

County *issues*

Volume 12, Issue 2 \ March 1, 2002

Published by the Texas Association of Counties

contents

Weight-loads <i>New Law?</i>	1
Turnpikes <i>TxDOT Rules</i>	2
ETJ Deadline <i>April 1</i>	2
Constable Duties <i>Redistricting</i>	3
Bush Budget <i>County Impact</i>	3
HB 1445 <i>Questions</i>	5
Bail Bonds <i>Fee Splitting</i>	5
Brownfields <i>New Law</i>	5
Tobacco Funds <i>Fiscal loss?</i>	8
Tobacco Funds <i>Panel to Act</i>	9
Info Resources <i>County Aid</i>	9
AG Opinions <i>Issued</i>	10
S torm Water <i>Coalition</i>	11
AG Opinions <i>Requested</i>	11
County Week <i>April 7-13</i>	11
From the Legislative Desk <i>Save us from ourselves</i>	12

Victoria County Questions Weight-load Rewrite

The Victoria County Criminal District Attorney's office has raised a question to the Attorney General regarding the Legislature's intent when changes occur in the law during codification. In the request, Assistant Criminal DA Michael Kelly questions changes made to Article 6701d-11 5B(a) to (e), Vernon's Annotated Civil Statutes, when it was changed in codification to Section 623.011 of the Transportation Code. Article 6701d-11 was repealed in 1995 during the 74th Legislative Session.

Kelly states the Commissioners Court of Victoria County is reviewing the traffic of heavy trucks on county roads and load limit bridges. Under current requirements of the law, those trucks (primarily heavy commercial vehicles) are required to receive state permits for travel but are not required to receive permits from counties. This practice creates an environment where trucks receive state approval to travel throughout the state (which includes county roads and load limit bridges), but do not have to notify counties of their presence or meet county load requirements.

The undocumented presence often presents challenges to counties when/if they attempt to assess damages to weight-load violators who cause damages to county roads and bridges. The fact that counties cannot require further permits beyond state permits means there is seldom a county record of heavy truck traffic traveling on the road.

Kelly's primary concern in the request focuses on the change of the word "shall" to "may" in codified section 623.011 of the Transportation Code and how that change enhances TxDOT's decision-making authority when issuing permits: "The previous law under 6701-d-11 Section 5B(a) to (e) was changed by the Legislature in the codification of the Transportation Code...the law read "... (a) The department SHALL issue a permit...has now been changed...to read "(a) The department MAY issue a permit." ...Did the Legislature...grant discretionary authority to TxDOT in the issuance of such permits?" the request asked.

The Attorney General's Office has 180 days to issue an opinion or respond to the request from the Victoria County Criminal District Attorney's Office.

For more information regarding this article, contact Jozette Maxwell at 800-456-5974 or via email at Jozettem@county.org. 🗺️

TxDOT Posts Proposed Rules for Regional Turnpikes

In accordance with Chapter 361 of the Transportation Code, the Texas Department of Transportation (TxDOT) has posted proposed rules for review and public comment regarding the implementation of Regional Mobility Authorities (RMAs). Regional Mobility Authorities will allow counties to group together for purposes of constructing, maintaining, and operating new turnpike projects in a state region.

Senate Bill 342, passed last year, amended Chapter 361 of the Transportation Code by adding Section 361.003 which gives TxDOT the ability to authorize the creation of RMAs. However, SB 342 specifically states an RMA may not develop or operate a turnpike project in a county that was involved with a regional tollway authority or operating a project under Chapter 284 of the Transportation Code on Nov. 6, 2001 (i.e., Harris County may group with other counties in an RMA, but the new turnpike project could not go through Harris County). Surplus revenue generated by RMA turnpike projects can be used to work on other transportation projects within the RMA's geographical region, reduce tolls or be deposited into the Texas Mobility Fund. Voters approved the creation of the revolving bond account (Texas Mobility Fund) in November 2001.

Transportation officials advise RMAs are designed to "...maximize local control over the development and operation of transportation facilities in a region." Under the proposed rules, there is no limit on the number of counties that can group together to form an RMA. One or more counties may submit a proposal to the Transportation Commission and counties that wish to group together are not limited to a geographically contiguous region. TxDOT advises approval will be based heavily on public support for an RMA and how each turnpike project(s) proposed will help improve transportation mobility in the region and to the overall state transportation system. RMA turnpike projects will be considered a part of the state highway system and thus fall under the authority of the commission.

A board of directors, whose members will be appointed by each participating county's commissioners court, will govern each RMA. Each county will be able to appoint two members to the board and the governor will appoint one member who will serve as the board's presiding officer. Those counties which join RMAs that are already operating turnpike projects will be able to appoint up to two additional members to the board depending on the county's size and the overall size of the RMA. Each county represented on the board will be expected to share the administrative costs associated with running the RMA.

RMA proposals will also be required to include information regarding how each project will be consistent with the Texas Transportation Plan, as well as how the project will improve mobility in the region. A preliminary financial plan and brief

description of any environmental, social, economic and cultural resource issues that may be present must also be included.

Provisions are also included for counties to withdraw from an RMA. Under the rules, the commission has authority to grant or deny requests for withdrawal and will base their decision on whether withdrawal from an RMA will have an adverse effect on the region and if no bonded indebtedness is present.

Counties who wish to comment on the proposed rules may do so in writing by sending comments to Phillip Russell, Director, Texas Turnpike Authority, 125 East 11th Street, Austin, Texas 78701-2483. Written comments will be accepted through Monday, March 18, 2002.

A copy of the proposed rules can be downloaded by accessing the following website:

http://www.txdot.state.tx.us/insdtdot/orgchart/tta/rules/RMA_preamble.htm.

For more information regarding this article, contact Jozette Maxwell at 800-456-5974 or via email at Jozettem@county.org. 🗺️

Deadline for Compliance with HB 1445 Quickly Approaching

The deadline for most Texas counties to reach agreements with their cities regarding plat review and approval in municipal extra-territorial jurisdictions is April 1. House Bill 1445 requires counties and cities (with certain exceptions) to provide "one-stop shopping" for plat applicants in the ETJ by the that date.

To assist counties in fulfilling the law's requirements, the Texas Association of Counties' Legal Department and the County Judges and Commissioners Association of Texas, are drafting two sample agreements that will be mailed to all county judges in counties affected by the law within the next week. These two sample documents will reflect two of the options made available to counties under HB 1445: the granting of exclusive jurisdiction over plat approval to the municipality or the granting of that exclusive jurisdiction to the county.

There are still some remaining copies of the recently updated Texas Association of Counties' Subdivision Regulation Sourcebook. Included in the sourcebook is a discussion of HB 1445, a copy of the bill itself, as well as two planning documents designed to assist counties in complying with this new law. Contact Paul Sugg at pauls@county.org or 800-456-5974 in order to obtain a copy of the sourcebook. 🗺️

New Precinct Boundaries Will Not Affect Constable Duties

In an opinion (JC-0462) recently issued in response to a request by House County Affairs Chairman Tom Ramsay, Attorney General John Cornyn held that if a constable's precinct is abolished due to redistricting, that the constable will serve out the elected term in the precinct in which the constable resides. Also, the constable's legal duties and powers will remain unchanged, and the commissioners court will continue to set the constable's salary and expenses and approve the appointment of deputies as it did before the precinct boundaries were redrawn.

Article V, Section 18, Texas Constitution, authorizes the commissioners court to redraw precinct boundaries "as needed for the convenience of the people." A 1983 amendment to Article V specified that a constable or justice of the peace serve out the elected term in the precinct they reside, even if redistricting results in abolition of the precinct to which the constable was elected, or results in extra constables or justices serving a precinct. Supporting the Attorney General's opinion, the Local Government Code and the Code of Criminal Procedure provide that a constable (or justice of the peace) who is redistricted from one precinct to another retains their

salary benefits and statutory job responsibilities (such as attending justice court and serving papers as directed by district/county court). In the "new" precinct, however, the relocated constable will not have authority to direct deputies serving under the existing constable, but may be afforded a deputy by applying to the commissioners court and demonstrating the necessity of having a deputy.

"There will be issues of a practical nature about allocating the work in the precinct between the two constables with identical powers and duties, but these are not resolved by statute," the opinion stated.

Chairman Ramsay's opinion request (RQ-0432-JC) centered around a commissioners court redrawing precinct boundaries and how a constable's position would be affected if the elected precinct was consequently abolished by the redistricting, and his home address was located within the boundaries of another precinct.

To read this or other Attorney General Opinions/Requests, contact the AG web site at www.oag.state.tx.us or contact Lori Kinder at 800-456-5974 or via e-mail to LauraK@county.org. 🗺️

Presidential Budget Could Have Impact on Counties

President George W. Bush has submitted his Fiscal Year 2003 budget to Congress and there are a variety of issues that will have an impact on counties. Homeland security, justice issues, public safety, transportation and community and economic development are only a few of the items contained in the budget that have some type of county impact.

The budget does include a proposal to eliminate funding for the State Criminal Alien Assistance Program (SCAAP), which provides reimbursements to states and local governments for the incarceration of undocumented immigrants. The program is currently budgeted at \$565 million per year.

Texas currently receives a little over \$45 million under the SCAAP initiative. More than \$6 million of that money is directed to Harris County.

The Local Law Enforcement Block Grant program is being consolidated with the Byrne Formula Grant program under a new Justice Assistance Program. The new program would be budgeted at \$800 million, which equates to \$195 million reduction from the two existing block grant programs. The

details of this consolidation will need to be worked out and could have a big impact on counties.

The Texas Association of Counties legislative staff will continue to monitor the budget proposal as Congress begins to take action.

For additional information please contact Sue Glover at 800-456-5974 or e-mail SueG@county.org 🗺️

AG Opinion Request Questions Elements of HB 1445

A recent request for an attorney general's opinion calls into question one of the options made available to counties and cities for review and approval of plats in the extraterritorial jurisdictions of municipalities.

House Bill 1445, passed this last session, requires counties and cities to provide "one-stop" shopping for plat applicants in ETJs. Under previous law, a plat of land in the ETJ could not be filed with the county clerk without the approval of both the affected municipality and county (provided both governmental entities exercised their plat review and approval authority in the ETJ).

One of the options available under HB 1445 allows a county and a city to enter into an interlocal agreement and create a single office authorized to accept plat applications for tracts of land located in the ETJ; collect municipal and county plat application fees in a lump-sum and provide a single response to plat applicants. The law authorizes this single office to establish "a consolidated and consistent set of regulations related to plats and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction."

Bell County Attorney Richard Miller has asked the attorney general whether the statutory language of House Bill 1445 "authorizes a city and county to agree to a hybrid mix of the authority granted each entity by the Local Government Code."

In his request for an opinion, Miller suggests that the language can be interpreted in one of two ways: it authorizes a county and a city to craft a hybrid set of regulations by combining county and city authority or it authorizes an "either/or" method, whereby the single office adopts the city authority, unchanged, or the county authority, unchanged.

The opinions committee of the attorney general's office will respond to the request on or before July 13. ➡

Is Fee-Splitting Possible under the Bail Bond Act?

The Tarrant County Criminal District Attorney has requested an attorney general opinion on the proper interpretation and scope of the fee-splitting prohibition in the Occupations Code, Section 1704.252(9). The language in this section states that a licensed bail bond surety may have his license suspended or revoked if he pays or divides, or offers to pay or divide, commissions or fees with a person or business entity not licensed under the bail bond chapter.

The question raised in the request is, "Does it prohibit only division of a fee on a percentage basis, or would it also prohibit a bondsman from charging one fee for himself while collecting a separate fee for a lawyer, 100 percent of which is remitted to the lawyer for legal fees?" The requestor believes that if the attorney receives 100 percent of the collected legal fee, it increases the chances of counsel appearing before the court, and reduces the possibility of counsel withdrawing from representation for non-payment of fees.

To view the Request for Opinion #0502-JC, go to the Attorney General's Web site at:
www.oag.state.tx.us/opinopen/opin_recent.htm. ➡

President Bush Signs Brownfield Legislation

President George W. Bush signed legislation Jan. 11 that increases flexibility and funding for the brownfields program. Brownfields are abandoned or underutilized industrial sites where redevelopment is hindered by possible environmental contamination.

HR 2869 authorizes \$200 million annually to help states and communities around the country clean up and revitalize brownfield sites. The Environmental Protection Agency, which administers the brownfield program, estimates that there are about 500,00 brownfields nationwide, about 200,000 of which are polluted with petroleum.

The National Association of Counties under the leadership of President Javier Gonzales worked closely on drafting and building support for the bill. "Enactment of the brownfields legislation is a major asset for counties," said Gonzales.

The legislation authorizes the President, acting with the EPA, to determine eligibility for the grants. It requires that special attention be paid to threats to minority communities and public health when selecting sites for cleanup.

Federal funding for the brownfields program in the past has been approximately \$98 million.

For additional information please contact Sue Glover at 800-456-5974 or e-mail SueG@county.org ➡

Tobacco fund loss troubles hospitals and counties

(The following article appeared in the Fort Worth Star Telegram Monday Feb. 25, 2002.)

By KELLY MELHART and CHARLOTTE HUFF
Star-Telegram Staff Writers

A billion-dollar tobacco-settlement fund expected to generate millions of dollars annually for public health in Texas actually lost money last year, leaving nothing for hospitals, cities and counties.

The news came as a surprise to roughly 300 hospital districts, counties and other local entities - some of which had included the funds in their current budgets. The checks, usually cut in April, have generally been used to offset the cost of treating the uninsured and for other health-care expenses.

"I cannot believe that that billion-dollar fund did not make a dime," said Tom Roy, JPS Health Network government relations director, who like others was initially skeptical of the news.

Seventy percent of the fund is invested in stocks, the remainder in bonds and other fixed-income investments, said Scott Scarborough, head of the governmental entity that oversees the investments. In 2001, there was a net loss of \$30 million, he said. The stocks lost \$61 million, but that was partially offset by a \$31 million gain in fixed-income investments, Scarborough said.

Of the \$30 million net loss, nearly \$1 million could be attributed to Enron, he said.

Under current rules, the only option is to use a \$5 million reserve fund, Scarborough said. The fund's investment advisory committee plans to meet in late March to discuss whether any payments can be made.

The exact amount of the financial hit for hospitals, cities and counties is unclear because state officials won't say how much investment income they were anticipating from the account, which contained \$1.4 billion as of Dec. 31. But the state's four largest hospital districts were projecting a total of about \$30 million this spring.

Parkland Hospital System in Dallas and Harris County Hospital District in Houston had each included \$11 million in their current budgets. Tarrant County Hospital District, which operates JPS, had anticipated \$5 million and San Antonio's University Health System, \$3.2 million.

John Thorpe, JPS vice president of finance, said it was too soon to speculate on how JPS officials could compensate for the potential loss of \$5 million out of a nearly \$300 million budget. The hospital district has a reserve fund of about \$70 million.

"This just became news to me this morning," he said on Wednesday. "When we are not kept informed, it doesn't help us make good decisions."

Officials at San Antonio's University Health System were already projecting a \$9 million shortfall for this fiscal year when they learned Wednesday that their \$3.2 million tobacco

settlement payment also is in jeopardy.

"This will put us deeper into the hole," Chief Executive Officer Jeff Turner said. San Antonio's taxpayer-funded system has the option of dipping into its \$125 million reserve account to make up the difference.

That account does not include stocks and has fixed-income investments such as treasury bonds, system officials said.

Turner questioned whether investing the tobacco fund so heavily in stocks was prudent, given that local entities rely on that money for public health purposes each year.

"I think everybody wants to get a good yield on investments, but at the same time, you have to avoid the risk," he said.

The investment advisory committee can change the rules that govern how the money is invested and distributed, said Scarborough, chief executive officer of Texas Treasury Safekeeping Trust Co. The company is a governmental entity created by the Legislature to invest money deposited in the comptroller's office, including the tobacco settlement and other funds.

Scarborough said the losses may be difficult for public health entities to stomach in the early years, particularly because the stocks were purchased during a bull market. But the goal of the 70 percent investment in stocks is to get the best return over the long haul.

"As we all know, the stock market is volatile," Scarborough said. "We were experiencing a down year last calendar year. The board has to decide, early in the life of this, what do you do when it goes negative in the early part of its history?"

The Tobacco Settlement Permanent Trust Account was established in 1999 as part of a multibillion-dollar settlement with tobacco companies reached in 1998. Tobacco companies have paid sums into the account to establish a \$1.8 billion principal that would generate revenue indefinitely.

Last year, local entities statewide received a total of roughly \$64 million, \$50 million of it through a lump-sum payment from the tobacco companies. The rest came from investment income.

But this year was to be the first that all the money was generated by investment income - a combination of stocks, bonds and other investments. Hospital districts call the potential financial hit especially painful because they are already struggling with a rising number of uninsured patients as well as Medicare cuts.

Last year, hospital districts got the biggest portion of the money, \$50 million for 129 districts. The remainder went to counties and a handful of cities.

Denton County had counted on receiving \$200,000 this year to help fund AIDS outreach and children's health programs. Despite the fund problems, the programs will continue, said Dr. Bing Burton, director of the county Health Department.

[Please see Tobacco Troubles, continued on page 9]

Counties to benefit from CIRA membership

Last session there was passage of at least one bill that mandated electronic reporting of information to the state. In this upcoming session, counties can anticipate more mandates for electronic reporting and other on-line governmental services since they save time and money.

Regardless of size or resources, all Texas counties are faced with the challenges that technology brings. That is why the Texas Association of Counties has sponsored the creation of the County Information Resources Agency (CIRA). The creation of CIRA was one of the recommendations of the E-County Task Force after more than a year of studying and discussing technology issues facing county officials and counties.

CIRA will work with state agencies, the Legislature, counties and other local governments to find solutions through coordination and leveraging of resources and data. The new agency is also offering free secure e-mail to county officials using their correct domain names (co.[your county name].tx.us) and will obtain and register the domain name for counties. At last count, only 17 county web sites in Texas had their correct domain name.

Other services that are being explored are installation of telecommunications, networks, and hardware and the creation

of a "county virtual network" – linking counties together to share software and data with each other and the state in a secure environment.

"Technology will change the way government operates," said Smith Judge Larry Craig, CIRA board chair. "Changes have already begun that may even change the structure of government itself. If county governments in Texas – urban and rural – don't come together and make sure that we have a 'seat at the table,' the future could be painful and expensive for local government and our citizens. But if we work together, we might save some money, build a better government and come out of this with some things that make our jobs easier."

All counties are urged to enter into an interlocal agreement to become a CIRA member before the next legislative session. There is no cost to become a member. In March, packets are going out to all county judges and commissioners with an attached interlocal agreement, agency bylaws, a fact sheet and sample press release. Officials with questions or who need more information can call Stan Reid, CIRA executive director, at 512-478-8753. ➡

[Tobacco Troubles continued from page 8]

Denton County Commissioner Sandy Jacobs was stunned that county officials only heard about the fund's performance when they contacted the state Health Department. She asked the county auditor to express their frustrations to state officials. "We want to find out what happened and make the appropriate changes so it won't happen again," Jacobs said.

Clifford Bottoms, chief financial officer of Harris County Hospital District, got on the telephone with state officials Wednesday, asking why the district was not getting quarterly reports on the fund. Everyone knew that the stock market was going to hit the fund hard, he said.

But during a December meeting with the Texas Department of Health, which calculates payments to local entities, there was no indication that the investment income could be zero, Bottoms said. Scarborough said those associated with the fund wanted to wait until after the advisory committee meeting in March to notify the entities. It's up to the committee to decide what it wants to do, he said.

Under current rules, the committee cannot dip into the principal, he said. John Sallee, the committee's vice chairman, said it is unlikely the committee will change the rules and raid the principal.

"We don't want to touch the corpus [principal] of that money," he said.

"That's the kicker. Don't start cutting the legs and wings off, or it doesn't last long." ➡

Tobacco Funds Could be Less But Panel to Act March 27

In several recent articles, the Fort Worth Star Telegram reported that the tobacco settlement trust fund suffered a \$30 million loss last year and that there will be no funds to distribute this year to eligible counties, hospital districts and cities. However, it should be pointed out that a final decision on this year's distribution will only be made after the Tobacco Investment Advisory Committee meets on March 27.

The committee will discuss a variety of factors, including a \$5 million reserve fund as well as any interest that may have been generated on the account since an annual deposit was made to the account in January.

It is also reported that the State Comptroller's Office will be recommending to the investment advisory committee that they approve distributions equal to the interest amount that was distributed last year, approximately \$14 million. This distribution would have to come out of the corpus of the account.

For more information, please contact Sue Glover at 800-456-5974 or via e-mail at sueg@county.org. ➡

Attorney General Opinions



JC-0459: The Honorable Bruce Isaacks, Denton County Criminal District Attorney, regarding county's and school district's obligations vis-à-vis a juvenile justice alternative education program, and related questions (RQ-0420-JC). **Summary:** Outside of its responsibility to provide some funding to the juvenile board and to review that portion of the juvenile board's budget funded with county monies, a county or a commissioners court is not statutorily responsible for any aspect of the development or operation of a juvenile justice alternative education program (JJAEP). Because the juvenile board receives some county funds, the county may have corresponding obligations or liabilities.

A county has no authority to determine which expulsions that are discretionary under section 37.007 of the Education Code will be subject to placement in the JJAEP. See Tex. Educ. Code Ann. § 37.007(b), (c), (e), (f) (Vernon Supp. 2002). A school district's authority to determine which discretionary expulsions will be subject to placement in a JJAEP stems from its duty to negotiate with the juvenile board an annual memorandum of understanding. See id. § 37.011(k), (l). Conversely, the juvenile board's authority to determine which categories of conduct will be subject to placement in the JJAEP is subject to negotiation with the school district. The eligibility criteria set in the memorandum of understanding may be based upon classifications of conduct only.

A school district is not obligated to fund the construction of JJAEP facilities.

A juvenile board may purchase real estate for JJAEP purposes, but a juvenile board may not accept contributed real estate for JJAEP purposes unless the legislature has expressly authorized it to do so.

JC-0461: Ms. Karen F. Hale, Commissioner Texas Department of Mental Health and Mental Retardation, Whether a federally-funded state protective and advocacy system for persons with mental illness or developmental disabilities may have access to a person and his or her records over the objection of the person's guardian (RQ-0427-JC).

Summary: Federally-funded state protection and advocacy systems for persons with mental illness or developmental disabilities are authorized, in accordance with federal law, to have access to such persons and their records under certain circumstances and in accordance with the procedures prescribed by federal law, even if the person's legal guardian objects to such access.

JC-0462: The Honorable Tom Ramsay Chair, County Affairs Committee, Texas House of Representatives, effect on a constable's duties when his precinct is abolished by redistricting (RQ-0432-JC). **Summary:** Pursuant to article V, section 18(c) of the Texas Constitution, a constable will serve out his term of office in the precinct in which he resides when the precinct to which he was elected was abolished by a change of boundaries, even though his continued service temporarily results in extra constables serving in a precinct. The legal duties and powers of a constable are not changed by the abolition of the precinct to which he was elected through the redrawing of precinct boundaries. The commissioners court continues to set the constable's salary and expenses and to approve the appointment of his deputies as it did before the precinct boundaries were redrawn.

JC-0463: The Honorable Dustanna Rabe, Hopkins County Attorney, Disposition of funds previously accumulated under pretrial diversion agreements (RQ-0437-JC). **Summary:** Unauthorized accumulated "pretrial diversion fees" and the interest earned on the fees must be

returned to the individuals who paid those fees. Unclaimed fees and interest earnings may become abandoned property that must be reported and delivered to the Comptroller of Public Accounts pursuant to chapter 74 of the Property Code.

JC-0466: The Honorable Jeri Yenne, Brazoria County Criminal District Attorney, whether peace officers serving as off-duty security guards on casino boats have authority to make arrests and related questions (RQ-0422-JC). **Summary:** The seaward boundary of the State of Texas and its coastal counties extends three marine leagues into the Gulf of Mexico. The state and its coastal counties may exercise criminal jurisdiction on the state's territorial waters, provided that there is no conflict with federal law or the rights of foreign nations. Texas peace officers acting as security guards on casino boats have the authority to make arrests under state law within the state's territorial waters. The extent of that authority depends upon the type of peace officer and whether he or she is within his or her jurisdiction.

Once a casino boat sails beyond the state's seaward boundary, a Texas peace officer no longer has the authority to make arrests under the law of the State of Texas. Within the jurisdiction of the United States, federal law may authorize a peace officer to make an arrest under certain circumstances. On the high seas, beyond the jurisdiction of both the State of Texas and the United States, the law of the ship's flag state and international law may be relevant to a Texas peace officer's authority to keep order on the ship and to detain passengers.

JC-0467: The Honorable Bobby Lockhart, Bowie County Criminal District Attorney, regarding when a constable is required to furnish evidence that he has been issued a permanent peace officer's license (RQ-0431-JC). **Summary:** The constable of precinct three of Bowie County had 270 days from the date he was sworn in to office for his elective term - January 1, 2001, to furnish to the Commissioners Court of Bowie County the evidence of licensure required by subsection 86.0021(b) of the Local Government Code.

JC-0468: The Honorable Chris D. Prentice, Hale County Attorney, Whether the designated representative of an authorized agent of the Texas Natural Resource Conservation Commission is a peace officer for purposes of sections 7.193 and 26.215 of the Texas Water Code (RQ-0438-JC). **Summary:** The designated representative of an authorized agent of the Texas Natural Resource Conservation Commission under chapter 366, Texas Health and Safety Code, is not a peace officer for purposes of sections 7.193 and 26.215 of the Texas Water Code. ■

Attorney General Opinions



RQ-0497-JC: Geoffrey S. Connor, Assistant Secretary of State, pertaining to duties of the county clerk with regard to the filing of certain kinds of financing statements

RQ-0498-JC: The Honorable Mark Burtner, Lamar County Attorney, regarding the validity of a mutual assistance agreement that would permit a municipal police officer to answer calls in the county and outside municipal jurisdiction.

RQ-0499-JC: The Honorable Toby Goodman, Chair, Committee on Juvenile Justice and Family Issues, whether the Animal Shelter Act, chapter 823, Health and Safety Code, supersedes the requirement of section 826.051, Health and Safety Code, that the State Board of Health adopt rules to establish minimum standards for impoundment facilities and for the care of impounded animals.

RQ-0501-JC: The Honorable David T. Garcia, Brooks County Attorney, whether an elected constable who has not yet been licensed as a peace officer under chapter 1701, Occupations Code, may perform the duties of a peace officer during the first 270 days after taking office.

RQ-0502-JC: The Honorable Tim Curry, Tarrant County Criminal District Attorney, concerning the proper interpretation of the fee-splitting prohibition in section 1704.252 of the Texas Occupations Code.

RQ-0504-JC: The Honorable Frank Madla, Texas State Senate, regarding the authority of a county civil service commission to award back pay to an employee after it modifies a disciplinary action taken against the employee.

RQ-0505-JC: Jerry Benedict, administrative director, Office of Court Administration, whether subsections 834.102(b) and 839.102(b), Texas Government Code, apply to visiting judges who retired prior to January 1, 2002.

RQ-0507-JC: The Honorable Juan Hinojosa, chairman, Committee on Criminal Jurisprudence, regarding application of section 1704.302, Occupations Code, to an employee of a bail bond business when the business is purchased by another person. ■

Storm Water Coalition Continues work with TNRCC

The Texas Counties Storm Water Coalition recently participated in the Texas Natural Resource Conservation Commission (TNRCC) workgroup meetings involving the Storm Water Phase II programs. These workgroups were formed in an effort to solicit input on the program from a variety of stakeholder groups, including counties.

Six workgroups were formed and each was charged with reviewing different provisions in the Phase II rule, which was issued by the Environmental Protection Agency in 1999. After reviewing the different sections, each group was to make recommendations on draft permit language. TNRCC is currently in the process of drafting a permit for the Phase II program, which will be administered by all 254 counties.

"Participation on these workgroups has provided counties with an opportunity to construct a permit suitable to their needs," said Victoria County Judge Helen Walker, co-chair of the Texas Counties Storm Water Coalition. However, Judge Walker pointed out that "these are only recommendations, which must be formally adopted by the TNRCC."

TNRCC hopes to have final rules outlining the permit procedure by December 2002. Counties will be responsible for implementing the Phase II program in March 2003.

For more information, please contact Sue Glover 800-456-5974 or email at SueG@county.org 📧

County Government Week Approaches

National County Government Week will be recognized April 7-13. The National Association of Counties has selected "Counties Secure America" as the theme for the yearly recognition of county government. As NACo President Javier Gonzales points out, "counties bear the burden of protecting our communities, and it is time to show citizens what you have done to safeguard their way of life".

Better awareness of County Government is an issue Texas Association of Counties President Bill Bailey, has identified as one of his main goals during his term as President. "If each of us truly believes that county government is important to our American way of life, we will become active participants in County Government Week. I fear that too many times we are content to let someone in Austin or Washington beat the drums for us. Our story can best be told by each county official right in

the midst of those we serve. Make plans to tell your story to some group during County Government Week. Better yet, tell them this week," said Bailey.

To assist you with these efforts NACo has prepared a handbook for this year's county government week which describes some of the key roles counties play and ideas on how to portray those roles to the public. For a copy of the handbook go to NACo's website at www.naco.org.

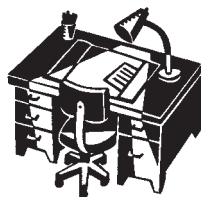
National County Government week has been recognized since 1991 and encourages counties across the nation to use the week as a way to create public awareness about the role county government plays in every community.

For additional information please contact Sue Glover at 800-456-5974 or e-mail SueG@county.org 📧

From the Legislative Desk

By Carey "Buck" Boethel

Director of Governmental Relations



Conferences coming out the

wazoo: it's a pretty tough job just to figure out which conference(s) to attend. You've got to think about a bunch of things like whether you can get credit for continuing education, what's on the program, the time of year and those folks that always seem to know when you're out of town. "How much will it cost? What will some of those courthouse people get by with, or do to me, while I'm out? Will the conference interfere with my personal life — never mind!"

Have we been squatting with our spurs on? Travel can be expensive, time-consuming, irritating (traffic and airports) and even risky or perilous. Perhaps some day a savior will arrive on a white horse, pure, honest, and rescue us from ourselves by creating a conference muy grande! One, huge, but highly organized assembly held during a time convenient and in a place where most county officials can achieve multiple purposes while taking a single trip.

There go the judges: Three County Judges have thrown their hats in the ring in a bid for seats in the Texas House of Representatives: Alvin Jones of Brazos County (District 14), Carter Casteel of Comal County (District 73) and Josephine Miller of San Patricio County (District 32).

County offices Up in 2002: County Clerks, District Clerks, Treasurers, County Judges, County Commissioners (Precincts 2 & 4) and Justices of the Peace.

Always drink upstream from the herd and take **care in making jerky**. In 1995 there was an outbreak of E. Coli in Oregon, the source of which was traced to homemade jerky prepared in an electric dehydrator. A temperature of 160 degrees is required to rid meat of the bacteria and most dehydrators don't operate at that level. To eliminate contamination, precook the meat in a boiling marinade, but not too long. And remember, "never slap a man who's chewin tobacco." [Will Rogers] 🇺🇸



TEXAS ASSOCIATION OF COUNTIES
P.O. Box 2131
Austin, Texas 78768

Return Service Requested

PRESORTED
FIRST CLASS MAIL
US POSTAGE
PAID
AUSTIN TEXAS
PERMIT NO. 1183