



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

**DAN MORALES**  
ATTORNEY GENERAL

April 27, 1995

Honorable Chris A. Wyatt  
Coke County Attorney  
P.O. Box 529  
Robert Lee, Texas 76945

Letter Opinion No. 95-027

Re: Law enforcement authority of agents  
of a water district who are not peace  
officers (RQ-575)

Dear Mr. Wyatt:

You ask whether the Colorado River Municipal Water District (the "district") may issue citations to persons who use its facilities without a permit, even if the employees who issue such citations are not peace officers certified by the Texas Commission on Law Enforcement Officer Standards-Education ("TCLEOSE").

As you give us to understand it, the district owns and operates E.V. Spence Reservoir. Pursuant to the authority granted it by sections 51.127 and 51.128 of the Water Code, the district has promulgated rules and regulations designed to limit access to the reservoir to persons who purchase a permit for that purpose. The rules require one to purchase such a permit and to retain it at all times while on reservoir property.

To assure that its rules are not violated, the district employs certain persons styled "Code Enforcement Officers." These officers, who are not peace officers certified by TCLEOSE, stop people who are on the reservoir property, inquire as to whether these people have the required permit, and, if they do not, issue them a citation. In order to issue the citation, the officer asks a series of questions to establish the person's identity. After issuing the citation, the officer files a complaint with the Coke County Justice Court.

You have taken the position that these stops constitute arrests, and that in order to make arrests the district, pursuant to section 51.132 of the Water Code, must employ peace officers certified by TCLEOSE. You appear to suggest that you could subject Coke County to liability for civil damages by acting on a Code Enforcement Officer's complaint.

Your suggestion that prosecuting persons who do not have permits based on the complaints of the "Code Enforcement Officers" might subject your county or your office to civil liability seems to us without merit. In prosecuting a complaint of alleged criminal

activity, your office is immune from civil damage actions. 31 TEX. JUR. 3d *District and Municipal Attorneys* § 17, at 411 (1984).

However, we do agree that actions of the sort you describe taken to enforce the district's regulations should be taken by TCLEOSE-certified officers, as section 51.132 contemplates. While the actions of the "Code Enforcement Officers" in stopping people at the dam and questioning them may not *per se* constitute arrests, very little more force may be necessary before such a situation becomes one in which "a person's liberty of movement is restricted or restrained." *Amores v. State*, 816 S.W.2d 407, 411 (Tex. Crim. App. 1991). The acts of such officers might well, in that case, give rise to claims under federal civil rights laws, such as 42 U.S.C. § 1983, or claims for the tort of false arrest.

We believe that it was with such problems in mind that the legislature enacted section 51.132 of the Water Code, which requires that arrests be made by TCLEOSE-certified peace officers. Accordingly, it is our view that the actions you describe should be carried out by TCLEOSE-certified officers.

### S U M M A R Y

Prosecution of a complaint made by so-called "Code Enforcement Officers" employed by a water district is protected from civil damage actions by prosecutorial immunity. However, because stops by such officers can easily become arrests, such stops should be made by peace officers certified by the Texas Commission on Law Enforcement Officer Standards-Education, as contemplated by section 51.132 of the Water Code.

Yours very truly,



James Tourtelott  
Assistant Attorney General  
Opinion Committee