



MEMORANDUM

To: Robin Cross and Don Norrell *via email*
From: Julie Fort
Date: September 24, 2018
Re: Executive Summary – Jurisdiction for Law Enforcement in Municipalities

County Sheriff—Duties and Authority: The sheriff and his deputies are statutorily authorized to provide law enforcement services for the municipality but may only enforce State laws.

The county sheriff's position is created by the Texas Constitution and is an elected position with duties and qualifications established by the Legislature. TEX. CONS. art. V, § 23. The Texas Legislature has established that the "sheriff shall be a conservator of the peace in his county . . ." TEX. CODE CRIM. PROC. art. 2.17. The Texas Attorney General and the Dallas appellate court have both held that a sheriff's duty as the conservator of peace within his county extends to the areas that lie within the boundaries of incorporated cities. Tex. Att'y Gen. Op. No. JC-0125 (1999); *Weber v. Sachse*, 591 S.W.2d 563, 566 (Tex. Civ. App.—Dallas 1979). Therefore, the sheriff is authorized to enforce State laws, such as speeding and violent crimes, within the boundaries of an incorporated city without any contractual arrangement or compensation from the city. *Id.* The Texas Attorney General has explained that the authority of a county sheriff within a municipality only extends to State law and does not extend to local municipal ordinances. Tex. Att'y Gen. Op. No. JC-0125 (1999).

Even though the sheriff is authorized to perform law enforcement functions within the boundaries of an incorporated city, a sheriff is not required to. A sheriff's duty as conservator of the peace grants the sheriff broad discretion and judgment on how law enforcement functions are performed to achieve that purpose. *Weber v. Sachse*, at 567. Municipalities generally resolve this issue by entering into an interlocal contract for law enforcement services related to State laws with their county sheriff's department. The interlocal agreement may set forth the amount of compensation, if any, to be paid to the county by a city. Note that the jurisdiction of the justice of the peace court and the municipal court cannot be changed by contract.

City Marshal—Duties and Authority

The governing body of a Type A municipality must provide by ordinance for the election or appointment of a city marshal. Tex. Local Gov't Code § 22.071(b). The office of the marshal for a Type A municipality may only be abolished, and duties conferred to the office of municipal police, by the governing body of a municipality with a population of less than 5,000. *Id.* § 22.076(b). With a population of over 100,000¹, if The Woodlands were a Type A municipality it would be statutorily ineligible to abolish the office of city marshal, however, it could still contract with a county sheriff for enforcement of State laws. The city marshal can enforce local ordinances that are not State laws, such as firework regulations, tall grass, noise, and junked vehicles.

¹ If The Woodlands later elects to become a home-rule municipality, the requirements for a Type A or Type B to select a marshal will no longer apply and the job duties statutorily assigned to the city marshal will also no longer apply. *Id.* § 26.041. The requirements for a Type B city are slightly different from a Type A.