



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 21, 1959

Honorable Doug Crouch  
Criminal District Attorney  
Tarrant County Court House  
Fort Worth, Texas

Opinion No. WW-765

Re: Since the enactment of Articles 1665 and 1666a, Vernon's Civil Statutes, are Commissioners' Courts and County Treasurers in counties with a population in excess of 225,000 required to comply with the provisions of Articles 1634, 1635 and 1636, Vernon's Civil Statutes?

Dear Mr. Crouch:

Your opinion request presents the following question:

Since the enactment of Articles 1665 and 1666a, Vernon's Civil Statutes, are Commissioners' Courts and County Treasurers in counties with a population in excess of 225,000 required to comply with the provisions of Articles 1634, 1635 and 1636, Vernon's Civil Statutes?

In 1897, Articles 1634, 1635 and 1636, Vernon's Civil Statutes, were enacted by the Legislature, setting out some of the duties of the County Treasurer relating to county finances. They read as follows:

"Art. 1634. The county treasurer shall keep accurate detailed accounts showing all the transactions of his office. And all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners court with the corresponding report, when said court shall compare the vouchers with the report, and all

proper vouchers shall be allowed and the treasurer credited with the amount thereof." (Emphasis ours).

"Art. 1635. When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be canceled by writing or stamping upon the fact<sup>1</sup> thereof the word, 'canceled,' and the clerk shall attest the same by his official signature."

"<sup>1</sup> So in enrolled bill. Should probably read 'face'."

"Art. 1636. When the commissioners court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, and reciting separately the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. Prior to the adjournment of each regular term of the court, the county judge and each commissioner shall make affidavit that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them giving the amount of said money and other assets in his hands. Such affidavits shall be filed with the county clerk and recorded in the minutes of said

court the term at which the same were filed; and the same shall be published in some newspaper published in the county if there be a newspaper published in the county, for one time." (Emphasis ours).

In the year 1905, the office of the County Auditor was created by the Legislature and Articles 1665 and 1666a, Vernon's Civil Statutes, were enacted setting out the duties of the County Auditor; Article 1665 was amended by Acts of the 54th Legislature, Regular Seccion, 1955, Chapter 414, Page 1117, and Article 1666a was amended by House Bill 240, Acts of the 49th Legislature, 1945, Chapter 65, Page 93. As amended, they read as follows:

"Art. 1665. The County Auditor shall make monthly and annual reports to the Commissioners Court and District Judge or District Judges of his county setting forth all the facts of interest and showing the aggregate amounts received and disbursed out of each fund, the condition of each account on the books, the amounts of county, district and school funds on deposit in the County Depository, showing further the amount of bonded and other indebtedness of the county, together with such other information and suggestions as he may deem proper or that said Commissioners Court or District Judge or District Judges may require. Said annual report shall be made to include all transactions during the year ending December 31st of each year and shall be completed and filed at a regular or special term of the Commissioners Court in the following April and copies of such reports shall be filed with the District Judge or District Judges of said county. Each time an annual audit is delivered to the Commissioners Court and the District Judge or District Judges, as the case may be, the County Auditor shall send a report to the bonding company of each district, county or precinct officer showing the condition of that particular office. As amended Acts 1955, 54th Leg., p. 1117, ch. 414, § 3."

"Art. 1666a. The County Auditor in all

counties having a population in excess of two hundred and twenty-five thousand (225,000) as shown by the last preceding or any future United States Censes shall serve as the budget officer for the Commissioners Courts in each county, and on or immediately after January 1st of each year he shall prepare a budget to cover all proposed expenditures of the county government for the current fiscal and calendar year. . . .

" . . .

"The County Auditor shall make to the Commissioners Court not less than monthly a complete report showing the financial condition of the county. Said report shall be in such form as may be prescribed by said County Auditor and shall set forth all facts of interest concerning the financial condition of the county and shall contain a consolidated balance sheet. The report shall contain a complete statement of the balances on hand at the beginning and close of the month and the aggregate receipts to and aggregate disbursements from each fund, the transfers to and from each fund, the bonded warrant indebtedness with the rates of interest due thereon, a summarized budget statement showing for each officer, department, or institution budgeted the expenses paid from the budget during the month and for the period of the fiscal year inclusive of the month for which said report is made, also the encumbrances against said budgets, and the amounts available for further expenditures, together with such other information as such officer may deem necessary to reflect the true condition of the finances of such county or the Commissioners Court thereof may require. The County Auditor shall publish once in a daily newspaper published in said county a condensed copy of said report showing the condition of funds and budgets together with such recommendations as he may deem desirable.

"In the preparation of the budget, the County Auditor shall have authority to require of any district, county, or precinct officer of the county such information as may be

necessary to properly prepare the budget."

You will note that Article 1636, Vernon's Civil Statutes, requires the Commissioners' Court to examine the quarterly report of the County Treasurer and, if found correct, to enter an order to that effect on the minutes of the Court, swear to the fact of such examination, and publish such affidavit in a newspaper in the county. Article 1634, Vernon's Civil Statutes, requires the Treasurer to present all vouchers relating to the report to the Commissioners' Court and the Court must compare all vouchers with the report.

After the law creating the office of County Auditor was passed and his duties set forth, and particularly his duties as set out in Article 1665 and 1666a, Vernon's Civil Statutes, the County Auditor, who has authority to employ as many deputies as his needs require, is directed to do the same thing with respect to the accounts of the County Treasurer as are required of the Commissioners' Court in Articles 1634, 1635 and 1636, Vernon's Civil Statutes, even to the requirement that the report be published in a newspaper except that the report of the auditor shall be made monthly instead of quarterly as in the case of County Treasurers.

It is a well-settled rule of statutory construction that:

" . . . statutes in pari materia and relating to the same subject are to be taken and construed together, because it is to be inferred that they had one object in view, and were intended to be considered as constituting one entire and harmonious system. But when the new statute in itself comprehends the entire subject and creates a new, entire and independent system respecting that subject-matter, it is universally held to repeal and supersede all previous systems and laws respecting the same subject-matter. . . . (Emphasis supplied by Court).

" . . . 'if a subsequent statute be not repugnant in all its provisions to a prior one, yet, if the latter statute was clearly intended to prescribe the only rules which

should govern, it repeals the prior one.' (3 How. U.S. R., 636.) So a subsequent statute revising the subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former to the extent to which its provisions are revised and supplied. . . ." Bryan v. Sundberg, 5 Tex. 418, 424.

The duties of the County Auditor as set out in Articles 1665 and 1666a, Vernon's Civil Statutes, of very recent date compared with Articles 1634, 1635 and 1636, Vernon's Civil Statutes, are a comprehensive set of rules prescribed by the Legislature concerning the county budget and county financial reports, and, in our opinion, is the only set of rules intended by the Legislature to have effect regarding these subjects in counties with a population in excess of 225,000.

When Articles 1634, 1635 and 1636, Vernon's Civil Statutes were passed in 1897, these rules were adequate in dealing with county finances, but as our population increased and many of our counties grew in population and wealth, the necessity of a more efficient, comprehensive system in handling county finances became obvious. Consequently, the position of County Auditor was created for the larger counties and Articles 1665 and 1666a, Vernon's Civil Statutes, were enacted.

As can be readily ascertained, it would be a duplication of effort to make it mandatory for the counties with County Auditors and County Treasurers to comply with both sets of statutes and; in those counties with a large population, the task of complying with Article 1634, Vernon's Civil Statutes, and Article 1636, Vernon's Civil Statutes, would not be practical and would require the full time of one or more members of the Commissioners' Court if the letter of the law were carried out. As stated in 36 Texas Jurisprudence, page 173, Statutes, Section 91:

"An important rule to be observed in statutory interpretation is that an act should be given a fair, rational, reasonable and sensible construction, considering its

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language and subject-matter, and with a view to accomplishing the legislative intent and purpose. . . ."

To give effect to both sets of statutes in this case would not be reasonable.

In view of the above, we are of the opinion that it was the intent of the Legislature for Articles 1665 and 1666a, Vernon's Civil Statutes, to supersede Articles 1634, 1635 and 1636, Vernon's Civil Statutes, insofar as they pertain to counties with a population in excess of 225,000.

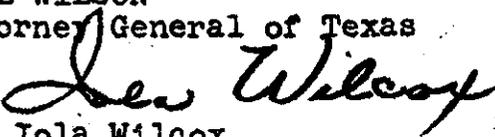
SUMMARY

After the office of County Auditor was created and Article 1665 and Article 1666a, Vernon's Civil Statutes, were passed, a new, entire and independent system of rules and laws were passed relative to the county budget and county financial reports in counties with a population in excess of 225,000, thereby superseding and repealing Articles 1634, 1635 and 1636, Vernon's Civil Statutes, insofar as said articles pertained to such counties.

Very truly yours,

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By

  
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APPROVED:

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