

## **Report on Guidance provided to Constables**

This is intended to be a summary and compilation of guidance the Office of the County Attorney has provided during the past few months concerning issues that have arisen with respect to various Constable Offices.

### **Matters Reviewed**

The following are matters reviewed:

- The appropriate use of county offices, equipment and personnel.
- The administration of the contract deputy programs.
- The service of vacate notices.
- The accuracy of timesheet records for county employees.
- The issuance of "honorary" badges to non-deputies.
- The use of reserve deputies.

### **Powers and Duties of the Office of the Constable**

The general powers and duties of Constables are principally set forth in Subsections (a) through (e) of Section 86.021, Local Government Code. These include executing civil or criminal process, warrants, and precepts and serving as bailiffs in Justice Courts. Harris County has eight Constable Precincts with budgets ranging from \$5,710,000 (Precinct 8) to \$28,175,000 (Precinct 5). Collectively the eight precincts are afforded funds of \$119,900,000 annually to service the 1,703.48 square miles of Harris County.

### **Use Of County Property, Equipment And Personnel For Charitable Purposes**

The Texas Constitution generally prohibits the use of public property for private purposes. TEX. CONST. ART. III, § 52(a); TEX. CONST. ART. III, § 51; TEX. CONST. ART. XVI, § 6(a). However, the courts have held that Article II, section 52 does not prohibit a county from providing public resources to a private entity provided that the expenditure serves a public purpose of the county, the county receives adequate consideration, and there are sufficient controls to ensure that the public purpose will be accomplished.

The Constables' Offices have a long history of helping various charities. County employees should not feel compelled to contribute to any charity whether or not it is associated with the elected office. County employees should be told in writing that no adverse consequences will result if an employee chooses not to contribute to or participate in the nonprofit's activities. Procedures should be in place to insure that such directives are followed by all employees.

## **Use Of County Property, Equipment, And Personnel For Campaign Purposes**

Use of county property and equipment for campaign purposes is prohibited. *See* TEX. PEN. CODE § 39.02(a)(2). In addition, threatening or intimidating a governmental employee with retaliation for refusing make a campaign contribution or work in a political campaign constitutes an act of official oppression and is a Class A misdemeanor. *See* TEX. PEN. CODE § 39.03.

The following is an example of a directive issued which may serve as a guide:

1. No Harris County resources should be used for political purposes, including county buildings, fax machines, phone lines, office equipment, vehicles, computers, and e-mail.
2. All employees who volunteer their time to political work must do so off-duty on their own time.
3. No campaign money, tickets, literature, gifts, or donations should be distributed or collected on county time or on county property or in a county vehicle.
4. Off duty personnel should not wear their uniforms at political events.

We suggest that the names and addresses of county employees should not be on campaign mailing lists, unless the employee expressly requests inclusion. No in-person solicitation should be made directly to a county employee, whether it is done on county property or another location. County work addresses and county email addresses should also be excluded from campaign mailing lists.

County employees may participate in campaign activities if they wish, but management should be sensitive to the appearance of coercion, and all such activity must be carried out while off duty.

Management should strictly enforce restrictions against use of county resources for campaign activity. Policies such as the campaign prohibitions in the Harris County Statement of Ethics, attached, should be adopted by individual Constable Offices and enforced by effective oversight.

## **Contract Deputy Program**

Pursuant to section 351.061 of the Local Government Code, Harris County enters into agreements with non-governmental associations for law enforcement services in the geographical area represented by the association. Pursuant to the Interlocal Cooperation Act found at Chapter 791 of the Government Code, the County enters into substantially similar agreements with governmental entities. A law enforcement services agreement is sometimes referred to as a Contract Patrol Program Agreement (CPPA).

The contract deputy program allows MUDs, school districts, homeowners associations and other groups to pay to have Sheriff's or Constables' deputies assigned to specific areas or neighborhoods.

While initially determined as unconstitutional by attorney generals during the 1980s, and prior to the passing of Local Government Code Subsection 351, Attorney General Greg Abbott in 2007 found the programs constitutional so long as county commissioners ensure a contract's main purpose is to benefit the public, not a private group, and further provided that the contract did not improperly cede an elected official's authority over his or her deputies.

CPPAs are designed to hire additional law enforcement officers that cannot be funded with existing county revenue. Governmental and non-governmental entities supply these funds to place additional officers in specific patrol areas. Through the use of the CPPA, Harris County is able to increase the number of patrol officers on duty by more than eight hundred deputies without resorting to a general tax increase or by reducing services elsewhere. As a result, the CPPA program is considered to be highly effective and successful.

According to the most recent report covering the program, 295 CPPAs supply 852 additional officers. Of these officers, 185 are reimbursed at 100% of the cost, 163 are reimbursed at 80%, and 504 are reimbursed at 70%.

The CPPA contracts mandate that all decisions as to the deployment of officers shall remain under the exclusive supervision of the law enforcement agency. This is required under TEX. LOC. GOV'T CODE § 351.064(a) and by the Texas Constitution which generally prohibits an elected official from delegating his discretion and duties to a private organization.

CPPAs are entered into on an annual basis. Recently, the effective date of the CPPAs was realigned to be consistent with the County's fiscal year, beginning on March 1<sup>st</sup> and terminating at the end of February the following year.

### **Vacate Notices**

Section 24.005 of the Texas Property Code requires a landlord to give a tenant who defaults or holds over the end of the term of a lease a notice to vacate the property prior to filing a forcible entry and detainer suit. *See* TEX. PROP. CODE § 24.00. This is known as a "vacate notice." The Texas Local Government Code states that such vacate notices required by Section 24.005, Property Code, "are process for purposes of this section that may be executed by a constable."

Section 86.021(a) of the Texas Local Government Code states that vacate notices may be served the same as other civil process; however Section 154.005(d) places limitations on the method by which constables may serve vacate notices. For example, Section 154.005(d) of the Texas Local Government Code states that a constable may receive a fee for serving a vacate notice, but "notices may only be delivered when not in conflict with the official duties and responsibilities of the constable." The section reads further that, "A constable delivering said notices must not be wearing upon his or her person a uniform or any insignia which would usually be associated with the position of constable nor may the constable use a county vehicle or county equipment while

delivering said notices. For purposes of collecting fees for serving said notices, a constable is considered a private process server.”

As a result of uncertainty in the law, different policies and procedures developed among the Constables can lead to further uncertainty and confusion. Constables should be wary of running afoul of the restrictions imposed by section 154.005(d) the Texas Local Government Code. The following is a summary of guidelines issued by our Office previously:

1. Deliver notices to vacate during off-duty hours.
2. Wear street clothes when delivering notices to vacate
3. Use a personal vehicle when delivering notices to vacate
4. Require the landlord to provide the notice to vacate.
5. Require the landlords to specify the manner of delivery.

### **Time Records Of County Employees**

County policy requires that all time sheets reflect actual time worked.

Better training of management and employees should be implemented to learn the standards that the county imposes on the filing of time records, and management should ensure that personnel adhere to these standards. Approved computerized forms should be used and training provided to insure proper use of computerized forms.

### **Honorary Constable Badges**

Section 37.12(a) of the Texas Penal Code prohibits the possession and presentation of a card, badge, document, insignia, shoulder emblem, or other object bearing the insignia of a law enforcement agency and which identifies that person as a deputy or reserve deputy of the agency when he or she is not. The penal code permits such identification if it clearly identifies the officer as an honorary or junior peace officer, a reserve deputy, or a member of a junior posse. *See* TEX. PEN. CODE §37.12.

We caution all Constables to ensure that the issuance of honorary badges and identification is done in compliance with section 37.12 of the Texas Penal Code. Such identification should only be issued with the knowledge and consent of the Constable and those who receive such identification should be instructed not to use it to influence the actions of law enforcement officers or others.

All honorary identification should indicate that it is not an official law enforcement credential.

### **Use Of Reserve Deputies**

Section 86.012 of the Texas Local Government Code authorizes constables to appoint reserve deputies. *See* TEX. LOC. GOV'T. CODE §86.012. Each of the Harris County Constables' Offices has reserve deputies.

Reserve deputies serve at the discretion of the Constable and can be called into service at any time that the Constable considers circumstances necessary to have additional officers to preserve the peace and enforce the law. Reserves who are peace officers may be authorized by the Constable to carry a weapon or act as a peace officer at all times. Reserves are not considered employees of the County and are not paid by the County.

Commissioners Court has the authority under section 86.012(a) of the Texas Local Government Code to limit the number of reserve deputy constables that a constable may appoint. Harris County Commissioners Court has not taken this step. Constables should ensure that they have reserve officers in place sufficient to provide for public safety while still ensuring proper management and training.

### **Summary**

We trust this report is helpful. Our attorneys are available to the Constables and to advise on these matters at any time.