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OPINION COMMITTEE



JIM WHEELER, CRIMINAL DISTRICT ATTORNEY
WOOD COUNTY, TEXAS

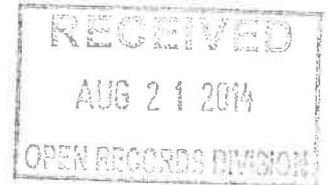
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*P. O. BOX 689 *QUITMAN, TX 75783 * 903-763-4515 * FAX: 903-763-5105*

August 18, 2014



Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, Texas 78711 – 2548

Dear Sir or Madam:

The Wood County Sheriff has a lake patrol program in place and is attempting to add equipment to enhance its effectiveness. No moneys from the 2014 Wood County budget have been so allocated, and the Commissioners Court has authorized the county to receive donations from the public to benefit the lake patrol program pursuant to Section 81.032 of the Local Government Code.

I am requesting an opinion from your office with respect to the following questions:

1. May the Wood County Sheriff receive donations directly from the public to be used in this program?
2. May the Wood County Sheriff solicit donations for such purpose?

A brief memorandum of law is attached which sets forth additional facts and legal concerns. I will look forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Wheeler".

Jim Wheeler

MEMORANDUM OF LAW

The Wood County Sheriff is attempting to raise funds to purchase a side scanning sonar for use in its lake patrol program. The Wood County 2014 budget does not have funds budgeted for this program, but has passed a resolution pursuant to Local Government Code Chapter 81.032 authorizing the Commissioners Court of Wood County to receive donations from donors to benefit this program. A copy of such resolution is attached hereto and is incorporated by reference. Several questions appear at issue immediately:

1. May the Wood County Sheriff receive donations *directly* for this program?
2. May the Wood County Sheriff *solicit* donations for this program?

MAY THE WOOD COUNTY SHERIFF RECEIVE DONATIONS DIRECTLY FOR THIS PROGRAM

It is the opinion of the requestor that the Wood County Commissioners Court has authority under Texas Local Government Code Section 81.032 to “accept a gift, grant, *donation*, bequest, or devise of money or other property on behalf of the county for the purpose of performing a function conferred by law on the county or a county officer. In this regard, Wood County has a number of lakes located within its boundaries which are open to the public and are regularly patrolled by various law enforcement agencies as well as the Wood County Sheriff’s Department. It appears from the clear wording of the local government code provision cited above that it was the clear intent of the legislature to address the type of need in issue.


However, the more precise issue is whether the Sheriff may receive donations directly or must donations be made to the Commissioners Court. This issue was addressed somewhat in Opinion No. GA-0562 (August 14, 2007). In that opinion, the committee indicated that donations must go through the Commissioners Court absent a specific authorizing statute to

the contrary. There does not appear to be any such statute with respect to the issue here. This reasoning was followed again in Opinion No. GA-0229 (August 9, 2004), citing Section 81.032 which generally authorizes a commissioners court to accept a donation to be used by the sheriff in performing that office's statutory functions.

MAY THE WOOD COUNTY SHERIFF SOLICIT DONATIONS FOR THIS PROGRAM

It is the opinion of the requestor that the Wood County Sheriff may not solicit donations for this program. Section 36.08 of the Texas Penal Code speaks to the issue of gifts to a public servant by a person subject to this jurisdiction. This code provides in section (a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency. This particular penal code prohibition would appear to apply to any type of solicitation effort whether it be by mail, in person, or even advertising through social media. It would appear that such penal code section prohibits solicitation of funds by the Wood County Sheriff for use in its lake patrol program.

Respectfully submitted,



Jim Wheeler
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