

DISTRICT ATTORNEY'S OFFICE

33rd & 424th Judicial Districts

COUNTIES OF

BLANCO • BURNET • LLANO • SAN SABA

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District Attorney

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RQ-0100-KP

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FEB 26 2016

OPINION COMMITTEE

February 26, 2016

Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548
Via Email: Opinion.committee@texasattorneygeneral.gov

Request for Attorney General Opinion

Dear Chairmen and Members of the Committee:

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

1. May a Commissioners' Court impose a vehicle policy (such as that attached to this request) on the Sheriff which regulates the use, deployment, recording and tracking of vehicles allocated to the use of the Sheriff in order perform his Constitutional and statutory duties?

If the answer to the first issue is that Commissioners' Court may impose such a vehicle policy on the Sheriff, then I request an opinion on the sub issues identified in the accompanying brief and the arguments set forth therein.

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,

A handwritten signature in black ink, appearing to read "Wiley B. McAfee".

Wiley B. McAfee
District Attorney

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STATEMENT OF FACTS

On January 25, 2016, the Llano County Commissioners’ Court adopted the attached vehicle policy along with the included attachments. The policy is intended to apply to each county employee who drives a Llano County vehicle, whether the employee is hired by the Sheriff, or any other elected official. The policy has an acknowledgement page for each employee and elected official to whom the policy is intended to apply as follows: “I understand that the above policy is binding upon all officials and employees of Llano County. I have received a copy of this Vehicle Policy and have read and understand it.”¹

The policy includes elected officials, and department heads as “employees” in that policy.² The policy is intended to apply to all vehicles operated in the course of Llano County business including vehicles that have been allocated to the Sheriff and other elected officials. The Sheriff of Llano County is an elected official who would be covered by the policy.

¹ LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P.19 of 23

² “e. Employee

“In this Policy, employee means any elected official, department head, agent, contracted employee, employee, or other person authorized by the Commissioners’ Court to operate or utilize a County-owned vehicle.” *Id.*

The vehicle policy by its terms seeks to regulate the use of Sheriff's Office vehicles³, requires specific reporting requirements to the County Judge and County Auditor for the use of Sheriff's Office vehicles, requires access by the County Judge and County Auditor to Global Positioning System (GPS) records of Sheriff's Office vehicles, and contains other regulations that have historically been relegated to the Sheriff.

The Sheriff of Llano County has asked that I request an opinion from the Office of Attorney General to address the following issues:

ISSUES PRESENTED

1. May a Commissioners' Court impose a vehicle policy (such as that attached to this request) on the Sheriff which regulates the use, deployment, recording and tracking of vehicles allocated to the use of the Sheriff in order perform his Constitutional and statutory duties?

If the answer to the first issue is that Commissioners' Court may impose such a vehicle policy on the Sheriff, then the following specific issues are presented:

2. May the Commissioners' Court regulate the use of all vehicles operated in the course of Llano County business (including vehicles allocated to the Sheriff) regardless of whether the vehicle is purchased, leased, awarded by grant funds, or legally seized and/or forfeited to the County (or subdivision of County) by a county law enforcement agency by the appropriate judicial body? *See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P. 2 of 23.*

3. May the Commissioners' Court require the Sheriff to seek approval from Commissioners' Court for specific markings on vehicles purchased for use of the Sheriff? *See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P. 4 of 23.*

4. Once vehicles have been allocated to the Sheriff through the budgetary process, may Commissioners' Court maintain the option to deny use and/or require the marking of a county vehicle assigned to any individual at any time including when such individual fails to utilize the vehicle in the manner specified by Commissioners' Court policy? *See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P. 4 of 23.*

5. May a Commissioners' Court remove a vehicle from the Sheriff's Office inventory with notice to Sheriff's Office that the offending employee's action was so serious that they are denied right of use of any county vehicle and will not be eligible for mileage reimbursement for the use of their personal vehicle? *See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P. 4 of 23.*

³ The policy seeks to similarly regulate vehicles allocated to other elected officials and department heads as well the Sheriff. However, the Sheriff of Llano County has asked the District Attorney, as an authorized requestor, to request an opinion from the Office of the Attorney General. Therefore, references will be to Sheriff's vehicles.

6. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office that vehicles that are not equipped by the county with emergency equipment (visual and audible warnings) shall not be used as police vehicles, even if the driver is a qualified peace officer, employed by the Sheriff? See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P. 4 of 23.

7. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office in which individuals who operate county-owned vehicles outside the policy limitations prescribed in this policy and specifically Chapter B.2. of this Policy (*Operation* - See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, Pgs. 4-6 of 23.) will automatically forfeit the county's liability protection and will be held personally liable for any damage or injury resulting from such vehicle use? See LLANO COUNTY VEHICLE POLICY, B.2.e., Adopted January 25, 2016, P. 5 of 23.

8. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office in which the Sheriff must get prior approval from the Commissioners' Court to place any label, emblem, logo, symbol, flag, bumper sticker, or any other object or article on vehicles allocated to the Sheriff? See LLANO COUNTY VEHICLE POLICY, B.2.g., Adopted January 25, 2016, P. 5 of 23.

9. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring all Sheriff's Office employees who operate county-owned vehicles to maintain in effect a personal auto insurance policy and file it with the County Treasurer's Office at the beginning of each calendar year, along with a copy of their current valid Texas driver license with the appropriate authorizations to operate the County equipment to which they are or may be assigned? See LLANO COUNTY VEHICLE POLICY, B.3.c., Adopted January 25, 2016, P. 6 of 23.

10. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff to get prior approval for each individual employee and vehicle that will be remote or home storage vehicles? See LLANO COUNTY VEHICLE POLICY, B.3.d.(1), Adopted January 25, 2016, P. 7 of 23.

11. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff to obtain Commissioners' Court approval prior to making an offer of or otherwise approve the remote or home storage of a vehicle to a prospective or current employee? See LLANO COUNTY VEHICLE POLICY, B.3.d.(2), Adopted January 25, 2016, P. 7 of 23.

12. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff to equip certain vehicles with GPS tracking systems to which the County Judge and County Auditor shall have unrestricted delayed access to the GPS and any of its data? See LLANO COUNTY VEHICLE POLICY, B.3.d.(2), Adopted January 25, 2016, P. 7 of 23.

13. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff to submit his pursuit/emergency response policy to the Commissioners' Court prior to installation of audible and visual emergency equipment to vehicles allocated to the Sheriff? See LLANO COUNTY VEHICLE POLICY, B.3.j., Adopted January 25, 2016, P. 9 of 23.

14. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff to file a report to the Llano County auditor listing the date, time, destination, mileage, and

specific reason for travel outside the county, with failure to timely make such report result in making an employee ineligible to drive a county vehicle until the report is submitted and approved by the County Auditor? See LLANO COUNTY VEHICLE POLICY, B.3.l., Adopted January 25, 2016, P. 9 of 23. (emphasis added.)

15. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff's Office employees to submit the employees' driving records each year to the County Auditor by January 31 each year?

16. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office authorizing the County Auditor to issue warnings to Sheriff's Office employees for the negligent use of vehicles allocated to the Sheriff by Sheriff's Office employees with Commissioners' Court review and action on the negligent use to include Commissioners' Court transfer of vehicles from the Sheriff's office? See LLANO COUNTY VEHICLE POLICY, B.5.c., Adopted January 25, 2016, P. 12 of 23.

17. May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office which suspends fuel purchases by the county for Sheriff's Office official business due to violations of provisions of the vehicle policy? See LLANO COUNTY VEHICLE POLICY, Adopted January 25, 2016, P. 18 of 23.

ARGUMENT

1. The Commissioners' Court does not have authority to impose a policy on the Sheriff that controls use of the vehicles that have been allocated to his use for his constitutional and statutory duties.

The Sheriff is an independent constitutional officer, with independent rights and duties. Tex. Att'y Gen. LO-98-072, at 2. The Commissioners of a county, and the Sheriff of that county, are each constitutional officers. Tex. Att'y Gen. JC-0214, at 1 (referencing TEX. CONST. art. V, § 18 (establishing Commissioners' Court); *id.* art. V, § 23 (establishing the office of Sheriff.) The principal power of the Commissioners' Court with respect to other county officers like the Sheriff is the power of the purse strings. Tex. Att'y Gen. JC-0214 at 2. Law enforcement activities of a county are vested in officers such as Sheriff and not in the Commissioners' Court. Tex. Att'y Gen. JC-0125, at 1; Tex. Att'y Gen. H-1123, at 2. It is the law in Texas that an elected officer occupies a sphere of authority, which is delegated to him by the Constitution and laws, within which another officer may not interfere or usurp. Tex. Att'y Gen. GA-0480, at 4 (*citing Renken v. Harris County*, 808 S.W.2d 222, 226 (Tex. App. – Houston [14th Dist.] 1991, no writ). The Office of Attorney General in that opinion also reflected as follows:

A Commissioners' Court, which sets the budgetary priorities of a county and can decide generally how much of the county's funds to dedicate to each of the county's purposes, has thereby a considerable ability to shape the ways in which an elected county official uses the resources of his office. But it cannot make those decisions for him. It may, in effect, tell that official what resources it will place at his disposal. But it may not micro-manage his decisions as to the use of those resources. Tex. Att'y Gen. JC-0214.

The attached vehicle policy is very specific in controlling use of vehicles, reporting requirements for vehicle usage, and obligations placed on the County Auditor to effect the policy. The policy includes provisions which threaten the removal of vehicles from inventory for failure to comply with all provisions of the policy. Additionally the policy threatens to remove civil liability protection of employees based on the violation of any provision of the policy. As such, the Commissioners' Court is usurping the discretion of the Sheriff in the use and deployment of the resources provided by the court and micro-managing the Sheriff's operations as prohibited in the previously cited opinions.

Because no statute prescribes the manner in which a Sheriff is to conserve the peace, it is for the Sheriff, in the exercise of reasonable discretion, to determine how best to accomplish this duty. Tex. Att'y Gen. GA-0480, at 2 (*citing Weber v. City of Sachse*, 591 S.W.2d 563, 567 (Tex. App. -Dallas 1979, writ dismissed)). The patrol vehicles allocated to a Sheriff by a Commissioners' Court are tools to be used by the Sheriff to perform the Sheriff's law enforcement duties. *Id.* (*See also* Tex. Att'y Gen. GA-0158, at 4) By extension then, a Sheriff has discretion over the vehicles allocated to the Sheriff, including the discretion to determine how the Sheriff's deputies are to use those vehicles in providing law enforcement within the county. Tex. Att'y Gen. GA-0480, at 2.

Texas Constitution, article III, section 52(a), and the case law interpreting that article, circumscribes a Sheriff's discretion over county patrol vehicles, but it leaves to the Sheriff the authority to permit the use of the county's patrol vehicles in a manner that satisfies the public purpose doctrine, subject to judicial review. *Id.* at 2 (*emphasis added*). There is no provision in the Constitution for Commissioners' Court to have review over the Sheriff's specific use of vehicles allocated to him.

The adopted policy attempts to remove much of the discretion in the use of the vehicles allocated to the Sheriff from the Sheriff. As such, the policy serves to manage the resources provided to the Sheriff rather than providing those resources and allowing the Sheriff to exercise his own discretion within his sphere of authority.

The Commissioners' Court's primary function is to administer the county's business affairs. *City of San Antonio v. City of Boerne*, 111 S.W. 3d 22, 27 (Tex. 2003). The county and the Commissioners' Court are not synonymous, however: "[T]he County Commissioners' Court is not charged with the management and control of all of the county's business affairs. Each of the [county's] various elected officials...has the sphere that is delegated to him by law and within which the Commissioners' Court may not interfere or usurp." *Prichard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961). In Tex. Att'y Gen. GA-0994, at 3, Attorney General Abbott, determined that a court would likely determine the Commissioners' Court is not authorized to approve or disapprove of the Sheriff's office policy manual. The question presented in that opinion was whether a Commissioners' Court could require the Sheriff to submit his policy manual to the Commissioners' Court for approval each year. Attorney General Abbott further offered in the opinion that there was no statute of which the Office of Attorney General was aware that authorized a Commissioners' Court to approve or reject the office policy manual of an elected county official. *Id.* at 2. To the contrary, "a Texas Sheriff has the power to make and enforce rules, regulations, and policy [and has] the 'authority to define objectives and choose the means of achieving them.'" *Id.* at 2 (citing *Fort Bend Cnty. Wrecker Ass'n v. Wright*, 39 S.W.3d 421, 425-26 (Tex. App. – Houston [1st Dist.] 2001, no pet.)) Elected county officials such as a Sheriff hold 'virtually absolute sway over the particular tasks or areas of responsibility entrusted to [them] by state statute.' Tex. Att'y Gen. GA-0994, at 2 (citing *Hooten v. Enriquez*, 863 S.W.2d 522, 531 (Tex. App.—El Paso 1993, no writ). A court would likely conclude the creation of an internal Sheriff's policy manual is an area of responsibility entrusted to [the sheriff] over which the Sheriff has "virtually absolute sway." Tex. Att'y Gen. GA-0994,

at 3. Because the Commissioners' Court is not authorized to approve or disapprove the Sheriff's policy manual, it would stand to reason that neither can the Commissioners' Court impose its policy on the Sheriff.

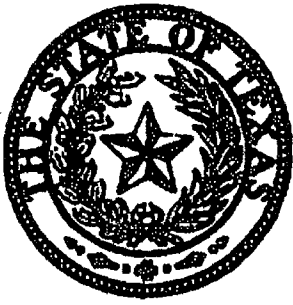
Because the remaining issues presented are contingent on the answer to the first issue, the remaining issues will not be reiterated in the argument. The argument for the first issue will apply to the remaining issues as well. However, on issue 7 which relates to the threat of removal of civil liability protection, additional argument must be made. A county's liability and immunity from liability through sovereign immunity is regulated in accordance with the Tort Claims Act, Tex. Civ. Prac. & Rem. Code Ann. § 101.001, *et. seq.* (Vernon 2005 & Supp. 2006). Since the sovereign immunity of a political subdivision of the state is waived through the Tort Claims Act, any immunity or qualified immunity will be subject to provisions of the Tort Claims Act as well. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.055 & 101.056. A policy of Commissioners' Court may not substitute its desired consequences for provisions of the law.

Additionally, Issue 12, "May a Commissioners' Court impose a vehicle policy provision on the Sheriff's Office requiring the Sheriff to equip certain vehicles with GPS tracking systems to which the County Judge and County Auditor shall have unrestricted delayed access to the GPS and any of its data?" requires additional briefing. In addition to the authorities previously cited, there are very practical reasons why this provision should not be imposed on the Sheriff's Office. The Sheriff is a constitutional officer who is a "conservator of the peace in his county." Tex Code Crim. Proc. Ann. Art 2.17 (Vernon 1977). As the conservator of the peace there are many law enforcement operations which are confidential in nature such as surveillance of criminal elements, meetings with person providing information to law enforcement, and patterns of patrol operations. These law enforcement operations are exemplary of items within the Sheriff's sphere of authority in which limited information should be available to others and only shared on a "need to know" basis. Allowing others outside the Sheriff's

sphere of authority such as the County Judge and County Auditor to have unlimited access to movement of vehicles is to allow those without a need to oversee the specific law enforcement functions carried out by the conservator of the peace of the county. Such information could result in generated reports which could be subject to public information requests when placed in hands other than the Sheriff's Office personnel. This information could seriously hamper law enforcement efforts, endanger persons providing information to law enforcement as well as witnesses to criminal activity, and also threaten the safety of law enforcement officers. The GPS tracking systems on vehicles allocated to the Sheriff's office have great utility in law enforcement operations. However, that information is necessary for the Sheriff to carry out his constitutional duties and within the discretion of the Sheriff and no other constitutional officer or department head.

SUMMARY

The Commissioners' Court of a county does not have authority to impose a vehicle policy on the Sheriff for vehicles which have been allocated to his use.



Rebecca Lange

Llano County Attorney's Office

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JUN 15 2016

OPINION COMMITTEE

June 14, 2016

FILE # RQ-0100-KP
I.D. # 48030

VIA CERTIFIED MAIL

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
Opinion.Committee@texasattorneygeneral.gov

Dear General Paxton and Members of the Opinion Committee:

I write today to request an attorney general opinion concerning Llano County vehicle policies. Last February, you received a request from the Honorable Wiley B. McAfee, the District Attorney for the 33rd and 424th Judicial Districts, both of which include Llano County. You designated it as Request No. 0100-KP. Said request asked the Attorney General to construe the provisions of a county vehicle policy adopted by the Llano County Commissioners Court ("Commissioners Court") on January 25, 2016, and to issue an opinion regarding the validity of numerous specific provisions within the Policy. Particularly, Request No. 0100-KP asked whether a "Commissioners' Court [may] impose a vehicle policy [such as the aforementioned Llano County Vehicle Policy] on the Sheriff which regulates the use, deployment, recording and tracking of vehicles allocated to the use of the Sheriff in order to perform his Constitutional and statutory duties". See Request No. 0100-KP at pg. 1. Further, The District Attorney posed numerous questions conditioned upon an affirmative answer to his principal question concerning the commissioners court's authority to adopt policies that regulate the use of county vehicles that have been allocated to county sheriffs. See *id.* at pgs. 3-5.

On April 25, 2016, the Llano County Commissioners Court ("Commissioners Court") adopted a Llano County Driver/Vehicle Policy Handbook ("County Policy" or "Policy") that will take effect on July 1, 2016. A certified copy is enclosed for your consideration. The Commissioners Court Order specifically repealed the Policy adopted on January 25, 2016. Upon reviewing the enclosed County Policy, you will note that it includes several provisions that differ from those set forth in the policy adopted on January 25, 2016. Accordingly, Request No. 0100-KP seeks your opinion regarding a county vehicle policy that has been repealed by order of the Commissioners Court. Consequently, to the extent that Request No. 0100-KP presented questions concerning the County Vehicle Policy that could be answered in the opinion process, it is no longer relevant. Therefore, I write to request an attorney general opinion concerning the County Policy that will be effective going forward.

Attorney General

May 25, 2016

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In addition to the authority of the commissioners court, this policy is supported by the statutory duties and responsibilities of the county auditor under Chapter 112 of the Local Government Code and other statutes. Ultimately, the new County Vehicle Policy will be implemented and administered by the county auditor.

Please provide your opinion regarding the following issues:

1. Whether a commissioners court and a county auditor have authority to adopt policies that impose reasonable controls and reporting requirements upon county employees' and elected officials' use of county-owned vehicles to ensure legitimate public purposes are accomplished through the allocation and use of such vehicles and to protect the county against legal claims and excessive or improper use of county equipment.

2. Whether a county auditor has authority to access and examine county records and to adopt and enforce regulations to ensure that county-owned vehicles are used by county employees and elected officials in a manner that accomplishes legitimate public purposes and that prevent the improper expenditure of county funds.

3. Whether the enclosed Llano County Driver/Vehicle Policy Handbook is a valid exercise of the Llano County Commissioners Court authority to ensure that county vehicles are allocated to accomplish legitimate public purposes, and the county auditor's authority to access and examine county records and to adopt and enforce regulations to ensure that county vehicles are used in a manner that accomplishes legitimate public purposes and protect the county from legal claims and to prevent the improper expenditure of county funds for the excessive or improper use of county equipment.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Rebecca Lange
Llano County Attorney

JPA/jem
Enclosures