



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

January 16, 1952

Hon. George L. Murphy
County Auditor
Johnson County
Cleburne, Texas

Opinion No. V-1387

Re: Authority of the Commissioners' Court to require the County Auditor to handle payroll deductions, accounts, and reports covering social security for county employees.

Dear Mr. Murphy:

Your request for an opinion from this office contains the following question:

Does the Commissioners' Court of Johnson County, Texas have the authority to order the County Auditor of Johnson County to make the necessary payroll deductions, accounts and reports for the program set up under House Bill 603, ch. 500, Acts of the 52nd Legislature, R.S. 1951?

Section 9 of H.B. 603, Acts 52nd Leg., R.S. 1951, ch. 500, p. 1480 (Art. 695g, V.C.S.), relating to social security for county and municipal employees, provides:

"When the governing body of a county or municipality elects to enter into an agreement with a State agency, it shall become the duty of the county treasurer in the respective counties, and of the person or persons who hold comparable positions in the municipalities, to assess and collect the required contributions of the various employees in the respective counties or municipalities, and transmit the same to the State agency. Each plan approved by the State agency will specify the responsible personnel of the undertaking county or municipality who will be charged with the duty

to make assessments, collections, and reports." (Emphasis added.)

The statute is clear in that when the governing body of a county elects to enter into an agreement with a State agency, the county treasurer is the responsible agent, and it is his duty to assess and collect the required contributions. Therefore, each plan approved by the State agency will specify the county treasurer as the responsible person in the case of a county.

Article 1651, V.C.S., provides:

"The auditor shall have a general oversight of all the books and records of all officers of the county, district, or state, who may be authorized or required by law to receive or collect any money, funds, fees, or other property for the use of or belonging to the county, and he shall see to the strict enforcement of the law governing county finances."

The Texas courts have repeatedly held that the commissioners' court is a court of limited jurisdiction and has only such powers as are conferred upon it, either by express terms or necessary implication, by the statutes and the Constitution of the State. Childress County v. State, 127 Tex. 343, 93 S.W.2d 1011 (1936); Von Rosenberg v. Lovett, 173 S.W. 508 (Tex. Civ. App. 1919, error ref.); Roper v. Hall, 280 S.W. 289 (Tex. Civ. App. 1925); Art. 2351, V.C.S. It is in the light of this general rule that we will answer your questions.

Under the above authorities and articles we agree with you that it is the duty of the county treasurer to assess the amount of the contributions necessary from the various county employees, to collect this amount, and to transmit same to the state agency. We further agree that under Article 1651, V.C.S., the county auditor is required to check, compare, and audit the social security services of the county treasurer, and to certify the results to the proper officials.

As a practical matter, the treasurer should make the correct computations as to the amount of the required assessment against the individual employee's

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salary, and notify the county auditor and the county clerk of these computations. The county auditor and the county clerk in issuing the warrants for the compensation of the various county employees, should make the necessary deductions as set by the assessments of the county treasurer.

You are accordingly advised that the commissioners' court has no authority to designate any officer other than the county treasurer as the responsible agent to assess and collect the required payments of the various county employees, and the commissioners' court cannot order the county auditor to perform these duties.

SUMMARY

A commissioners' court cannot order the county auditor to assess, collect, and transmit the payments under the new social security plan. This is the duty of the county treasurer. Sec. 9, H.B. 603, Acts 52nd Leg., R.S. 1951, ch. 500, p. 1480 (Art. 695g, V.C.S.).

It is the duty of the county auditor to supervise, compare, and audit the funds paid under H.B. 603, and to certify the accounts and make the reports to the proper authority. Art. 1651, V.C.S.

Yours very truly,

APPROVED:

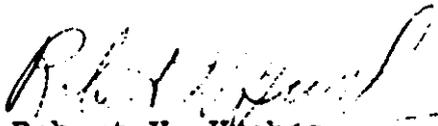
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