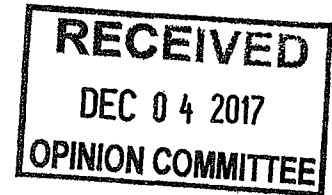




CAMERON COUNTY DISTRICT ATTORNEY

Luis V. Saenz

District Attorney



December 4, 2017

SENT VIA ELECTRONIC MAIL AND
CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

The Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
Attention Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548
opinion.committee@oag.texas.gov

FILE # ML-48260-17
I.D. # 48260

RQ-0197-KP

Re: **REQUEST FOR ATTORNEY GENERAL OPINION**

Attorney General Paxton:

This request is being made by the Cameron County & District Attorney's Office at the request of the Honorable Eddie Solis, Constable for Cameron County Precinct 5. I seek guidance on the following issues:

1. May a Commissioner's Court authorize a Justice of the Peace to hire and directly supervise a bailiff/warrant officer?
2. If the answer to Question 1 is "yes," is said bailiff/warrant officer eligible to be commissioned as a Texas Peace Officer?
3. May a Constable sitting in Precinct X carry the commission of a bailiff/warrant officer to a peace officer duties for a Justice of the Peace located in a Precinct Y?
4. If the answer to all of the above questions is "yes," is the Constable of Precinct Y excused from her duty to attend Justice of the Peace proceedings in Precinct Y?

Background

Three Justices of the Peace currently service Cameron County Precinct 5. The Cameron County Commissioner's Court has authorized an employment slot for a bailiff/warrant officer for Justice of the Peace Precinct 5 Place 2, and another employment slot for same for Justice of the Peace Precinct 5 Place 3.

As per a Memorandum of Understanding executed between the Cameron County Constable for Precinct 3 and the respective Justices of the Peace and distributed by the Cameron County Commissioners Court:

Cameron County Administration Building
964 E. Harrison Street ♦ Fourth Floor ♦ Brownsville, Texas 78520
Mainline: 956.544.0849 Fax: 956.544.0869

- The Justice of the Peace of each court is to appoint these employees for their respective courts, and the respective Justices of the Peace are to immediately supervise the respective bailiffs/warrant officers;
- The Constable for Cameron County Precinct 3 will carry/sponsor the law enforcement commissions for said bailiffs/warrant officers; and
- The bailiffs/warrant officers shall be under the control and supervision of the Cameron County Constable for Precinct 3 while performing public safety and law enforcement duties, and the Constable for Precinct 3 shall determine said law enforcement and public safety needs and require said bailiffs/warrant officers to participate.

Please find said Memorandum of Understandings attached.

Request for Opinion

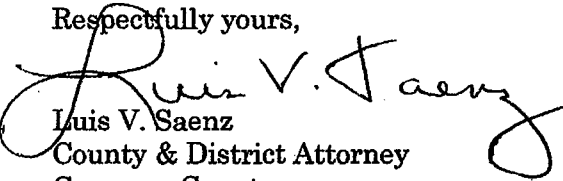
Local Government Code 86.011 states that “[a]n elected constable who desires to appoint a deputy must apply in writing to the commissioner’s court of the county and show that it is necessary to appoint a deputy in order to properly handle the business of the constable’s office that originates in the constable’s precinct.”

Local Government Code 86.021(f) directs that “[t]he constable shall attend each justice court held in the precinct.”

Government Code 27.056 directs that “[e]ach justice of the peace may designate one or more persons to serve as the clerk of the justice court.”¹

Considering these mandates, is it permissible for a Constable of one precinct to carry the commissions of deputy constables who will be directly assigned to another precinct? Thank you for your guidance regarding the questions presented herein.

Respectfully yours,


Luis V. Saenz
County & District Attorney
Cameron County

Cc: Constable Eddie Solis
Cameron County Pct. 5

¹ Please note that this is different from the authority to employ staff provided for the District and County Courts at Law. Government Code 74.103 states that “[t]he courts may appoint appropriate staff and support personnel according to the needs in each county.” Admittedly, there is an inherent authority of a court to employ the staff necessary to carry out the function of the court. *See In re El Paso County Commissioners*, 281 S.W.3d 16 (Tex. App. – El Paso, no pet.).

INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING

This agreement among Justice of the Peace Precinct 5, Place 3, Mike Trejo and Cameron County Constable, Precinct 3, Adrian Gonzalez, provides for an individual warrant officer for the Justice of the Peace Precinct 5, Place 3.

1. The Cameron County Commissioners Court has authorized a slot for such warrant officer. Justice of the Peace Precinct 5, Place 3 shall appoint a warrant bailiff for that judge's court who shall be under the immediate supervision of that court's judge. However, to the extent public safety and law enforcement needs as determined by the Constable, Precinct 3 may require participation of said warrant officer, the warrant officer shall be under the control and supervision of Constable, Precinct 3, when engaged in public safety and law enforcement matters. Constable, Precinct 3 shall assure that the warrant officer is well-trained to handle all courtroom, public safety and law enforcement duties.

2. The warrant officer appointed to the justice court shall be a TCOLE (Texas Commission on Law Enforcement) certified and licensed peace officer. Constable, Precinct 3 shall sponsor the commission of each warrant officer's TCOLE certification/license as an accommodation to the judge. The warrant officer shall be permitted to carry a handgun and other weapons and equipment as may be authorized by the Constable, Precinct 3, in keeping with reasonable and accepted standards for courtroom duties, including handling individuals in the courtroom, hallways, and other areas in proximity to the court and the courts' chambers.

3. The warrant officer shall assist the judge in maintaining the court's calendar, docket and maintaining order in the courtroom in addition to assisting the Judge in the operations of the office. The duties of this position include assisting the judge in administering courtroom procedure, administering records for the court, and providing information about scheduled court proceedings. This position is also responsible for delivering court orders, such as subpoenas, warrants, garnishment and other matters as designated by the Court. This position reports to directly the Justice of the Peace as well as to the Constable as set forth herein;

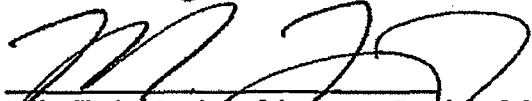
The essential functions include that the warrant officer;

1. Serves warrants and makes arrests.
2. Serves court papers, including writs, summons, subpoenas, capias, etc.
3. Responsible for jail docket, inmate's waivers, non-citizenship acknowledgement, etc.
4. Assists in attending to needs of jurors during deliberations.
5. Instructs spectators, prospective jurors, and jurors regarding their conduct in the courtroom.
6. Respond to questions from bail bondsmen that request dispositions on criminal or civil cases
7. Keep track of defendants that fail to appear for court setting and locate them.
8. Interact with the public to assist in providing and verifying information, processing transactions, issuing documents and providing general information. Delivers court orders, such as subpoenas, warrants garnishment and other matters as designated by the Court.
9. Performs such other duties as may be assigned.

This position is a Civil Service covered position and will adhere to the Cameron County Civil Service Rules and Regulations. This position will require a commission at all times.

Wherefore, Premises considered, this agreement is hereby adopted by the signatories and is the entire agreement of the Parties hereto which may only be modified in a writing signed by all the said Parties or their successors or designees.

Signed this 6th day of Nov, 2017, by:

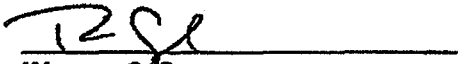


Mike Trejo, Justice of the Peace, Precinct 5-3



Adrian Gonzalez, Cameron County Constable, Precinct 3

Agreed to:



Warrant Officer

INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING

This agreement among Justice of the Peace Precinct 5, Place 2, Eloy Cano, Jr. and Cameron County Constable, Precinct 3, Adrian Gonzalez, provides for an individual warrant officer for the Justice of the Peace Precinct 5, Place 2.

1. The Cameron County Commissioners Court has authorized a slot for such warrant officer. Justice of the Peace Precinct 5, Place 2 shall appoint a warrant bailiff for that judge's court who shall be under the immediate supervision of that court's judge. However, to the extent public safety and law enforcement needs as determined by the Constable, Precinct 3 may require participation of said warrant officer, the warrant officer shall be under the control and supervision of Constable, Precinct 3, when engaged in public safety and law enforcement matters. Constable, Precinct 3 shall assure that the warrant officer is well-trained to handle all courtroom, public safety and law enforcement duties.

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3. The warrant officer shall assist the judge in maintaining the court's calendar, docket and maintaining order in the courtroom in addition to assisting the Judge in the operations of the office. The duties of this position include assisting the judge in administering courtroom procedure, administering records for the court, and providing information about scheduled court proceedings. This position is also responsible for delivering court orders, such as subpoenas, warrants, garnishment and other matters as designated by the Court. This position reports to directly the Justice of the Peace as well as to the Constable as set forth herein;

The essential functions include that the warrant officer;

1. Serves warrants and makes arrests.
2. Serves court papers, including writs, summons, subpoenas, capias, etc.
3. Responsible for jail docket, inmate's waivers, non-citizenship acknowledgement, etc.
4. Assists in attending to needs of jurors during deliberations.
5. Instructs spectators, prospective jurors, and jurors regarding their conduct in the courtroom.
6. Respond to questions from bail bondsmen that request dispositions on criminal or civil cases
7. Keep track of defendants that fail to appear for court setting and locate them.
8. Interact with the public to assist in providing and verifying information, processing transactions, issuing documents and providing general information. Delivers court orders, such as subpoenas, warrants garnishment and other matters as designated by the Court.
9. Performs such other duties as may be assigned.

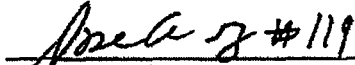
This position is a Civil Service covered position and will adhere to the Cameron County Civil Service Rules and Regulations. This position will require a commission at all times.

Wherefore, Premises considered, this agreement is hereby adopted by the signatories and is the entire agreement of the Parties hereto which may only be modified in a writing signed by all the said Parties or their successors or designees.

Signed this 6th day of November, 2017, by:



Eloy Cano, Jr., Justice of the Peace, Precinct 5-2



Arlan Gonzalez, Cameron County Constable, Precinct 3

Agreed to:


Benito de la Cruz
Warrant Officer