July 14, 2008

Mr. Sidney "Buck" LaQuey
Grimes County Auditor
Post Office Box 510
Anderson, Texas 77830

Opinion No. GA-0645
Re: Whether a county commissioner may be paid while working for the county sheriff in the jail division (RQ-0661-GA)

Dear Mr. LaQuey:

You state that a Grimes County Commissioner "has been working and received a salary paid by the jail division of the sheriff's department in addition to receiving the salary as" county commissioner.¹ You ask whether the commissioner may be paid for her work in the jail division. Request Letter, supra note 1, at 1. You believe Attorney General Opinion JC-0061, which construes Local Government Code section 81.002 to prohibit a county commissioner from being employed by the county, suggests that the answer is "no." See id.; see also TEX. LOC. GOV'T CODE ANN. § 81.002(a) (Vernon 2008); Tex. Att'y Gen. Op. No. JC-0061 (1999).

Local Government Code section 81.002(a) requires a county commissioner, "[b]efore undertaking the duties of" the office, to

take the official oath and swear in writing that the person will not be 
interested, directly or indirectly, in a contract with or claim against 
the county except:

(1) a contract or claim expressly authorized by law; or

(2) a warrant issued to the judge or commissioner as a fee of 
office.

TEX. LOC. GOV'T CODE ANN. § 81.002(a) (Vernon 2008) (emphasis added).


repealed section 81.002 with respect to a county commissioner’s interest in business entities and real property, Opinion JC-0061 concludes that section 81.002 remains viable with respect to a county commissioner’s employment relationship with the county. See id. at 3; see also Tex. Loc. Gov’t Code Ann. § 171.004(a) (Vernon 2008) (generally requiring a local public official with a substantial interest in a business entity or real property, before a vote on a matter involving the business entity or real property, to disclose the interest and abstain from voting).

Section 81.002 precludes a county commissioner from simultaneously being employed by the county because a compensated county employee is “interested, directly or indirectly, in a contract with or claim against the county.” Tex. Att’y Gen. Op. No. JC-0061 (1999) at 3 (quoting Tex. Loc. Gov’t Code Ann. § 81.002(a) (Vernon 1988)); see also Starr County v. Guerra, 297 S.W.2d 379, 380 (Tex. Civ. App.—San Antonio 1956, no writ) (indicating that the oath provision precludes a county commissioners court from employing a commissioner). Because an ambulance driver in the county at issue in JC-0061 was a county employee and paid with county funds, the opinion determines that the county may not pay a county commissioner for employment as an ambulance driver. See Tex. Att’y Gen. Op. No. JC-0061 (1999) at 3–4.

In the situation you describe, the county commissioner is compensated for work performed in the jail division of the sheriff’s office, and the commissioner thus has entered an employment relationship with the county. See Request Letter, supra note 1, at 1. An employee of a county sheriff’s department is a county employee paid with county funds. Cf. Tex. Att’y Gen. Op. No. GA-0465 (2006) at 3 (stating that many counties employ one person to serve as both jailer and deputy sheriff); Tex. Att’y Gen. Op. No. GA-0322 (2005) at 3 n.5 (stating that a sheriff’s deputies “are county employees paid by county funds”); Tex. Att’y Gen. Op. No. S-96 (1953) at 3 (concluding that a deputy sheriff is a county employee for purposes of the Workmen’s Compensation Act); Tex. Att’y Gen. LO-93-62, at 2 (stating that both deputy sheriffs and county jailers “perform their duties on behalf of the sheriff”). Indeed, you tell us that the county is paying the commissioner for services as commissioner and with the sheriff’s department “on one check from the county.” Request Letter, supra note 1, at 1.

By becoming a compensated county employee, the commissioner has become interested in a contract with or claim against the county for purposes of Local Government Code section 81.002(a). See Tex. Loc. Gov’t Code Ann. § 81.002(a) (Vernon 2008); Tex. Att’y Gen. Op. No. JC-0061 (1999) at 3. Consequently, under section 81.002(a) a county commissioner may not be employed with the county sheriff’s department unless the commissioner’s contract or claim is within either of the exceptions to section 81.002(a). See Tex. Loc. Gov’t Code Ann. § 81.002(a) (Vernon 2008); Tex. Att’y Gen. Op. No. JC-0061 (1999) at 3. You do not suggest that the contract or claim at issue here is within either of the exceptions to section 81.002(a), and we do not find that it is.

See also Tex. Loc. Gov’t Code Ann. § 85.005(a) (Vernon 2008) (authorizing a sheriff, “with the approval of the commissioners court,” to employ guards “to ensure the safekeeping of prisoners” and jail security); id. §§ 151.001(a), 002, 003 (providing generally that a county officer may appoint positions after the commissioners court has approved the positions); id. § 152.001 (authorizing the county commissioners court to set a county employee’s compensation, salary, and expenses). See generally Tex. Att’y Gen. Op. No. O-2444 (1940) at 3–4 (describing the process by which a sheriff may appoint an employee with the commissioners court’s approval).


In conclusion, the commissioner about whom you ask may not be paid for working in the sheriff's jail division. As this office stated in Opinion JC-0061, because section 81.002 precludes this employment relationship, "we need not address whether the arrangement violates the doctrine of common-law incompatibility . . . ." Tex. Att'y Gen. Op. No. JC-0061 (1999) at 4. And we recognize that this construction of section 81.002 vis-à-vis Local Government Code section 171.004(a) creates an anomaly in that, under section 171.004(a), a county commissioner may benefit from a contract with the county that involves a business entity or real property in which the

commissioner has a substantial interest so long as the commissioner complies with chapter 171’s requirements, yet section 81.002 prohibits the commissioner from entering an employment relationship with the county. But this is a policy matter for the Legislature—and not this office—to consider. Cf. Tex. Att’y Gen. Op. No. GA-0630 (2008) at 4 (suggesting that policy concerns are for the Legislature to address).
SUMMARY

Local Government Code section 81.002(a) precludes a county commissioner from being paid for employment in the county sheriff’s department.

Very truly yours,

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