

**RECEIVED**

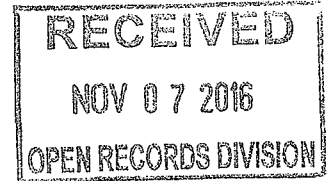
NOV 07 2016

**OPINION COMMITTEE**



Nicholas "Nico" LaHood  
Criminal District Attorney  
Bexar County, Texas

November 3, 2016



FILE # ML-48104-16  
I.D. # 48104

**RQ-0139-KP**

Honorable Ken Paxton  
Attorney General of Texas  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Request for opinion interpreting Chapter 124 of the Texas Government Code**

Dear Attorney General Paxton:

This is to request that the Attorney General of Texas issue an opinion pursuant to Section 402.042 of the Texas Government Code.

**QUESTIONS PRESENTED**

- 1) Where the legislature has vested the exclusive authority to establish a veterans program with a county, did such exclusive authority impliedly include the right to direct and control administrative details related to the veterans program, specifically the hiring and supervision of grant funded personnel?
- 2) Is the role of a treatment court judge limited to direction and control of the disposition of the cases coming before that court and not supervision of grant funded personnel?

**BACKGROUND**

In 2009, certain amendments to the Texas Health and Safety Code authorized the commissioners court of a county to establish a veterans treatment court program ("VTC") for persons who are veterans or current members of the United States armed forces who are arrested

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*

for or charged with any misdemeanor or felony offense and meet certain specified criteria (the “Act”). *See* Tex. Gov’t Code § 124.002(a). One of the key roles of the VTC judge is to serve as a gate-keeper by ensuring that only qualified participants are allowed into the program. Tex. Gov’t Code § 124.002(a)(1)-(2) (A defendant is only eligible to participate if the court in which the criminal matter is pending makes certain required findings in accordance with the Act.). A county establishing a program under the Act must specifically pass a resolution designating an authorized official with the full power to act on behalf of the county awardee. (*See* Resolution Naming County Judge as Authorized Official - attached as Exhibit A-1). Additionally, under the specific terms of the grant, a county receiving grant funds must agree to match state funding, must remain responsible for all grant funding and must accept liability for the proper expenditure of grant funds. *Id.* In the event any grant funds are either lost or misused, the County must agree to reimburse the Criminal Justice Division of the Governor’s Office in full. *Id.*

Following the effective date of the Act, the Bexar County Commissioners Court determined that establishing a veterans treatment court in Bexar County would be in the best interests of the community and the veterans that such a program would serve (the “Program”). In making its determination of which court would be most suitable for the establishment of a veterans program in Bexar County, Bexar County Commissioners Court decided to approach the presiding judge of Bexar County Court at Law No. 6. Bexar County then hired appropriate personnel and a project director to administer the Program on behalf of the County and meet grant reporting requirements.

The enabling legislation granted exclusive authority to establish a veterans program to the commissioners court of a county. However, at some point following the 2010 election, the

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*

newly elected VTC judge took the position that all aspects of the Program were under his exclusive direction and control, to include the hiring and supervision of county employees staffing the Veterans Treatment Court and its Project Director. (See Exhibit A-2). When the position for Project Director became available, the VTC judge became so insistent that he was the hiring authority that he sent out an email purporting to “order” Bexar County employees to deliver employment applications to the VTC court. The email went on to state that if county employees failed to comply with the VTC judge’s demand and deliver applications as directed, the VTC judge would hold the offending employee in contempt of court following a show cause hearing. (See Exhibit A-2).

No County employee was jailed over the employment applications. Rather, the VTC judge requested an opinion from the then Criminal District Attorney of Bexar County to clarify the authority for supervision of VTC personnel. In that opinion, the District Attorney concluded that the authority to establish a veterans program would ordinarily carry with it the right to administer and control related aspects of the program, including supervision of personnel. (See Exhibit A-3). The opinion went on to identify the appropriate roles and authority of the relevant parties, concluding that the County would have supervisory authority for administration of the Program and its personnel while the judge would have sole authority over disposition of pending cases and a very limited role in the administration of grant funded personnel. *Id.*

Accordingly, in an attempt to better serve those veterans who met the qualifications established for participation in the Program and to more properly administer the grant, the Bexar County Manager restructured supervision for the Program from its Community Resources Department to another department, Judicial Support Services. The restructuring was done to

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*

ensure that future grant funding was not lost and the VTC program was successful. In January of 2012, the Bexar County Manager sent out a memo notifying all parties of the restructuring. (See Exhibit A-4).

County personnel at all levels have continued to work diligently to ensure that the Program survives and to try and work with the VTC judge to most effectively deliver services to Program participants. However, the position of VTC Project Manager again became available after the current VTC Program Manager retired. Yet again, the VTC judge has taken the position that he alone has the authority to hire a replacement Program Manager. Once more, the VTC judge issued an “order” to county personnel to deliver job applications to the VTC judge’s chambers. (See Exhibit A-5). Yet again, the VTC judge has issued another “special order” threatening County personnel with contempt. (See Exhibit A-6).

Success of the Program and its continued viability relies on grant personnel being accountable for the proper administration of the Program grant and ensuring that veterans receive effective treatment. Hiring the correct personnel is a critical component of that success.

### **ARGUMENT AND AUTHORITIES**

Article 5, Section 18 of the Texas Constitution establishes the commissioners court as the principal governing body of the county and provides that a commissioners court shall exercise such powers and jurisdiction over all county business, as is conferred by the Constitution and the laws of the State. TEX. CONST. art. V, § 18(b); *Ector County v. Stringer*, 843 S.W.2d 477, 479 (Tex. 1992). The Texas Supreme Court has interpreted this provision to mean that although a commissioners court may exercise broad discretion in conducting county business, the legal basis for any action taken must be grounded ultimately in the constitution or statutes. *See Guynes*

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*

v. *Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993); see also *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003) (“...a commissioners court may exercise only those powers expressly given by either the Texas Constitution or the Legislature.”).

Though any action must necessarily begin with the constitution or laws of this state, the *Guynes* court also recognized that a commissioners court possesses broad implied powers as necessary to accomplish its legitimate directives. *Guynes*, 861 S.W.2d at 863. In discussing implied powers, the Texas Supreme Court has defined them as “those which can and ought to be implied from an express grant of power.” *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 399 (Tex. 1979).

The veterans court program was created and enacted into law during the 2009 legislative session. See, Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009. The legislation authorized the creation of a veterans court program and specifically vested the authority to do so solely with the commissioners court of the county in which the program was established. TEX. GOV’T CODE § 124.002(a).<sup>1</sup> It would seem to follow that the authority to create a program would also carry with it the implied power to take those acts necessary to successfully administer the Program, including supervision and direction of grant funded personnel. *Eichelberger*, 582 S.W.2d at 399.

On the other hand, the Act is very specific as to the role of a court within the veterans court program. For example, before a veteran may participate in a veterans treatment court program, the veterans treatment court judge is required to make certain findings:

---

<sup>1</sup> “[t]he *commissioners court of a county* may establish a veterans court program...”

- (a) "...if *the court in which the criminal case is pending finds* that the defendant is a veteran or current member of the United States armed forces, including a member of the reserves, national guard, or state guard, who:
- (1) suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, or was a victim of military sexual trauma that:
    - (A) occurred during or resulted from the defendant's military service; and
    - (B) affected the defendant's criminal conduct at issue in the case; or
  - (2) is a defendant whose participation in a veterans treatment court program, considering the circumstances of the defendant's conduct, personal and social background, and criminal history, is likely to achieve the objective of ensuring public safety through rehabilitation of the veteran in the manner provided by Section 1.02(1), Penal Code.
- (b) *The court in which the criminal case is pending shall* allow an eligible defendant to choose whether to proceed through the veterans treatment court program or otherwise through the criminal justice system.

TEX. GOV'T CODE § 124.002(a)-(b). Additionally, the court may only dismiss a pending case upon successful completion of a veterans treatment court program if the court determines that dismissal is in the best interests of justice:

- (b) If a defendant successfully completes a veterans treatment court program, after notice to the attorney representing the state and a hearing in the veterans treatment court at which that *court determines that a dismissal is in the best interest of justice*, the court in which the criminal case is pending shall dismiss the case against the defendant.

TEX. GOV'T CODE § 124.001(b). Finally, the Act is very specific as to the requirements that a veterans court program established under the Act must meet and maintain:

- (a) A veterans court program established under this chapter must:
- (1) ensure a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*

- (2) allow a participant to withdraw from the program at any time before a trial on the merits has been initiated;
  - (3) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and
  - (4) ensure that the jurisdiction of the veterans court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged.
- (b) A veterans court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the county or counties in which those defendants reside...”

TEX. GOV'T CODE § 124.003. Supervision of grant personnel is not a duty or responsibility of the court under the Act.

Where the legislature has vested courts with authority over the hiring and supervision of court personnel, it has done so explicitly. TEX. GOV'T CODE § 52.041 (official court reporters appointed by judge and serve at the pleasure of the court); TEX. GOV'T CODE § 53.031 (baliffs appointed by sheriff but must be acceptable to court); TEX. GOV'T CODE § 53.071 (grand jury bailiffs appointed by district judges with commissioners court approval and serve at the pleasure of the judges); TEX. GOV'T CODE § 55.001 (authorizing county judges to hire secretary or stenographer upon commissioners court entering an order authorizing, but judge may remove); TEX. GOV'T CODE § 74.101 (authorizing administrative judge and each district or statutory county court judge to establish a court coordinator system and appoint a court coordinator to improve justice and expedite the processing of cases, to serve at pleasure of judge appointing). It would seem that if the legislature had intended for a veterans court judge to supervise grant personnel, it would have included that duty as among those duties expressly outlined in the Act.

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*

## CONCLUSION

Bexar County fully acknowledges that the VTC judge has sole authority over the disposition of a pending case. However, Bexar County Commissioners Court is the only entity authorized to establish a veterans court program in Bexar County. Likewise, Bexar County Commissioners Court is the only entity statutorily authorized to apply and reapply to obtain grant funding. Bexar County Commissioners Court must match grant funds and is fully accountable for the proper expenditure of all grant funds and must repay any improper expenditure. The most reasonable interpretation of the Act would find that Bexar County Commissioners Court has the authority to hire and supervise those personnel charged with properly administering the grant on its behalf. The Bexar County Criminal District Attorney now seeks an opinion fully and finally resolving this matter.

Thank you for your assistance,

NICHOLAS "NICO" LAHOOD  
Criminal District Attorney  
Bexar County, Texas

BY: /S/ LARRY L. ROBERSON  
LARRY L. ROBERSON  
State Bar No. 24046728  
Assistant District Attorney-Civil Section  
101 W. Nueva St., 7<sup>th</sup> Floor  
San Antonio, Texas 78205  
Telephone No. (210) 335-0785  
Fax No. (210) 335-2773  
Email: [lroberson@bexar.org](mailto:lroberson@bexar.org)

*Paul Elizondo Tower, 101 W. Nueva, 7th Floor  
San Antonio, Texas 78205-3030  
(210) 335-2311  
For Victim Assistance call (210) 335-2105*