

COUNTY of HIDALGO



EDINBURG, TEXAS 78539

HIDALGO COUNTY AUDITOR'S OFFICE
Administration Building 3rd Floor
100 East Cano
Edinburg, Texas 78539-3587
PHONE: (956) 318-2511
FAX: (956) 318-2577
<http://www.countyofhidalgo.org>

MAILING ADDRESS:
HIDALGO COUNTY AUDITOR'S OFFICE
P. O. BOX 689
EDINBURG, TEXAS 78540-0689

FILE # ML-43117-03
I.D. # 43117

May 23, 2003

Mrs. Nancy Fuller, Chairperson,
Opinions Committee
Office of The Attorney General
P.O. Box 12548
Austin, Tx 78711-2548

RQ-0059-GA

RECEIVED
MAY 29 2003
OPINION COMMITTEE

CERTIFIED MAIL #7001 1940 0000 0239 5122

Dear Mrs. Fuller:

As County Auditor for the County of Hidalgo I respectfully submit this letter requesting an Attorney General's Opinion on the situation outlined in the enclosed letter. Please be informed that I am aware of the provisions of Section 41.007 of the Government Code which stipulates that I should first seek my opinion from our District Attorney. The opinion I am requesting, however, directly involves our District Attorney. My best interpretation of this matter is that it would be a conflict of interest for our District Attorney to issue an opinion on this situation that he is a party to. For this reason I am requesting that you waiver my requirement of having to go through our District Attorney for this opinion and consider issuing an opinion in which I am in dire need of.

Your kind consideration will be greatly appreciated.

Sincerely,

Antonio R. Sandoval
County Auditor

HIDALGO COUNTY DISTRICT JUDGES

EDWARD G. APARICIO
JUDGE, 92ND D.C.
OVERSEER

RODOLFO DELGADO
JUDGE, 93RD D.C.

LETICIA HINOJOSA
JUDGE, 139TH D.C.

ROSE GUERRA REYN
JUDGE, 206TH D.C.

JUAN R. PARTIDA
JUDGE, 275TH D.C.

MARIO E. RAMIREZ, JR.
JUDGE, 332ND D.C.

NOE GONZALEZ
JUDGE, 370TH D.C.

LETICIA LOPEZ
JUDGE, 389TH D.C.

AIDA SALINAS FLORES
JUDGE, 398TH D.C.

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Dear Mrs. Fuller:

As County Auditor for the County of Hidalgo I respectfully request an Attorney General's Opinion on the questions following the brief narrative listed below.

BRIEF NARRATIVE:

On or about September 29, 1994 the Criminal District Attorney for the County of Hidalgo, the Honorable Rene Guerra, entered into a Local Agreement (please see Exhibit A) between the Texas Department of Public Safety and himself in his capacity as the Prosecuting Attorney for the County of Hidalgo. On or about April 16, 1997 a final judgment was rendered in the 206th District Court of Hidalgo County (please see Exhibit B). The final judgment mentioned here deals with the forfeiture of one (1) residence and land containing approximately thirty-four (34) acres of land legally described as the north 8.03 acres, more or less of lot 73, and all of lot 72, containing 25.36 acres more or less, Ramseyer Gardens Subdivision No. 1, Hidalgo County, Texas. The judgment indicates that the land will be forfeited to the District Attorney and the Texas Department of Public Safety. The title of the property was transferred to the District Attorney as per the judgment. On or about January 3, 2001 the Honorable Rene Guerra entered into a Lease Agreement (please see Exhibit C) in his capacity as Criminal District Attorney for Hidalgo County with Jim D. Lambert (a private citizen)/L&L Farms. The property being leased is described as all of lot 72 and part of lot 73, Ramseyer Gardens #1, Hidalgo County, Texas as recorded in the deed records of the Hidalgo County Clerk and as referred to in Exhibit B. Mr. Guerra claims that he is holding the property for "...law enforcement..." purposes and delaying the sale until he can obtain a "...more favorable..." sales price.

HIDALGO COUNTY DISTRICT JUDGES

EDWARD G. APARICIO
JUDGE, 32nd D.C.
OVERSEER

RÓDOLFO DELGADO
JUDGE, 33rd D.C.

LETICIA HINOJOSA
JUDGE, 139th D.C.

ROSE GUERRA REYNOLDS
JUDGE, 206th D.C.

JUAN R. PARTIDA
JUDGE, 275th D.C.

MARIO E. RAMIREZ, JR.
JUDGE, 332nd D.C.

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JUDGE, 370th D.C.

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JUDGE, 389th D.C.

AIDA SALINAS FLORES
JUDGE, 396th D.C.


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Opinions Committee

QUESTIONS FOR WHICH AN OPINION IS REQUESTED:

1. In reference to Exhibit A: Does this Local Agreement satisfy the provisions of Article 59.06(a) of the Code of Criminal Procedure, in that the District Attorney does not have to sell the confiscated property on the 75th day after the date of the final judgment of forfeiture of this property?
2. Is the District Attorney authorized to lease the aforementioned confiscated property?
3. If your response to question number two (2) is in the affirmative: Was the District Attorney required to seek approval of the Hidalgo County Commissioner's Court (the governing board of Hidalgo County) or the State of Texas, since he is considered a state employee, prior to entering into the lease agreement described as Exhibit C?
4. Did the District Attorney violate the bidding laws of the state of Texas by not requesting sealed bids on the leasing of the property described in Exhibit C, more specifically LGC 263.001—Sale or Lease of Real Property?
5. Once the final judgment was made (Exhibit B), was the District Attorney required to remove the property from the tax rolls since the property now belonged to the state of Texas? The ad valorem taxes continue to be assessed on the property and currently over \$30,000.00 remain outstanding.
6. Is the District Attorney in compliance with state statues by holding the property for "...law enforcement..." before selling the property and distributing the proceeds as agreed to in the Local Agreement (Exhibit A)? If the answer to this question is yes, is there a maximum amount of time the property can be held?

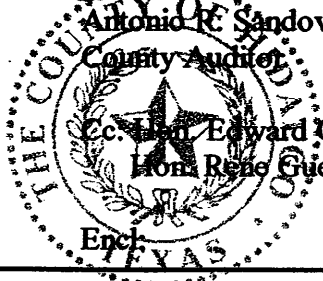
In closing I would like to add that it was the District Attorney himself who brought this matter to my attention. He asked me to review the lease and inform him if he was within his authority to enter into this contract. It is for this reason that I am asking your assistance on this matter. Should you need to contact me please call me at (956) 318 2535. Hoping to hear from you soon I remain,

Sincerely yours,



Antonio R. Sandoval
County Auditor

cc. Hon. Edward G. Aparicio, 92nd State District Judge
Lionel Rene Guerra, Criminal District Attorney



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