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Criminal District Attorney
Tarrant County

April 11, 2023

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

Re: Request for Opinion regarding Texas Local Government Code section 120.002 and the ability of a county to transfer Deputy Constables from a Constable's office to other county departments

Dear General Paxton:

Tarrant County is divided into eight precincts, with each precinct served by one Justice of the Peace and one Constable. Tex. Const. art. V, § 18. The primary duty of some of the Constable's offices in Tarrant County is to serve legal papers, including processes, warrants, precepts, citations, notices, subpoenas, and writs. Tex. Local Gov't Code § 86.021(a)-(c). Other Constable's offices undertake law enforcement activities in addition to their duty to serve legal papers. In addition to these duties, a Constable "shall attend each justice court held in the precinct." Tex. Local Gov't Code § 86.021(e). As a practical matter, this results in the Constable or Deputy Constable in attendance serving as the bailiff of the Justice of the Peace.

In 2021, the 87th Texas Legislature enacted Local Government Code section 120.002. Counties are now required to hold an election approving a proposed reduction or reallocation if it adopts a budget which "reduces for a law enforcement agency [...] with primary responsibility for policing, criminal investigation, and answering calls for service" the overall budget of the agency for a fiscal year or "reallocates funding or resources to another law enforcement agency." Tex. Local Gov't Code § 120.002(a)(1)-(2). However, no definition of "law enforcement agency" is provided in Local Government Code chapter 120.

Other provisions of Texas law provide some guidance in defining "law enforcement agency." Code of Criminal Procedure articles 2.33(a)(2) and 59.01(5) both define a "law enforcement agency" as "an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers." *See also* Tex. Penal Code § 2.32(a)(1) ("an

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agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties"); Tex. Gov't Code § 614.231(1) ("an agency of this state or a political subdivision of this state that employs peace officers other than game wardens"); *but see* Tex. Gov't Code § 411.082(3)(A) (defining a "criminal justice agency" as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice"). Because all of Tarrant County's Constables employ peace officers as Deputy Constables, but some do not have a "primary responsibility for policing, criminal investigating, and answering calls for service," Tex. Local Gov't Code § 120.002(a)(1), Tarrant County seeks an opinion from the Office of the Attorney General whether a Constable's Office which primarily serves legal papers qualifies as a "law enforcement agency" under Local Government Code section 120.002. Should the Office of the Attorney General opine that such a Constable's office does qualify as a "law enforcement agency" under Local Government Code section 120.002, Tarrant County would ask for further clarification as to whether there are any criteria which may be applied to determine whether a Constable's office is a "law enforcement agency" under the statute or whether all Constable's offices automatically qualify as such.

Constables and Deputy Constables are peace officers. Tex. Code. Crim. Proc. art. 2.12(2). As a peace officer, it is the duty of the Constable to "preserve the peace within the officer's jurisdiction" by, among other actions, preventing or suppressing crime, notifying magistrates of offenses committed within the officer's jurisdiction, and arresting offenders without a warrant when authorized. Tex. Code Crim. Proc. art. 2.13(a), (b)(1), (b-4), (d-1). A Constable has the authority to conduct warrantless arrests outside of the boundaries of the precinct in which the Constable serves. Tex. Code Crim. Proc. art. 14.03(g)(1).

In Tarrant County, it is the general practice of the Constable's offices to focus most of their department's resources on the service of legal papers. Constables and Deputy Constables have specific responsibilities in the realm of serving legal papers, Tex. Local Gov't Code § 86.021(a)-(d), and are required by statute to receive twenty hours of instruction in civil process. Tex. Occ. Code §§ 1701.354(a), 1701.3545(b-1). Annual reports filed by the Constable's Offices with the Tarrant County Commissioners Court pursuant to Texas Code of Criminal Procedure article 2.132(b)(7) regarding traffic stops give some insight as to how this practice is carried out. For the eight Constable's offices in Tarrant County in calendar year 2022, a total of 311 traffic stops took place resulting in one search and no arrests. Two Constable's Offices have a policy of not conducting traffic stops. Based on the foregoing, Tarrant County seeks guidance from the Office of the Attorney General as to whether any factors may impact the qualification of a Constable's Office as a "law enforcement agency" under Local Government Code section 120.002.

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It has been proposed the Tarrant County Commissioners Court transfer a Deputy Constable from the table of organization of a Constable's office to permanently function as a bailiff for a Justice of the Peace court. Under this proposal, the Deputy Constable would be categorized as an employee of the Justice of the Peace and would no longer be considered an employee of the Constable's Office. Although no longer an employee of the Constable's Office, this Deputy Constable would continue to fulfill the statutory duty to "attend each justice court held in the precinct," Tex. Local Gov't Code § 86.021(e), and potentially provide full time security to the Justice of the Peace's offices and courtroom. Before taking any action on this proposal, Tarrant County requests the Office of the Attorney General issue an opinion on whether this would violate Local Government Code section 120.002 in the absence of an election.

Accordingly, Tarrant County requests the Office of the Attorney General issue an opinion addressing the following questions:

1. For the purposes of Texas Local Government Code section 120.002, do Constable's offices whose primary duty is serving legal papers pursuant to Texas Local Government Code section 86.021 qualify as a "law enforcement agency"?
2. Is there a criteria by which a county can determine whether a Constable's Office qualifies as a "law enforcement agency" under Local Government Code section 86.021 or is a Constable's Office always considered a "law enforcement agency" pursuant to this statute?
3. If a Deputy Constable is transferred by a Commissioners Court action from the office of a Constable to serve as a bailiff in a Justice of the Peace Court without holding an election, would this constitute a violation of Texas Local Government Code section 120.002?

We respectfully request your opinion regarding application of Local Government Code section 120.002 in the circumstances described above.

Respectfully submitted,

Phil Sorrells
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Tarrant County, Texas


