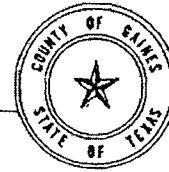


# COUNTY OF GAINES



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JUL 22 2016

OPINION COMMITTEE

RICK DOLLAHAN, County Auditor

P. O. Box 847

Seminole, Texas 79360

FILE # ML-48050-1b  
I.D. # 48050  
**RQ-0120-KP**

The Honorable Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
Attention: Opinion Committee  
P.O.Box 12548  
Austin, Texas 78711-2548

July 21, 2016

Sent Certified Mail, Return Receipt Requested  
Receipt No. 7014 0510 0001 0879 9572

And via email to [Opinion.Committee@texasattorneygeneral.gov](mailto:Opinion.Committee@texasattorneygeneral.gov)

1. Re: Whether the County Auditor can pay a claim presented by the 106<sup>th</sup> Judicial District, District Attorney (DA) to pay the Gaines County Attorney the sum of \$500.00 to compensate him for serving as a special prosecutor (not as an Assistant DA) appointed by the DA in Gaines County during a day when the DA was absent from the Gaines County Court.

## Opening Statement

I am the County Auditor for two of the four counties in the 106<sup>th</sup> Judicial District (Gaines and Dawson Counties). Dawson County being the administrative county for both the court and the DA budget and funds. My office processes accounts payable claims for the 106<sup>th</sup> DA.

On July 11<sup>th</sup>, 2016 my Dawson County Office was presented a letter from the Honorable Mr. Michael Munk, 106<sup>th</sup> DA, directing the payment of \$500.00 to the Honorable Mr. Joe Nagy, Gaines County Attorney, for "services rendered as a Special Prosecutor in Gaines County, July 1, 2016" Mr. Nagy represented the state in various Gaines County District Court proceedings on that date, a fact well documented.

I was already aware that a County Attorney appointed as a Special Prosecutor by the Court could not receive payment for their services (CCP 2.07(b)). However, as I always do when there is a legal question I ask my home County Attorney, Mr. Nagy for his opinion.

In my preparation to meet with the County Attorney I reviewed the Code of Criminal Procedure, 2.07; and several AG opinions on similar subjects. Those opinions are JM-763, LO MS-12, and LO 96-148 (attached). The question to Mr. Nagy was could I pay a special prosecutor, who was also a County Attorney for his services. Mr. Nagy said no and asked me to notify Mr. Munk.

The District Attorney has made it clear that he does not accept the County Attorney's opinion and my refusing the payment on the basis of that opinion, the statute and the AG opinions.

Please advise if a County Attorney who provides services as a "Special Prosecutor" (not as an Assistant DA) appointed by the DA and not the Court is authorized to be paid for his services.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Rick Dollahan". The signature is fluid and cursive, with the first name "Rick" and last name "Dollahan" clearly distinguishable.

Rick Dollahan  
Gaines and Dawson County Auditor

Attachments: JM-763, LO MS-12, and LO 96-148