

Matthew Poston  
County Attorney

Gary F. Dennison  
Asst. Co. Attorney

Matthew Minick  
Asst. Co. Attorney

Kathrine B. McCarty  
Asst. Co. Attorney

1923 Sam Houston  
Suite 202  
Liberty, Texas 77575  
Voice  
(936) 336-4650  
Facsimile  
(936) 336-4568

THE COUNTY OF LIBERTY  
Office of the County Attorney

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October 10, 2017

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OPINION COMMITTEE

FILE # ML-48224-17  
I.D. # 48224

RQ-0187-KP

Office of the Attorney General of Texas  
Attention Opinion Committee  
P.O. Box 12458  
Austin, Texas 78711-2548

*RE: Whether an elected constable and his deputies may simultaneously serve under the sheriff, specifically to perform tasks related to the duties of a weight enforcement officer.*

Dear General Paxton:

The Liberty County Attorney's Office seeks an opinion as to whether an elected constable and his deputies may simultaneously serve under the sheriff in a dual-commissioned capacity, specifically to perform tasks related to the duties of a weight enforcement officer set forth by the Texas Transportation Code.

**Authority to Request Opinion**

The Liberty County Attorney's Office has criminal and civil jurisdiction in Liberty County. At the request of Bobby Rader, the Liberty County Sheriff, and Leslie Hulsey, the Liberty County Constable, Precinct Two, the Liberty County Attorney's Office requests an opinion from the Texas Attorney General's Office regarding whether an elected constable and his deputies may simultaneously serve under the sheriff in a dual-commissioned capacity, specifically to perform tasks related to the duties of a weight enforcement officer.

**Brief in Support of Request for Opinion**

The Texas Transportation Code states that weight enforcement officers have the exclusive authority to enforce weight regulation in any area of this state. Tex. Transp. Code Ann. § 621.408(a). A weight enforcement officer is statutorily authorized to stop overloaded vehicles to determine their exact weight and load. *Smith v. Texas Farm Products*, 86 S.W.2d 52 (Tex. Civ. App. Beaumont 1935), aff'd, 128 Tex. 171, 96 S.W.2d

290 (1936). The Transportation Code also provides a list of those capable of carrying out the duties of a weight enforcement officers. Among that list, are “a sheriff or a sheriff’s deputy.” Tex. Transp. Code Ann. § 621.401(3). However, the Transportation Code does not permit constables or deputy constables to carry out the duties of a weight enforcement officer, except in counties that meet the requirements of Section 621.4015. Tex. Transp. Code Ann. § 621.401(6). Therefore, in this instance, Constable Hulsey is unable to perform the duties of a weight enforcement in his official capacity as an elected constable.

An elected constable, however, is not prohibited by Article XVI, Section 40 of the Texas Constitution from simultaneously serving as a deputy sheriff. Tex. Const. Art. XVI, § 40. *See also* Tex. Att’y Gen. Op. GA-0402 (2006). The Texas Constitution provides that “[n]o person shall hold or exercise at the same time, more than one civil office of emolument...” *Id.* However, the Texas Supreme Court has previously distinguished a public officer from an employee, holding that “the determining factor... is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent if the control of others.” *Id. See also Aldine Indep. Sch. Dist. V. Stanley*, 280 S.W.2d 578, 583 (Tex. 1955). A constable is an elected official and is autonomous and self-regulating. He is under his own control. Whereas a deputy sheriff is not an officer because he “serves at the pleasure of the sheriff.” Tex. Loc. Govt. Code Ann. § 85.003(c).

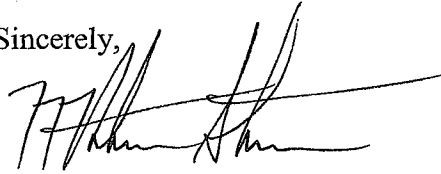
Based on the law stated above, it would stand to reason that a constable could in fact perform the duties of weight enforcement officer, while acting as a sheriff’s deputy. Nevertheless, the Transportation is directly silent on this issue. In fact, in opposition, the Transportation Code implies that the Texas Department of Public Safety is responsible for who may or may not become a weight enforcement officer in the state. Tex. Transp. Code Ann. § 621.402(e). The Department of Public Safety is statutorily required to “establish by rule uniform weighing procedures for weigh enforcement officers to ensure an accurate weight is obtained for a motor vehicle.” Tex. Transp. Code Ann. § 621.402(e)(1). The Department of Public Safety may also “revoke or rescind” the authority of weight enforcement officers, including officers from a sheriff’s department that may not comply with those rules. Tex. Transp. Code Ann. § 621.402(e)(2)(B).

Constable Hulsey and his deputy are currently commissioned as sheriff’s deputies for Liberty County solely to perform duties specific to a weight enforcement officer. Liberty County does not have a license and weight inspector with the Department of Public Safety within its jurisdiction. No authority has been found that addresses that this issue directly. The Department of Public Safety is refusing to provide training to our deputies, citing that constables are not statutorily capable of becoming weight enforcement officers.

Based on the assertions by the Texas Department of Public Safety that the Liberty County Constable and Deputy Constable of Precinct Two cannot become weight enforcement officers under their commission as sheriff’s deputies for the Liberty County Sheriff’s Department, our officer respectfully requests the Texas Attorney General to

review this question and determine whether an elected constable and his deputies may simultaneously serve under the sheriff in order to perform tasks related to the duties of a weight enforcement officer.

Sincerely,



Matthew C. Poston  
County Attorney  
Liberty County



Kathrine B. McCarty  
Assistant County Attorney  
Liberty County

MCP/jlb

*Via Certified Mail, Return Receipt Requested, No.7009 2820 0001 5429 4829*