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Tex. Atty. Gen. Op. JM-270, 1984 WL 182335 (Tex.A.G.)

Office of the Attorney General
State of Texas

Opinion No. JM-270

December 27, 1984

Re: Whether a **constable** may sell **computers** to his countyHonorable Charles D. Houston
District Attorney
155th Judicial District
P.O. Drawer 10
Bellville, Texas 77418

Dear Mr. Houston:

You state that the **constable**-elect for a Waller County precinct owns a **computer** store from which Waller County and other counties have purchased **computers**. You ask whether he may legally continue to service the accounts he has with the county governments and whether he may legally make new sales to the counties.

We have previously issued Attorney General Opinion JM-99 (1983) which provides a partial answer to your question. It concluded that a county treasurer who owned a "right-of-way service company" could contract with his county to assist it in acquiring right of way property. The opinion pointed out the Penal Code provisions prohibiting official misconduct and the misuse of official information. Penal Code §§ 39.01, 39.03. Whether an officer has been guilty of conduct proscribed by these statutes is a fact question. The opinion discussed common law prohibitions against **conflicts** of interest and concluded that

as long as there is no **conflict** of interest, self-dealing, or potential for dereliction of duties, we believe that as a general proposition, a county official or employee may contract with the county through the commissioners court for services or materials which are furnished by that county employee in his private capacity and which are separate and wholly unrelated to his official county duties.

This general conclusion has been modified by the enactment of article 988b, V.T.C.S., which became effective January 1, 1984. Acts 1983, 68th Leg., ch. 640 at 4079. Article 988b, V.T.C.S., relates to **conflicts** of interest by local

public officials:

Section 1. In this Act:

(1) 'Local public official' means a member of the governing body or another officer, whether elected or appointed, paid or unpaid, of any district (including a school district), county, city, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

....

Sec. 3. (a) Except as provided by Section 5 of this Act, a local public official commits an offense if he knowingly:

(1) participates in a vote or decision on a matter involving a business entity in which the local public official has a substantial interest if it is reasonably foreseeable that an action on the matter would confer an economic benefit to the business entity involved;

(2) acts as surety for a business entity that has a contract, work, or business with the governmental entity; or

(3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

*2 Sec. 4. If a local public official or a person related to that official in the first or second degree by either affinity or consanguinity has a substantial interest in a business entity that would be peculiarly affected by any official action taken by the governing body, the local public official, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the official recordkeeper of the governmental entity.

Sec. 5. (a) The governing body of a governmental entity may contract for the purchase of services or personal property with a business entity in which a member of the governing body has a substantial interest if the business entity is the only business entity that provides the needed service or product within the jurisdiction of the governmental entity and is the only business entity that bids on the contract.

(b) The governing body must take a separate vote on any budget item specifically dedicated to a contract with an entity in which a member of the governing body has a substantial interest and the affected member must abstain from that separate vote. The member who has complied in abstaining in such vote under procedures set forth in Sections 3 and 4 of this Act may vote on a final budget only after the matter in which he is concerned has been resolved.

Sec. 6. ... The finding by a court of a violation under this article does not render an action of the governing body voidable unless the measure that was the subject of an action involving **conflict** of interest would not have passed the governing body without the vote of the person who violated this article.

A **constable** is a precinct officer who exercises responsibilities beyond those that are advisory in nature. Tex. Const. art. V, § 18; V.T.C.S. arts. 6878, 6885. He is therefore a local public official within the definition in section 1(1) of article 988b, V.T.C.S.

Section 3 states the prohibited conduct. Under the circumstances described in section 3(a)(1), a local public official may not participate in a vote or decision affecting a business in which he has a substantial interest. The prohibition expressly applies only to officers who have authority to participate in such votes or decisions for the governmental entity which they serve. Other provisions of article 988b, V.T.C.S., demonstrate that a local public official must have

legal authority to decide or vote on a matter in order to violate section 3(a)(1). See sec. 5 (exception for sole bidder requires the interested officer to abstain from vote); sec. 6 (violator's participation in vote does not necessarily invalidate the contract).

The **constable**-elect in this case wishes to continue contracting with his county. The commissioners court is the contracting agency for the county. *Anderson v. Wood*, 152 S.W.2d 1084 (Tex.1941). A **constable** thus does not have legal authority to vote on a county decision about its existing **computer** service contracts or its decision to buy a new **computer**. Section 3(a) therefore will not apply to the **constable** elect's contracts with his county.

*3 We have found no other provision of law which would bar the **constable** from continuing to service the accounts he has with Waller County and other counties or from making new sales of **computers** to the county governments.

SUMMARY

Article 988b, V.T.C.S., does not prohibit a **constable** from contracting with the government of the county in which his precinct is located.

Very truly yours,
Jim Mattox
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