

CHARLES A. ROSENTHAL, JR.
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

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OPINION COMMITTEE

September 21, 2007

FILE # ML-45372-07

I.D. # 45372

Mr. Greg Abbott
Attorney General of Texas
300 W. 15th Street
Austin, Texas 78701

RQ-0631-GA

Dear General Abbott:

Pursuant to Section 402.043 of the Government Code, I request your written opinion on the following questions:

Does the Harris County Commissioners Court have the authority to lease or purchase a juvenile detention facility in Colorado County, Texas?

Does the Harris County District Attorney's expenditure of asset forfeiture funds to purchase or lease a juvenile detention facility constitute use of those funds in furtherance of an "official purpose of his office" under Article 59.06(c)(1) of the Code of Criminal Procedure?

These questions have arisen in the course of litigation involving the State of Texas in which the district courts are unable to place juvenile offenders, who meet the statutory standards for placement in a juvenile detention facility outside of the home, in appropriate detention facilities because of lack of resources.

The Harris County District Attorney has proposed depositing a substantial amount of asset forfeiture funds collected pursuant to Chapter 59 of the Code of Criminal Procedure into a special fund for use by Harris County to assist in the lease or purchase of a juvenile detention facility in Colorado County, Texas. After the facility has been leased or purchased, it would be made available for use by the state district judges for Harris County juvenile offenders who qualify for placement outside of their homes.

Please find attached a brief on the merits of each question. I look forward to your opinion on these important issues of law.

Hon. Greg Abbott
September 21, 2007
Page 2.

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Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Rosenthal, Jr.", written in a cursive style.

Charles A. Rosenthal, Jr.
Harris County District Attorney
(713) 755-5810

Enclosure.
CAR/sd

Brief in Support of Charles A. Rosenthal, Jr.'s
September 21, 2007 Request for Attorney General Opinion

A. Questions Presented

1. Does the Harris County Commissioners Court have the authority to lease or purchase a juvenile detention facility in Colorado County, Texas?
2. Does the Harris County District Attorney's expenditure of asset forfeiture funds to purchase or lease a juvenile detention facility constitute use of those funds in furtherance of an "official purpose of his office" under Article 59.06(c)(1) of the Code of Criminal Procedure?

B. Relevant Facts

The Harris County District Attorney represents the State of Texas in state district court proceedings involving children under the Juvenile Justice Code. *See* TEX. FAMILY CODE § 53.04(a) (providing that petition for adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct "may be made as promptly as possible by a prosecuting attorney"); § 51.02(11) (defining "prosecuting attorney" to include "district attorney"); § 51.02(10) (defining "party" to include "the state"); *Rivera v. State*, 768 S.W.2d 399, 400 (Tex. App.—Houston [1st Dist.] 1989, no pet.).

In this capacity, the role of the Harris County District Attorney includes:

- Prosecution of adjudication hearings under TEX. FAMILY CODE § 54.03; and
- Advocacy regarding the appropriate placement of a child after the district court has determined, pursuant to TEX. FAMILY CODE § 54.04(c), that "the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made."

In many cases, the disposition of the child's case entails placement of the child on probation. *See* TEX. FAMILY CODE § 54.04(d)(1). The location of that probation is extremely significant: if the district court (or a jury) finds that the "child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of the probation," the district court may place the child on probation outside the child's home. *See* TEX. FAMILY CODE § 54.04(c).

Upon such a finding, the Juvenile Justice Code permits the district court to place a misdemeanor juvenile offender in "a suitable public or private institution or agency" for appropriate supervision. TEX. FAMILY CODE § 54.04(d)(1)(B)(ii).

Prior to June 8, 2007, a district court could send recidivist misdemeanor offenders to the Texas Youth Commission (TYC), pursuant to then-existing Sections 54.04(s) & (t) of the Family Code. Effective June 8, 2007, however, the Legislature repealed Sections 54.04(s) & (t) as part of the effort to reform abuses at TYC. *See* Act of May 25, 2007, 80th Leg., R.S., ch. 263, § 64(1), 2007 Tex. Sess. Law Serv. 422, 456 (Vernon). The impact of this repeal was two-fold: it reduced the number of referrals to TYC, and it *increased* the number of juvenile offenders Harris County would have to place outside of the home.¹

Unfortunately, because of resource shortages, the district courts in Harris County are currently unable to place a majority of the misdemeanor offenders who are in need of support and supervision outside the child's home. Moreover, because of the demand for space, those offenders who manage to be placed in one of Harris County's facilities are accelerated through the placement, depriving them of meaningful programs for rehabilitation and counseling.

To address this problem, the Harris County District Attorney has proposed depositing a substantial amount of asset forfeiture funds into a special fund for use by Harris County to assist in the lease or purchase of a juvenile detention facility in Colorado County, Texas. After the facility has been leased or purchased, it would be made available for use by the state district judges for Harris County juvenile offenders who qualify for placement outside of their homes.²

¹ The minutes of the Harris County Juvenile Probation Board's June 27, 2007 meeting reflect that approximately 425 juvenile offenders who had been committed to TYC in 2006 would not be eligible for placement in TYC after the June 8, 2007 repeal of Sections 54.04(s) and (t) of the Family Code.

² It is important to note that this facility will not be used for "status offenders" (*see* TEX. FAMILY CODE § 51.02(15)), "nonoffenders" (*see* TEX. FAMILY CODE § 51.02(8)) or "children in need of supervision" (*see* TEX. FAMILY CODE § 51.03(b)). In other words, the intent of the District Attorney's transfer of funds is *not* to incarcerate children who arrested for either minor penal law offenses or non-criminal statutory violations. It is instead intended to effectuate the core purposes of the Juvenile Justice Code by housing juvenile offenders who commit serious misdemeanor or felony offenses and who need structure and supervision that they cannot get at home.

C. Authority to Lease or Purchase the Colorado County Facility

As a threshold matter, the Harris County District Attorney respectfully requests a determination whether Harris County may lease or purchase a juvenile detention facility outside of the geographical boundaries of Harris County.

Article V, § 18 of the Texas Constitution confers on commissioners courts such powers and jurisdiction over county business as are conferred by the Constitution and statutes. *See* TEX. CONST. art. V, § 18; Tex. Att’y Gen. Op. H-392, at 2 (1974). Once such a legal basis is found, the commissioners court has broad discretion in the exercise of its power. *See, e.g., Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948); Tex. Att’y Gen. Op. H-392, at 2.

As a matter of constitutional law, there is no core constitutional prohibition against county ownership of property outside its geographic boundaries. *See, e.g.,* Tex. Att’y Gen. Ops. H-462 (1974); H-392 (1974); MW-274 (1980); LA-133 (1977).

This is not to say that there may be no statutorily-imposed geographic limitations on the purchase of property by a county. For example, Section 331.001(c) of the Local Government Code requires that land acquired by a county for use as a public park “must be within the limits of the county.” *See* TEX. LOC. GOV’T CODE § 331.001(c). In concluding that Harris County could not purchase county park land outside of Harris County, the Attorney General specifically observed, however:

We caution that we do not mean to say here that any legal authorization for county land acquisition is necessarily limited to land within the county. *See, e.g.,* Attorney General Opinion H-392 (1974). We reach our conclusion here based on the specific provisions involved, and in particular on the express limitation in section 331.001.

Tex. Att’y Gen. Letter Opinion No. 94-018 (1994).

From this logic, there appears to be a simple principle regarding the authority of a county to purchase real estate outside of its geographic boundaries: if a county has statutory authority to lease or purchase property, there is no geographical restriction on the location of the leased or purchased property unless such a restriction is specifically included in the authorizing statute.

In the instant case, a county's lease or purchase of a juvenile detention facility is authorized by Section 63.017(a) of the Human Resources Code, which authorizes a county to "acquire, through gift, *purchase*, condemnation, or any other method, real property for the purpose of locating a facility on such property." See TEX. HUM. RES. CODE § 63.017(a) (emphasis added). "Such property may be acquired outside of the boundaries of the creating county if, in the opinion of the commissioners court of the forming county, there will exist a demand for the services to be provided by the facility in the county in which the facility is to be located in addition to any need which may already exist within the boundaries of the creating county." *Id.*

Assuming, *arguendo*, that the Harris County Commissioners Court opines that there will be a demand from Colorado County for the use of the juvenile detention facility, there should be no restriction on the authority of Harris County to lease or purchase a juvenile detention facility in Colorado County, Texas.

D. Use of Asset Forfeiture Funds for Lease or Purchase of a Juvenile Detention Facility as a "Official Purpose" of the Harris County District Attorney's Office

The remaining question is whether the expenditure of asset forfeiture funds by the Harris County District Attorney, with approval of the Harris County Commissioners Court, to lease or purchase the Colorado County juvenile detention facility constitutes a lawful use of those funds.

Article 59.06(c) of the Code of Criminal Procedure provides:

If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

- (1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney *solely for the official purposes of his office*;

TEX. CODE CRIM. PROC. art. 59.06(c)(1) (emphasis added).

Consistent with Article 59.06(c)(1), the Harris County District Attorney proposes that the asset forfeiture funds may be expended to lease or purchase the Colorado County facility in the furtherance of the “official purposes of his office.”

The phrase “official purposes of his office” is not defined in Chapter 59, and there have been no case authorities or Attorney General opinions that have construed the phrase. Texas case authority that generally refers to the phrase “official purposes” is likewise sparse, but two cases provide some helpful insight into its meaning.

In *New Amsterdam Cas. Co. v. First National Bank*, 134 S.W.2d 470 (Tex. Civ. App.—El Paso 1939, writ dismissed judgment corrected), the El Paso Court of Civil Appeals took up a controversy arising out of the misapplication of Upshur County funds by the Tax Assessor and Collector for Upshur County, C.W. Owen.³ Upshur County had recovered its losses from Owen’s officeholder bond, and the bond’s surety thereafter sought recovery from the financial institution that had released the misapplied funds to Owen. *Id.* at 472.

In describing Owen’s use of the public funds, the El Paso Court of Civil Appeals used the phrase “official purposes” to contrast a proper use of the funds against Owen’s private use of the funds:

The defendant First National Bank, out of the public money of Upshur County on deposit with it, permitted C. W. Owen, on his checks as County Collector, payable to himself, to withdraw the sum of \$4,731.23. The first withdrawal was by check of March 11, 1935 in the sum of \$2,500; the second in the sum of \$2,231.23, dated December 10, 1935. Of the total sum of money thus drawn, Owen devoted \$806 thereof to the payment of a note owed by him to said First National Bank which, at the time said payment was made, had knowledge of the source of the funds. The balance was deposited in the bank to the private account of Owen. *This money was drawn out of his private account by him by means of checks given for other than official purposes.* In any event, the evidence fails to show that any of the money went to the payment of expenses of his office.

The defendant Farmers and Merchants Bank received and paid out of public money belonging to Upshur County two warrants aggregating \$2,872.61, and applied \$1,122.25 to the payment of note owing to it by Owen. Owen was given credit for the balance in his

³ Who, parenthetically, was “adjudged to be a person of unsound mind” nineteen months after being elected tax assessor. See *New Amsterdam*, 134 S.W.2d at 472.

private account. This balance, together with the sum next mentioned, was withdrawn on checks given by Owen, the proceeds of which were not shown by the evidence to have gone to the payment of expenses of his office – *in fact the evidence shows, or tends very strongly to show, that it was used for purely private obligations of Owen.*

Id. at 473 (emphasis added). The key contrast drawn here by the El Paso Court of Civil Appeals was between the use of the public funds for “purely private obligations” against the “official purposes” of Owens’s office.

The breadth of the phrase “official purposes” is also shown by dicta in *Margraves v. State*, 34 S.W.3d 912 (Tex. Crim. App. 2000), in which the Court of Criminal Appeals observed that “[a] public servant can misapply government property even when it is used for official purposes.” *Id.* at 916. Implicit in the *Margraves* holding is that the concept of “official purposes” is so broad as to include purposes that may even constitute a misapplication of government property, so long as it bears some relation to the public purposes of the office.

If the phrase “official purposes” is read as broadly as it was apparently intended by the Legislature, the expenditure of asset forfeiture funds under Article 59.06(c)(1) to assist in the lease or purchase of a juvenile detention facility is consistent with the “official purposes” of the District Attorney’s office. The expenditure does not benefit a private interest of the District Attorney or any other person; it *does* further the public interests of the District Attorney and the citizens of Harris County.

When considering the official purpose of the Harris County District Attorney’s office, the mandate is extremely broad. At its core, it is to “represent the state in criminal cases pending in the district and inferior courts of the county” and to see that justice is done. *See* TEX. GOV’T CODE § 43.180(b); TEX. CODE CRIM. PROC. art. 2.01. In the context of juvenile proceedings, as noted *supra*, p. 1, the Harris County District Attorney represents the State of Texas in state district court proceedings involving children under the Juvenile Justice Code.

Necessarily, the official duties of the District Attorney do not end with the adjudication of a juvenile offender. The District Attorney is obliged to serve as an advocate of the State of Texas in pursuing the statutory goals of the Juvenile Justice Code, which include:

- Protection of the public and public safety.
- Promoting the concept of punishment for criminal acts.
- Protection of the welfare of the community.

- Controlling the commission of unlawful acts by children.
- Separation of a child from the child's family in the interest of public safety.

See TEX. FAMILY CODE § 51.01(1), (2)(A), (4), & (5).

The expenditure of funds to establish detention facilities for these offenders furthers these goals by creating an environment for the successful rehabilitation of these offenders, and a facility for the separation of dangerous offenders from the public until the law requires their release.

It furthers the District Attorney's statutory and constitutional mandate to contribute funds for a facility to house juvenile offenders who would otherwise not be housed at all. In other words, if there no placement facility to send children who are in need of structure and supervision and who cannot get it at home, the District Attorney's advocacy for such an outcome becomes essentially meaningless and the goals of the Juvenile Justice Act cannot be fulfilled.

For these reasons, the Attorney General should find that the District Attorney has the authority under Article 59.06(c)(1) to expend asset forfeiture funds to assist in the lease or purchase of a juvenile detention facility.