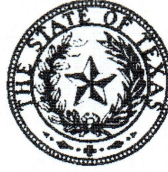


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By Opinion Committee at 3:26 pm, Oct 25, 2023



RQ-0518-KP

310 MAIN
LIBERTY, TEXAS 77575

LIBERTY COUNTY
DWAYNE GOTT, CPA - COUNTY AUDITOR

936-336-4604
936-346-4638 FAX

October 23, 2023

VIA Email to : opinion.committee@oag.texas.gov
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Attorney General Paxton,

This letter serves as a request for an opinion on the issue of county owned law enforcement vehicles being used for extra security jobs outside Liberty County.

1. Does the commissioners court of Liberty County have the authority to adopt a policy prohibiting the use of county-owned vehicles in the performance of private security jobs (colloquially referred to as “extra jobs”) outside of Liberty County?
2. Is it within the Sheriff’s or Constable’s authority to approve an in-kind compensation package, without approval from Commissioner Court, that includes a policy allowing deputies to use county-owned vehicles to travel to, from and in furtherance of the deputies “extra jobs”? The IRS considers non commuting travel outside the officer’s jurisdiction to be included on the W-2 as income as a taxable fringe benefit. Treas. Reg. Section 1.274-5(k)(3)
3. Does a policy approving deputy sheriffs’ or deputy constables’ use of county owned vehicles for “extra jobs” outside Liberty County violate Article III section 52(a) of the Texas Constitution?

It is currently the policy of the Sheriff's Department and a Constable to allow county owned law enforcement vehicles to be used by their deputies for travel to and in the performance of extra jobs outside of Liberty County. When these vehicles are deployed outside of Liberty County for the performance of extra jobs, they provide no benefit to the citizens of Liberty County. It is for the benefit of the deputy in the form of extra compensation from the outside entity. This appears to be in violation of Article III section 52(a) of the Texas Constitution.

A clearly marked police, fire or public safety officer vehicle is a qualified nonpersonal use vehicle (non-taxable) only if the employer prohibits personal use (other than commuting) for travel outside the officer's jurisdiction. Treas Reg. Section 1.274-5. When the vehicle is used for a contracted security job it is income to the employee. This amount is to be included as wages and subject to Social Security and Medicare taxes. Therefore, the sheriff or constable is approving a compensation package without the approval of commissioner's court.

Members of the Liberty County commissioners court are seeking guidance on these issues before adopting an initial vehicle policy. Therefore, I am requesting an Attorney General's opinion on these issues.

Sincerely,

A handwritten signature in blue ink that reads "Dwayne Gott".

Dwayne Gott CPA
Liberty County Auditor