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OPINION COMMITTEE

KERR COUNTY ATTORNEY

ROBERT HENNEKE

COUNTY COURTHOUSE, SUITE BA-103 • 700 MAIN STREET • KERRVILLE, TEXAS 78028

April 22, 2013

FILE # ML-47264-13
I.D. # 47264

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, TX 78711-2548

RQ-1124-GA

RE: Request for Attorney General Opinion regarding whether a Texas Government Code Chapter 52 Official District Court Reporter for a Multi-County District is an Employee of the State or the County(ies)

Dear Attorney General Abbott:

Pursuant to Tex. Gov't Code §402.043, I respectfully request that you provide this office with a formal written opinion regarding the following questions.

1. Whether the Official District Court Reporter for the 198th Judicial District is a State, County, or District employee?
2. If determined to be a District employee, does that make the Official District Court Reporter for the 198th Judicial District a State employee?

Please see the attached brief addressing the above referenced issues. I respectfully request waiver of the §402.042(c) requirement regarding submission of request via certified mail. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Robert Henneke".

Robert Henneke

cc: The Honorable Rex Emerson, 198th District Judge



KERR COUNTY ATTORNEY

ROBERT HENNEKE

COUNTY COURTHOUSE, SUITE BA-103 • 700 MAIN STREET • KERRVILLE, TEXAS 78028

April 22, 2013

The Honorable Greg Abbott
Attorney General of Texas
P. O. Box 12543
Austin, TX 78711-2548

RE: Brief in support of request for Attorney General Opinion regarding whether a Texas Government Code Chapter 52 Official District Court Reporter for a Multi-County District is an Employee of the State or, the County(ies)

The 198th Judicial District is established by State law and is composed of Edwards, Kerr, Kimble, McCulloch, Mason, and Menard counties. Tex. Gov't Code §24.377. District Judges are elected state officials. The 198th Official District Court Reporter was appointed pursuant to Chapter 52 of the Government Code.

Section 52.041 states that each Judge of a Court of record shall appoint an Official Court Reporter who is a sworn officer of the Court and holds office at the pleasure of the Court. The Official Court Reporter must take the official oath required of Officers of the State. *See Sec. 52.045*. Subject to Sec. 52.046, the Court Reporter typically serves the Judge who appoints them, rather than working tradition 40 hour week jobs; their jobs are described in terms of the tasks or duties to be performed, not the number of hours required. *See Tex. Atty. Gen. Op. No. JM-1083 (1989)*. The Official District Court Reporter is paid a salary set by Order of the Judge of the Court, but funded by the County, and budgeted by the Commissioner's Court. *See Sec. 52.051*.

Court reporters for hearings conducted by associate judges for child protection cases are state employees for all purposes. *See Tex. Fam. Code §201.207(a)*. In affirming this designation, the Attorney General equated a court reporter appointed pursuant to section 201 of the Family Code as being an "official court reporter" per chapter 52 of the Government Code. *See Tex. Atty. Gen. Op. No. GA-0164 (2004)*. District Court employees, even if paid from County funds, may be considered State employees because they are covered in the Government Code rather than the Local Government Code. *See Gill-Massar v. Dallas County*, 781 S.W.2d 612, 616-617 (Tex. App-Dallas 1989, no writ); *see also Yowman v. Jefferson County Cmty. Supervision & Corr. Dept.*, 370 F. Supp. 2d 568, 591 (E.D. Tex. 2005) (citing Op. Tex. Att'y Gen. No. JC-0314 for

the proposition that adult probation officers and employees are employees of the judicial district).

While analogous authority indicates that an Official District Court Reporter would be an employee of the District (and therefore of the State), the employment status of District Court Reporters appears to be unsettled. In light of the facts and authority presented, it is respectfully requested that the Attorney General resolve the following questions:

1. Whether the Official District Court Reporter for the 198th Judicial District is a State, County, or District employee?
2. If determined to be a District employee, does that make the Official District Court Reporter for the 198th Judicial District a State employee?