

THE ATTORNEY GENERAL

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An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0517-KP

Requestor:

The Honorable Franklin McDonough

31st Judicial District Attorney

Post Office Box 1592

Pampa, Texas 79066

Re: Whether a constable may simultaneously serve as a municipal court judge (RQ-0517-KP)

Briefs requested by November 22, 2023

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202303911

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: October 24, 2023



Opinions

Opinion No. KP-0446

The Honorable Brandon Creighton

Chair, Senate Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Questions relating to the powers and duties of the Galveston Park Board of Trustees (RQ-0507-KP)

S U M M A R Y

Local Government Code chapter 306 authorizes certain municipalities to create a park board and gives such boards certain powers and responsibilities. While a home-rule municipality has the full power of self-government, it may not impose measures on a park board that conflict with state law.

Because the Legislature has not spoken to the issue of removal in chapter 306, a court would likely find the chapter does not preempt a munic-

ipal ordinance removing a park or facility from the park board's management and control.

Tax Code section 351.105 allows eligible coastal municipalities to contract for a park board to use a portion of the hotel occupancy tax for certain statutory purposes without further authorization beyond the contract. The extent to which a municipality may exercise control over the use of hotel occupancy tax funds allocated under section 351.105 will be determined by the provisions of the contract required by subsection 351.105(f)(1).

Opinion No. KP-0447

The Honorable Matthew E. Minick

Hardin County Attorney

Post Office Box 516

Kountze, Texas 77625

Re: Whether an elected constable may serve as a student resource officer, employed as an independent contractor, with a school district located in the constable's precinct (RQ-0506-KP)

S U M M A R Y

Education Code section 37.081 authorizes a school district to retain the services of a school resource officer. A court would likely conclude that a school resource officer may not be retained as an independent contractor. Neither Texas Constitution article XVI, subsection 40(a) nor the common-law doctrine of incompatibility prohibit a constable from acting as a school resource officer under a memorandum of understanding to retain the constable that complies with Education Code section 37.081.

Opinion No. KP-0448

The Honorable Renee Ann Mueller

Washington County Attorney

100 East Main, Suite 200

Brenham, Texas 77833

Re: Whether the District Attorney's Office located in a stand-alone building with no other courts or court offices is a building that houses the operations of a district, county, or justice court for purposes of an expenditure from the courthouse security fund (RQ-0509-KP)

S U M M A R Y

Under Code of Criminal Procedure article 102.017(b), a county commissioners court may use monies from the courthouse security fund to

purchase or repair bullet-proof glass related to buildings that house the operations of district, county, or justice courts. A court would likely conclude that a building does not house the operations of a district, county, or justice court if it is devoid of adjudicators.

Opinion No. KP-0449

The Honorable Eduardo Arredondo

Burnet County Attorney

220 South Pierce

Burnet, Texas 78611

Re: Whether a county commissioners court may cede authority to the county judge to hire a county commissioner's spouse for a position that reports directly to the county judge; and related questions involving Government Code chapter 573 (RQ-0511-KP)

S U M M A R Y

A commissioners court has implied authority to employ persons necessary to carry out county business. A commissioners court may, through official action, delegate to the county judge its implied authority to employ persons.

A court would likely conclude that a county judge who is delegated the commissioners court's implied authority to employ persons is prohibited by the anti-nepotism provision in Government Code section 573.041 from appointing the spouse of a county commissioner to a paid county position.

Pursuant to Government Code section 573.083, a public official who makes, confirms, or votes for an appointment or confirmation of an ineligible individual or who approves an account or authorizes the draw-

ing of a warrant or order to pay the individual's salary potentially commits a misdemeanor involving official misconduct.

Opinion No. KP-0450

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Authority of the Hood County Development District No. 1 to add an additional member to its board of directors under Local Government Code chapter 383 (RQ-0002-AC)

S U M M A R Y

Local Government Code section 383.041 provides that a county development district is governed by a board of five directors. Local Government Code subsection 383.048(d) establishes who may serve as a board's assistant or deputy secretary. A court would likely conclude that subsection 383.048(d) does not authorize a county development district to add a sixth director to its board.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

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