

BROWN COUNTY COURTHOUSE
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OPINION COMMITTEE

SHANE BRITTON
COUNTY ATTORNEY
BROWN COUNTY, TEXAS

FILE # ML-47719-15
I.D. # 47719

RQ-0018-KP

March 16, 2015

Hon. Ken Paxton
Attorney General of Texas
P. O. Box 12548
Austin, TX 78711-2548

RE: Attorney General Opinion pursuant to Section 402.042, Texas Government Code

Dear Attorney General Paxton,

Please accept this letter as a formal request, on behalf of Nina Cox, Brown County Auditor, for an Attorney General's Opinion.

On July 31, 2014, Brown County Commissioner Wayne Shaw was indicted by the Brown County Grand Jury for the offense of Theft by a Public Servant, \$1,500 to \$20,000, being a 3rd Degree Felony. On February 11, 2015, following a jury trial, Commissioner Shaw was found Not Guilty of the allegation in the indictment. Commissioner Shaw has now asked for an opinion regarding the appropriateness of him being reimbursed for all legal costs relating to his defense.

It would appear that the decision to reimburse a county official for legal costs associated with a defense to criminal charges is discretionary on the part of the Commissioner's Court. A county does not have a duty to provide for the criminal defense of any of its officers and employees. *See White v. Eastland County*, 12 S.W.3d 97, 102 (Tex. App.--Eastland 1999, no pet.). A pertinent statute, section 157.901 of the Local Government Code, requires a county to employ and pay for private counsel to represent a county official or employee in an action arising out of the performance of public duties. *See Tex. Loc. Gov't Code Ann. § 157.901* (Vernon 1999). The court in *White* determined that section 157.901 creates a duty to provide for a defense in civil cases, but does not create a duty to defend an official or employee against a criminal charge. *See White*, 12 S.W.3d at 102. The court in *White* also determined that the common law does not impose a duty on a county to pay for the criminal defense of its officers and employees. *Id.* at 103.

Although a county has no statutory or common-law duty to provide or pay for criminal representation of its officers or employees, it has the discretion to do so for certain kinds of claims. *See White*, 12 S.W.3d at 102-03. Provided that the official or employee is not found

guilty, the commissioners court may reimburse criminal defense costs upon its determination that the prosecution was for an act performed in the bona fide performance of official duties and that the expenditure will serve a public interest and not merely an officer's or employee's private interest. Tex. Att'y Gen. Op. No. GA-0523 (2007). A county's "decision to provide or not provide counsel is one of governmental policy and discretion." *White*, 12 S.W.3d at 104 (discussing a county's discretion to defend a sheriff from criminal charges). Accordingly, I am of the opinion that if the Commissioner's Court determines that the act for which Commissioner Shaw was indicted was done in the bona fide performance of his duties and that the expenditure serves a public interest, not merely Commissioner Shaw's own private interest, Brown County can reimburse him for his legal expenses.

Auditor Cox kindly requests your opinion on this matter.

With best regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Shane Britton', written in a cursive style.

Shane Britton
Brown County Attorney