

NAVARRO COUNTY



STEVE A. KEATHLEY

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RECEIVED

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OPINION COMMITTEE

RQ-0558-GA

December 29, 2006

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-45090-07

I.D. # 045096

RE: Attorney General Opinion request

Pursuant to Section 402.043 of the Texas Government Code, I am seeking an opinion from your office regarding the following situation.

My Criminal Investigator is leaving office at the end of this year to assume the role as a Justice of the Peace in the four precinct county of Navarro. While under employment with the Navarro County District Attorney's Office, he obtained his Polygraph Examiner's License at the expense of Navarro County. The Navarro County District Attorney's Office would like to continue using him for polygraph examinations in our criminal cases. I understand that we would not be able to use his polygraphs for investigative purposes where he may later arraign and set bail on a defendant. However, my question is this: Is it a conflict of interest for a sitting Justice of the Peace to continue administering polygraph examinations on criminal defendants after arraignment and bail being set?

It is quite obvious that my Criminal Investigator, once sworn in as Justice of the Peace, will more than likely arraign and set bonds on defendants in criminal cases where he is later asked to conduct a polygraph examination on the same defendant. My research has yielded no case law or statute dealing with a fact scenario such as this one. However, the Texas Code of Judicial Conduct deals with this scenario in that Canon 4 (Section A) states that a judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties. My Criminal Investigator has polygraphed only defendants charged with felonies. It is my argument that his jurisdiction over the defendant will end once he has arraigned and set the bond on the defendant thus posing no conflict of interest.

Please contact me if you have any further questions on this matter. Thank you for your and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen A. Keathley". The signature is written in dark ink and is positioned above the printed name.

Stephen A. Keathley
Navarro County Criminal District Attorney