

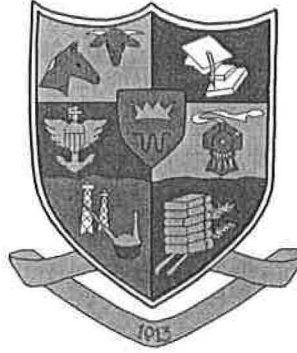
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JUN 26 2013

OPINION COMMITTEE

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RQ-1133-GA

COUNTY of KLEBERG
KINGSVILLE, TEXAS

April 4, 2013

Resubmitted June 26, 2013

The Honorable Greg Abbot
Texas Attorney General
P.O. Box 12548
Capitol Station
Austin, Texas 78711

Dear Attorney General Abbot:

The following questions are respectfully submitted for the considered opinion of the Office of the Attorney General of Texas pursuant to the authority of Section 402.043 of the Texas Government Code.

I waive Section 402.042 (c), Texas Government Code requirement.

Question #1:

Whether or not the Kleberg County Commissioners Court is authorized to create and fund a separate full time bailiff position for the Kleberg County 105th District Court.

Facts:

The 105th District Court is composed of Nueces County, Kleberg County, and Kenedy County. In accordance with Section 53.001 (b), TX.Gov Code, " a district court or statutory county court judge in Nueces County shall appoint a bailiff." Section 53.09 (i), TX. Gov. Code provides that "each bailiff appointed under Section 53.001(b) is entitled to receive a salary set by the commissioners court of the county in which he serves. Since the creation of the 105th District Court, the sheriff of Kleberg County has furnished a bailiff for the 105th, or the bailiff appointed for the 105th District Court in Nueces County has covered the days that the 105th District Judge is in Kleberg County, and has been paid a supplement of \$10,000.00 a year by Kleberg County Commissioners

Court. The 105th District Judge is from Nueces County and serves the majority of the time in Nueces County. The District Judge has historically come to Kleberg County an average of about 10 days per month.

On January 22, 1013, the Kleberg County Commissioners Court acted on a request by the 105th District Judge for a bailiff for the 105th District Court in Kleberg County. The court considered and approved a bailiff position and a salary in the amount of \$30,000.00 annually for the 105th District Court in Kleberg County. (See attached Minutes)

Relevant Statutory Provisions:

Appointment of Bailiffs

Subchapter A of Chapter 53 of the Government Code governs the mandatory and permissive appointments, qualifications, and duties of certain bailiffs in certain courts, including the 105th Judicial District Court.

Section 53.001 (b), TX. Gov. Code states that *“A district or statutory county court judge in Nueces County shall appoint a bailiff.”* Section 53.09 (i) states that *“Each bailiff appointed under Section 53.001 (b) is entitled to receive a salary set by the commissioners court of the county in which the bailiff serves.”*

Pursuant to Section 53.09 (f), TX Gov. Code, *“The appointment of a bailiff under this chapter does not affect the requirement under general law that the sheriff furnish a bailiff for each court.”* In addition, Article 36.24 of the TX. Code of Criminal Procedure provides that the sheriff *“shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court.”*

County Commissioners Court Authority

It is well established that a county commissioners court may exercise only those powers conferred upon it by the Constitution or a state statute. *TX. Const. Art. V, § 18*) provides that a commissioners court *“shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State.”* *“This provision has been interpreted to mean that although a commissioners court may exercise broad discretion in conducting county business, the legal basis for any action taken must be grounded ultimately in the constitution or statutes.”* *Guyne v. Galveston County, 861 S.W. 2d 861, 863 (TEX. 1993; City of San Antonio v. City of Boerne, 111 S.W. 3rd 22,28 (Tex. 2003), Opinion No. GA-0085 (2003).*

Analysis

Relying and applying the above relevant statutory provisions, Section 53.001 (b), TX. Gov. Code provides that *“a district or statutory county court judge in Nueces County shall appoint a bailiff.”* Section 53.09 (i) states that *“Each bailiff appointed under Section 53.001 (b) is entitled to receive a salary set by the commissioners court of the county in which the bailiff serves. A bailiff means one bailiff for each court. Had the legislature intended for more than one bailiff*

they would have stated as in section 53.001(c) of the Government Code which provides that "each criminal district court in Tarrant County must have at least three bailiffs..... The statute is clear that there is to be one bailiff appointed for each district court in Nueces County and if the district is composed of more than one county, the bailiff is to serve each county in the district, and the bailiff's salary is to be set by the commissioners court of the county in which the bailiff serves. I find no other statute authorizing a separate full time bailiff for Kleberg County nor any statute giving Kleberg County commissioners court authority to create a separate full time bailiff position for Kleberg County. Further, Article 36.24 of the TX. Code of Criminal Procedure provides that the sheriff "*shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court.*"

Respectfully submitted,

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Encl.