

Office of County Attorney

By Rick Miller, Bell County Attorney

July 2004

Like other offices, that of the county attorney is constitutionally established, unless the county has created a criminal district attorney, in which case the office of county attorney is abolished. If there is both a district attorney and a county attorney, the county attorney prosecutes misdemeanor offenses, and the district attorney handles felonies. However, some counties have a county attorney with felony responsibility.

A variety of statutes govern the duties of the county attorney. Under the Code of Criminal Procedure, he or she must prosecute misdemeanor criminal cases, i.e., those offenses filed in the county court, county courts at law, and justice courts. In the absence of the district attorney, he or she shall represent the state, and may also aid the district attorney in district court.

Texas statutes are replete with unique offenses that the county attorney is required to enforce, such as election violations, vice laws, "going-out-of-business" sale violations, and liquor law offenses. The county attorney also may act as the juvenile prosecutor, where cases will primarily involve felony offenses.

Under the Local Government Code, the county attorney may represent county officials and employees in lawsuits related to their duties. On request, the county attorney is additionally required to give a written legal opinion to any county official concerning that official's duties. Also, the county attorney may represent the county in collecting delinquent taxes, and is mandated to collect delinquent motor vehicle inventory taxes. The Transportation Code requires that the county attorney file suit for collection of delinquent assessments against property owners for construction of drainage ditches and adjoining roadway, as well as for damages to a closed roadway or bridge caused by a driver.

A number of other statutes authorize the county attorney to take such actions as obtaining injunctions against public nuisances, prosecuting public officials guilty of some offense or malfeasance, and enforcing deed restrictions in larger counties. Texas statutes also permit the county attorney to retain under his or her control a hot check collection fee fund, which may be used solely to defray salaries (other than the county attorney's) and expenses of the office.

Primarily, the county attorney is charged with enforcement of criminal statutes and does not represent the county in its general legal business or the conduct of ordinary civil actions. Because of this, county officials may hire private counsel so long as that action does not usurp the statutory authority of the county attorney.

Chapter 45 of the Texas Government Code reserves to each county a statute that may be used to more specifically define the duties of the county attorney, including representing the county in civil matters, although many counties have not done so. Chapter 46 of that Code, the Professional Prosecutors Act, also allows the county attorney to accept a specified salary supplement from the state; in so accepting the county attorney is then prohibited from having a private law practice in addition to his or her public duties.

In addition to misdemeanor prosecution, the county attorney often represents Child Protective Services with regard to the disposition of abused and neglected children, handles the county's mental illness

hearings before the court, and may conduct special prosecutions, such as nuisance-abatement of trash under a commissioners court ordinance, animal control problems, etc.

Where there is a good working relationship between a county attorney and the commissioners court, the county attorney can act as the legal right-hand of the court. However, while most county attorneys are “up-to-speed” on county legal issues and can be of important assistance to the commissioners court, many are usually more oriented to criminal law. If the county attorney feels that he or she is not qualified or capable of handling a particular civil issue for the county, professional ethics require that he or she not undertake the matter; private legal counsel may then be required. Areas where the county attorney can provide positive assistance to the commissioners court may include some of the following:

- Reviewing and drafting proposed county legislation, ensuring that it meets legal standards and requirements and avoids problems of ambiguity.
- Examining contracts to assure that they meet legal requirements and do not create any more liability for the county than is necessary. There are constitutional requirements with respect to a county incurring debt, and the county attorney can aid in protecting the county’s interest.
- Rendering legal opinions about potential actions and policy matters. He or she should not be expected to give “off-the-cuff” opinions, since any legal opinion should be well researched and provide a sound basis on which court-established policy can rest. Sometimes the problem will be sufficiently complex that it will require an attorney general’s opinion. When asking for a legal opinion of the county attorney, it is very important that all of the facts behind the request be provided. Of course, one must be prepared for whatever opinion is forthcoming, good or bad. Also, the county attorney will provide an opinion as to the legal feasibility of a course of action, not whether that course should be taken...that is the province of the commissioners court alone.
- Screening open records requests. Open records and meetings law has become increasingly complex, and it is critical that timely decisions and responses promptly flow from such requests from the public. A policy should be established for all departments to routinely channel such requests through the county attorney to make sure the law is followed correctly.
- Initially reviewing claims made against the county before being turned over to the insurance carrier. The problem might be one that can be quickly and cheaply resolved. Also, a quick response in gathering records and information, such as interviewing involved parties, may preserve important evidence in the county’s favor that might otherwise be lost by delay. Also, the county attorney can be an important liaison with the insurance carrier.

Finally, with respect to the county attorney’s criminal prosecution duties, it is very unethical and unbecoming for a political figure to attempt to intercede with the county attorney on behalf of some arrested friend, relative or community leader who has run afoul of the law. Nothing upsets the electorate more than the notion that political influence can buy immunity or privileged treatment. The county attorney must necessarily enforce all of the laws without favor.

While the preferences of the county attorney or the commissioners court will largely dictate the ongoing relationship between the two, it also should be emphasized that the more duties that the county attorney assumes in support of the court, the more likely there will be a need to enhance the available resources in the county attorney’s office, both personnel and equipment. Even at that, it might still be cheaper than outside legal help. Nevertheless, the county attorney can be an important part in helping a commissioners court to meet its responsibilities legally and efficiently.