murder suspect by the Archer County Sheriff) that "In this circuit, "[i]t has long been recognized that, in Texas, the

county sheriff is the county's final policymaker in the area of law enforcement, not by virtue of the delegation by the county's governing body but, rather, by virtue of the office to which the sheriff has been elected." *Turner*, 915 F.2d at 136 (citing and quoting from *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir.1980)). *Bennett v. Pippin*, 74 F.3d 578, 586 (5th Cir. 1996)

Following the reasoning in the above line of cases, a Houston Court of Appeals held that "a Texas Sheriff has the power to make and enforce rules, regulations, and policy." *See e.g., Rhode v. Denson*, 776 F.2d 107, 109 (5th Cir.1985). Sheriffs have the "authority to define objectives and choose the means of achieving them." *Id.*; *see also, Turner v. Upton County*, 915 F.2d 133, 135 (5th Cir.1990). In Texas, a county sheriff is the county's final policy maker "by virtue of the office to which the sheriff has been elected." *Bennett v. Pippin*, 74 F.3d 578, 586 (5th Cir.1996). *Fort Bend County Wrecker Ass'n v. Wright*, 39 S.W.3d 421, 425-26 (Tex. App. 2001)

Furthermore, the Sheriff of a County is an elected official, as such, he enjoys a "sphere of authority" in which he is free to manage his office without interference from the Commissioners' Court. *See Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961). The *Pritchard* Court held: "We are fully in accord with respondents in pointing out, as they do, that the County and the County Commissioners' Court are not synonymous nor are they one and the same. We quite agree that the County Commissioners' Court is not charged with the management and control of all of the County's business affairs. Each of the various elected officials, including the Assessor-Collector, has the sphere that is delegated to him by law and within which the Commissioners' Court may not interfere or usurp." *Id* at 335.

In *Commissioners' Court of Shelby County v. Ross*, the Commissioners' Court, in an effort to comply with the Fair Labor Standards Act, adopted a policy that would require any county

employee that worked in excess of forty (40) hours in any one work week to take the appropriate compensatory time off the following week. The deputies were found by the court to be in violation of the policy and were suspended for thirty (30) days and were notified that any future violations would result in termination. Their court held that "while it is the commissioners' court which possesses the authority to determine the number of deputies to be appointed and their compensation, it is the sheriff who has the absolute right to determine the persons to be appointed."

Commissioners' Court of Shelby County v. Ross, 809 S.W.2d 754, 756-57 (Tex. App. 1991)

The powers delegated to the Commissioners' Court, just like the Sheriff, are also set by the Constitution and the Legislature. I can find no statute on point that would allow the Commissioners' Court to intervene into the Sheriff's "sphere of authority" in carrying out the mandates of his office.

SUMMARY

The Commissioners' Court of a County has no authority over the Sheriff's policy manual. Which would mean that the Sheriff would not have to submit a policy manual annually to a Commissioners' Court for their approval or rejection.