



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 2, 1993

Honorable David T. Garcia
Brooks County Attorney
P.O. Box 557
Falfurrias, Texas 78355

Letter Opinion No. 93-107

Re: Whether the Brooks County Commissioners Court is authorized to hear an appeal of the sheriff's suspension of a deputy sheriff (ID# 21053)

Dear Mr. Garcia:

On behalf of the Brooks County Commissioners Court (the "commissioners court"), you ask whether it is authorized to hear the appeal of a grievance of a deputy sheriff. You explain that the sheriff suspended the deputy for violations of departmental policy. In the letter the sheriff sent to the deputy informing him of the suspension, the sheriff stated that the deputy had the right to appeal the suspension to the commissioners court. The deputy sheriff then requested a hearing before the commissioners court. In your capacity as county attorney, you advised the commissioners court that it was not authorized to hear the appeal. The commissioners court has asked this office to consider whether, in our view, this is the case.

You advised the commissioners court that it was not authorized to hear the appeal because the Brooks County Personnel Manual (the "manual") does not apply to the deputy sheriff. Article IX, section 4, of the manual states that "[i]f a grievance is not satisfactorily adjusted [by the employee's immediate supervisor], the employee may appeal to the Commissioners' Court for an equitable solution." Article I, section 2, of the manual states in pertinent part:

The policies created in this manual are designed to apply to ALL EMPLOYEES AND PUBLIC OFFICIALS IN THE SERVICE OF BROOKS COUNTY. They shall not, however, apply to those individuals or areas of the job which are regulated by Statute. [Emphasis in original].

Apparently, you interpret this language to provide that the manual does not "apply to employees of a Constitutional Office such as the Sheriff's." It is not within the purview of this office to construe local governmental bodies' personnel manuals, and we defer to your interpretation of the foregoing provision. Although we decline to interpret the manual and do not comment on your interpretation, we conclude that state law prohibits the

commissioners court from hearing the appeal. Therefore, for different reasons, we agree with your conclusion.

Section 151.001 of the Local Government Code provides that a county officer who requires the services of deputies shall apply to the commissioners court of the county for the authority to appoint the employees. Section 151.001 applies to sheriffs. *Commissioners Court of Shelby County v. Ross*, 809 S.W.2d 754, 756 (Tex. Civ. App.—Tyler 1991). The commissioners court is authorized to determine the number of employees that may be appointed and to authorize their appointment, Local Gov't Code § 151.002, but is prohibited from attempting "to influence the appointment of any person to an employee position authorized by the court," *id.* § 151.004. Furthermore, section 85.003 of the Local Government Code provides that a deputy sheriff "serves at the pleasure of the sheriff."

In *Ross*, 809 S.W.2d 754, the court considered whether a commissioners court was authorized to suspend or terminate deputy sheriffs who had violated the commissioners court's overtime policy. The trial court had held that section 85.003 of the Local Government Code prohibited the commissioners court from suspending or terminating the deputy sheriffs. The appellate court agreed, stating in pertinent part that section 85.003:

has been interpreted to mean that both the appointment and tenure of a sheriff's deputy depend upon the sheriff's sole discretion. *Murray v. Harris*, 112 S.W.2d 1091, 1093 (Tex. Civ. App.—Amarillo 1938, writ *dism'd*). . . . Several similar cases grant Texas sheriffs virtually unbridled authority in choosing their personnel, restricted only by certain basic constitutional considerations. [Citations omitted.] On the other hand, the commissioners court . . . [is] expressly forbidden to attempt to influence the appointment of any person to an employee position authorized by the court. [Local Gov't Code §] 151.004. The commissioners court may limit the number of deputies authorized, but it has no power over naming the individuals to be appointed. *Tarrant County v. Smith*, 81 S.W.2d 537, 538 (Tex. Civ. App.—Fort Worth 1935, writ *ref'd*).

Ross, 809 S.W.2d at 756. The court concluded that "[t]he acts of the Commissioners Court in suspending or threatening to discharge the three deputies were clearly contrary to the applicable statute and therefore beyond its authority." *Id.* at 757. *Cf.* Attorney General Opinion DM-158 at 4 (1992) (commissioners court has no authority to reinstate a discharged employee paid from county road and bridge funds in an *ex officio* road commissioner's precinct).

On the basis of the reasoning in *Ross*, we conclude that the commissioners court is without authority to consider the appeal of the deputy sheriff's grievance. Clearly, under

the *Ross* court's interpretation of section 85.003 of the Local Government Code, only the sheriff is authorized to suspend or terminate a deputy sheriff, and such matters are completely beyond the jurisdiction of the commissioners court. We believe that it is immaterial in this case that the sheriff has informed the employee that he has a right to a hearing before the commissioners court. It is not for a county sheriff to define the authority of the county commissioners court. The power of a commissioners court is limited to that conferred by the constitution or statute, or reasonably inferred from the grant of a specific power. *Renfro v. Shropshire*, 566 S.W.2d 688, 690 (Tex. Civ. App.--Eastland 1978, writ ref'd n.r.e.); Attorney General Opinions DM-158 at 4; JM-1160 at 2 (1990).

S U M M A R Y

The Brooks County Commissioners Court is not authorized to hear an appeal of the sheriff's suspension of a deputy sheriff.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee