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OPINION COMMITTEE

FILE # ML-45367-07
I.D. # 45367

September 19, 2007

RQ-0628-GA

The Honorable Greg Abbott
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

(via CMRRR#7004 1350 0002 6704 1185)

RE: Opinion Request Relating to Law Enforcement Authority of Postal
Inspectors Pursuant to Texas Code of Criminal Procedure, Article 2.122

Dear Attorney General Abbott:

This request for an Attorney General Advisory Opinion is made pursuant to Section 402.043 of the Texas Government Code. I respectfully request an opinion relating to the legal issue identified and briefed below.

BACKGROUND

In 1985, the Texas Legislature amended Article 2.122 of the Code of Criminal Procedure to add *inspectors of the United States Postal Service* to the list of federal law enforcement officials who are authorized to arrest individuals for felony offenses in the State of Texas. Tex. H.B. 1351, 69th Leg. (1985). Article 2 of the Code of Criminal Procedure identifies the statutory duties of various law enforcement officials in the State of Texas; Article 2.12 lists the officials who are considered peace officers of the State of Texas. The provision in issue here, Article 2.122, while noting that certain federal officials are not peace officers, declares they are, in fact, *special investigators* authorized to conduct certain law enforcement activities within the State.

There are two federal law enforcement agencies under the umbrella of the United States Postal Service: the United States Postal Inspection Service and the United States Postal Service, Office of Inspector General. Both law enforcement divisions of the United States Postal Service derive arrest and investigative powers from 18 USCA § 3061.

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The authority granted by this federal law is limited to the enforcement of laws regarding property in the custody of the Postal Service, property belonging to the Postal Service, the use of the mails and other postal offenses. The Office of Inspector General has jurisdiction to investigate misconduct by *postal employees*. 39 CFR 233.1(b)(1)(i). The Inspection Service has jurisdiction to investigate misconduct by *members of the public*. 39 CFR 233.1(b)(1)(ii). Both divisions work closely with local law enforcement agencies in Texas.

ISSUE

Does Article 2.122(a)(6) of the Code of Criminal Procedure, which grants the powers of arrest, search, and seizure to *inspectors of the United States Postal Service*, apply to inspectors of both the United States Postal Inspection Service and the United States Postal Service, Office of Inspector General?¹

DISCUSSION

In construing a statute, whether or not the statute is considered ambiguous on its face, the following factors, among others, are relevant: 1) the object sought to be attained; 2) circumstances under which the statute was enacted; and 3) legislative history of the provision. Tex. Gov't Code §311.023 (Vernon 2005).

Legislative history documents show the purpose of enacting Article 2.122(a)(6) was simply "to add inspectors of the United States Postal Service to the definition of criminal investigators in Texas." House Comm. on Law Enforcement, Bill Analysis, Tex. H.B. 1351, 69th Leg. (1985). Both the Inspection Service and Office of Inspector General employ postal inspectors who are authorized by federal law to investigate and arrest individuals who violate laws relating to the United States Postal Service; it seems reasonable to conclude that the Legislature intended to include all postal inspectors under Article 2.122(a)(b). The plain meaning of *inspectors of the United States Postal Service* can reasonably be interpreted to apply to both law enforcement branches of the United States Postal Service. Tex. Gov't Code § 311.011 (Vernon 2005); *see also* Tex. Atty. Gen. Op. JC-0177 (2000).

¹ An attorney with the Office of General Counsel of the Office of Inspector General ("OIG") has received a verbal indication from both your office and the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") that these entities do consider postal inspectors from the OIG to be covered by 2.122. However, the OIG is seeking a formal opinion indicating same.

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Regarding the circumstances under which the statute was enacted, the law enforcement functions that the Office of Inspector General currently possesses were handled by the Inspection Service in 1985. A separate Office of Inspector General did not exist in 1985 when the Legislature enacted House Bill 1351. Congress took action in 1997 to create a branch of the Postal Service that was independent in order to ensure impartial and objective investigation of postal employees when needed. A separate Office of Inspector General was formed in 1997, over ten years after the Legislative enactment that added postal inspectors to Article 2.122. U.S.P.S. Board of Governors, Res. No. 97-3 (1997).

CONCLUSION

Postal inspectors, from both the Inspection Service and Office of Inspector General, work closely with other law enforcement agencies including local district attorneys. Postal inspectors assist local law enforcement in numerous ways including locating suspects and witnesses by providing information from Postal Service records. Postal inspectors can also assist in serving an arrest warrant for a Postal Service employee on postal property or by obtaining a federal search warrant for mail containing illegal narcotics.

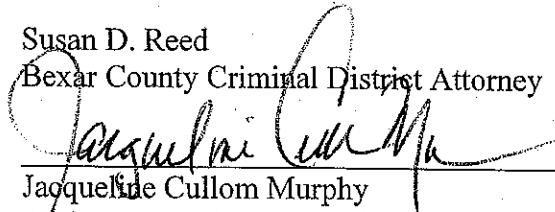
An interpretation allowing inspectors from both the Postal Service Inspection Services and Office of Inspector General to be authorized to act under Article 2.122 would be beneficial to local law enforcement in Texas.

Thank you for considering this request. Your opinion in this matter will assist me in carrying out my duties.

Very truly yours,

Susan D. Reed
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BY:


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CITED LEGAL RESOURCES

H.B. 1351
BY: BURNETT

COMMITTEE ON LAW ENFORCEMENT

BILL ANALYSIS

BACKGROUND:

Inspectors of the United States Postal Service are not included in the definition of criminal investigators in the State of Texas.

PURPOSE:

This bill proposes to add inspectors of the United States Postal Service to the definition of criminal investigators in Texas.

SECTION BY SECTION ANALYSIS:

SECTION 1.

Section 2, Chapter 396, Acts of 65th Legislature, Regular Session, 1977, is codified as Article 2.121, Code of Criminal Procedure, 1965, is amended to read:

- Adding, 'Article 2.121, SPECIAL INVESTIGATORS.
- Deleting Section 2 title.
- Adding subsection headings (1) through (6).
- Adding Inspectors of United States Postal Service.

SECTION 2.

- Effective date is September 1, 1985.
- Emergency Clause.

RULEMAKING AUTHORITY:

It is the Committee's opinion that this Act does not delegate rulemaking authority to any state officer, agency, department or institution.

SUMMARY OF COMMITTEE ACTION:

Pursuant to a public notice posted in accordance with the Rules of Procedure of the House of Representatives the Committee On Law Enforcement convened in a public hearing on April 17, 1985. The Chair laid out H.B. 1351 and recognized Representative Dick Burnett. Representative Tallas moved to report H.B. 1351 to the floor of the House of Representatives with the recommendation that it do pass without amendments, by a record vote of 6 ayes and 0 nays and be placed on the Consent Calendar.

TESTIMONY:

In favor of passage:

Mr. David Collier
Houston, Texas

Mr. Billy Mason
Houston, Texas

1 By: Burnett (Senate Sponsor - Lyon) H.B. No. 1351
2 (In the Senate - Received from the House May 6, 1985;
3 May 6, 1985, read first time and referred to Committee on
4 Jurisprudence; May 25, 1985, reported favorably; May 25, 1985, sent
5 to printer.)

6 A BILL TO BE ENTITLED
7 AN ACT

8 relating to the arrest, search, and seizure powers of postal
9 inspectors.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

11 SECTION 1. Section 2, Chapter 396, Acts of the 65th
12 Legislature, Regular Session, 1977, is codified as Article 2.121,
13 Code of Criminal Procedure, 1965, and amended to read as follows:

14 Art. 2.121. SPECIAL INVESTIGATORS. [See-2-] The
15 following named criminal investigators of the United States shall
16 not be deemed peace officers, but shall have the powers of arrest,
17 search and seizure as to felony offenses only under the laws of the
18 State of Texas:

19 (1) Special Agents of the Federal Bureau of
20 Investigation; [7]

21 (2) Special Agents of the Secret Service; [7]

22 (3) Special Agents of United States Customs, excluding
23 border patrolmen and custom inspectors; [7]

24 (4) Special Agents of Alcohol, Tobacco and Firearms; [7-and]

25 (5) Special Agents of Federal Drug Enforcement Agency; and

26 (6) Inspectors of the United States Postal Service.

27 SECTION 2. This Act takes effect September 1, 1985.

28 SECTION 3. The importance of this legislation and the
29 crowded condition of the calendars in both houses create an
30 emergency and an imperative public necessity that the
31 constitutional rule requiring bills to be read on three several
32 days in each house be suspended, and this rule is hereby suspended.

33 * * * * *

34 Austin, Texas
35 May 25, 1985
36 Hon. William P. Hobby
37 President of the Senate

38 Sir:

39 We, your Committee on Jurisprudence to which was referred H.B. No.
40 1351, have had the same under consideration, and I am instructed to
41 report it back to the Senate with the recommendation that it do
42 pass and be printed.

43 Mauzy, Chairman

RESOLUTION OF THE BOARD OF GOVERNORS
OF THE
UNITED STATES POSTAL SERVICE

Resolution No. 97-3

Office of Inspector General

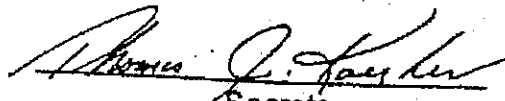
Section 8G(f) of the Inspector General Act of 1978, as amended, has created an Office of Inspector General for the United States Postal Service, replacing the former provisions of that Act which lodged the Inspector General function within the Postal Inspection Service. Section 662(e) of the Treasury, Postal Service and General Government Appropriation Act, 1997, and section 8G(b) of the Inspector General Act require the Governors to determine what functions, powers, and duties should be transferred to the Office of Inspector General as being related to the functions of that office and needed to further the purposes of that Act.

RESOLVED:

1. Division of functions. The Office of Inspector General shall have the functions, powers, and duties necessary for the work reflected in the attached schedule dividing responsibilities between the Inspector General and Inspection Service. The functions transferred shall not include any program operating responsibilities of the Inspection Service, within the meaning of section 8G(b) of the Inspector General Act.
2. Investigative powers. To the full extent necessary to enable the Office of Inspector General properly to perform its investigative functions consistent with the Inspector General Act, the Governors authorize the Office of Inspector General to exercise, concurrent with the Postal Inspection Service, the investigative functions, powers, and duties delegated to the Postal Inspection Service under authority of 39 U.S.C. § 404(a)(7), 18 U.S.C. § 3061, or other law.
3. Support. The Postal Service shall make available to the Office of Inspector General the facilities, space, equipment, funding, and all other support necessary for that Office to perform its functions under the Inspector General Act.
4. Audit Committee. The Inspector General, or his or her representative, shall regularly attend and participate in meetings of the Audit Committee of the Board. The Inspector General shall, in addition, have full access to the Chairman of the Board, and shall report to the Board of Governors (appointed members)

periodically but not less frequently than every six months, consistent with the Inspector General Act.

Sections 1, 2, and 4 of the foregoing Resolution were adopted by the Governors, and section 3 was adopted by the Board of Governors, on March 4, 1997.


Secretary