



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1993

Mr. J. Lynn Owens
Reeves County Auditor
P.O. Box 2072
Pecos, Texas 79772

Letter Opinion No. 93-91

Re: Whether, under section 113.901 of the Local Government Code, a county auditor may refuse to issue a requisition if the county already has ordered or received the goods requisitioned and related question (ID# 21878)

Dear Mr. Owens:

You have asked us to construe section 113.901 of the Local Government Code. In general, chapter 113 of the Local Government Code pertains to the management of county money. Section 113.064(a) forbids the commissioners court in a county that has the office of county auditor¹ from paying any account that the auditor has not examined or approved. *See Smith v. McCoy*, 533 S.W.2d 457, 459 (Tex. Civ. App.--Dallas 1976, writ dismissed) (voiding order of commissioners court directing payment when auditor had not approved payment). *See generally* Attorney General Opinion O-6784 (1945) (and cases cited therein). Section 113.901 articulates the requisites for approval that a county auditor must find prior to approving an account for the purchase of supplies or materials,

¹Section 84.002 of the Local Government Code provides for the appointment of a county auditor:

- (a) In a county with a population of 10,000 or more, the district judges shall appoint a county auditor.
- (b) In a county with a population of less than 10,000:
 - (1) the district judges may appoint a county auditor if the judges determine that the county's financial circumstances warrant the appointment; and
 - (2) the district judges shall appoint a county auditor if:
 - (A) the commissioners court finds that a county auditor is necessary to carry out county business and enters an order in its minutes stating the reason for this finding;
 - (B) the order is certified to the district judges; and
 - (C) the district judges find the reason stated by the commissioners court to be good and sufficient.

35 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 19.14, at 656 (Texas Practice 1989):

(a) Except as provided by Subsection (c), a county auditor may not audit² or approve an account³ for the purchase of supplies or materials⁴ for the use of the county or of a county officer unless a requisition, signed by the officer ordering the supplies or materials and approved by the county judge, is attached to the account. The requisition requirement is in addition to any other requirements of law.

(b) The requisition must be made, signed, and approved in triplicate. The original must be delivered to the person from whom the purchase is to be made before the purchase is made. The duplicate copy must be filed with the county auditor. The triplicate copy must remain with the officer requesting the purchase.

(c) The county judge of a county that has the office of county auditor may, by a written order, waive the requirement of the county judge's approval of requisitions. The order must be recorded in the minutes of the commissioners court. If the approval of the county judge is waived, all claims must be approved by the commissioners court in open court. [Footnotes added.]

You inform us that, pursuant to section 113.901(c), the county judge of Reeves County has waived the requirement of his signature on requisitions. You further state as follows:

The requisition policy, adopted by [the] commissioners[] court, designates the county auditor's office as the issue point for county requisitions. Our requisition forms list a section for the county

²In Attorney General Opinion V-1111 (1950) this office construed V.T.C.S. article 1660, a statutory predecessor to Local Government Code section 113.064, to determine whether the county auditor has a responsibility to approve claims for expenses of visiting district judges. Article 1660 prohibited the county commissioners court from allowing or paying any claim, bill, or account unless the county auditor had approved it. The opinion concluded that a county auditor may "audit" the expense accounts of a visiting district judge in the sense that the county auditor may verify the bookkeeping, but the county auditor is not authorized to "audit" the account by reviewing "the legality of items of expenditure contained in the expense account when the" district judge has certified and approved the expenditures. Attorney General Opinion V-1111 at 4; *see also* Attorney General Opinion WW-1328 (1962) at 9 (discussing Attorney General Opinion V-1111).

³*See infra* at 5 (discussing difference between "account" and "requisition").

⁴*See generally* Attorney General Opinion H-977 (1977) (considering whether various expenditures are "supplies or materials" for purposes of statutory predecessor to Local Government Code section 113.901).

auditor's approval of the requisition, indicating that there is an unencumbered balance in the department budget to support the requisition.

The requisition forms, which are serially numbered, are issued through the county auditor's office. Our procedure requires a requisition request form, signed by an authorized individual of the requesting department, be presented to the auditor's office for issuance of the purchase requisition. The requisition form is prepared, signed by the department head, or authorized individual, certified by the county auditor that the budget appropriation does exist, and given to the department head for use as a requisition/purchase form.

You state that you refuse to issue a requisition after "the purchase has been made," by which we understand you to mean that the county or county officer either has ordered or received the goods prior to requesting you to issue a requisition. Your refusal is predicated upon section 113.901(b) of the Local Government Code, which you construe to require that the "[t]he requisition . . . be made, and certified as to budget appropriation, prior to an order being issued for materials or supplies, and prior to delivery of the goods."

You indicate that the Reeves County Attorney disagrees with your position. According to your letter, the county attorney believes that, because "the requisitions are issued through the county auditor's office, and the county auditor's approval (certify[ing] the budget appropriation) of the requisition is indicated, the procedure is an infringement of the county officer's right to administer their own budgets and is contrary to Attorney General Opinion M-955 (. . . 1971)." Furthermore, you state that the county attorney believes that a "purchase," in the context of section 113.901(b), is not completed "until the county auditor has audited and approved the claim for submittal to the commissioners[] court. If the requisition is submitted, along with the invoice to the county auditor, the county auditor should consider the requisition was made prior to the purchase."

As a threshold matter, we will consider the word "purchase" as used in section 113.901 of the Local Government Code. The statute itself does not define the word. We find guidance, however, in section 311.011 of the Government Code, which instructs us to construe a word according to its common usage, unless the word has acquired a technical or particular meaning. Gov't Code § 311.011. "Purchase" is the "[t]ransmission of property from one person to another by voluntary act and agreement, founded on a valuable consideration." *Spur Indep. Sch. Dist. v. W. A. Holt Co.*, 88 S.W.2d 1071, 1073 (Tex. Civ. App.--Waco 1935, no writ); *Cobb v. Webb*, 64 S.W. 792, 793 (Tex. Civ. App. 1901, writ ref'd). "Valuable consideration" may consist of a promise of performance if the promisor treats and considers the promise of value to him or her. BLACK'S LAW DICTIONARY 1390 (5th ed. 1979); see also 14 TEX. JUR. 3d *Contracts* §§ 115, 117, at 195, 197 (1981) (stating that promise to do something that promisor is not legally

required to do is sufficient consideration to support contract, and that promise of one party to contract is valid consideration for promise of another). Thus, a purchase is completed when a seller, relying upon a promise to pay, transfers property to the buyer.

The question becomes, then, at what particular point in a sales transaction does the transfer of property, *i.e.*, the transfer of *title* to property, occur. Section 2.401 of the Business and Commerce Code specifies the point in various kinds of sales transactions at which title passes from the seller to the buyer. Section 2.401(a) provides that title to goods cannot pass under a contract for sale prior to the time the seller identifies the goods to the contract. Section 2.401 further provides as follows:

(b) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(1) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(2) if the contract requires delivery at destination, title passes on tender there.

For purposes of section 113.901 of the Local Government Code, therefore, we believe that, unless the vendor and the county officer have contracted otherwise, a "purchase" is completed upon the transfer of title to the goods, in accordance with section 2.401(b) of the Business and Commerce Code.⁵

We next consider the questions you explicitly asked. A county auditor possesses only those powers that the law expressly confers upon the position or that are necessarily implied therefrom. Attorney General Opinion M-955 (1971) at 1 (citing Attorney General Opinion M-756 (1970)). While a county auditor has general oversight of the county's finances, the exercise of such oversight in regard to specific purchases made and expenses incurred is controlled by the specific provisions of the statutes pertaining to those particular types of purchases and expenses. Attorney General Opinion O-6506 (1945) at 8; *see* Local Gov't Code § 112.006 (authorizing county auditor to oversee books and records of county officer who is legally authorized to receive money intended for the county's use, and requiring county auditor to "see to the strict enforcement of the law governing county finances"); D. BROOKS, *supra*, § 19.9, at 649-51. Section 113.901 governs the county auditor's authority to oversee a county officer's purchase of supplies and materials. Pursuant to section 113.901(a) of the Local Government Code, the county

⁵Of course, a seller may retain a security interest in the goods after the purchase is completed.

auditor must approve an account if the purchase strictly complies with the law governing county finances. *See Smith v. McCoy*, 533 S.W.2d at 459. The auditor may not withhold approval of an account arbitrarily or in contravention of law. *See id.* at 460.

In examining section 113.901 of the Local Government Code, we note initially that the section distinguishes between an "account" and a "requisition." Under sections 113.901 and 113.064, a county auditor must approve an "account" before the county commissioners may vote to pay it. *See Smith v. McCoy*, 533 S.W.2d at 459. The section implies that an "account" is a kind of document, to which a requisition must be attached.

On the other hand, the approval of the county auditor is not required for the issuance of a "requisition," a separate document that must be completed in triplicate. *See* Local Gov't Code § 113.901. Instead, the county officer ordering the supplies or materials and the county judge must sign the requisition, unless the county judge has waived his or her authority to approve requisitions; in that case, the commissioners court must approve the requisition in open court. *See id.* This office has determined that a county auditor may not require, as a prerequisite to approving an account, that he or she sign and approve the requisition at the time the purchase is made or the expense incurred. Attorney General Opinion M-955 at 4; Attorney General Opinion O-6506 (1945) at 8; *see also* Attorney General Opinion H-977 (1977) at 2 (stating that statutory predecessor to section 113.901, Local Government Code, gives auditor no control over purchase before it is made).

In our opinion, section 113.901 does not provide a county auditor with any role in the requisition process. We do not here consider the propriety of the Reeves County procedure, which requires a county officer to request a purchase requisition through the issuance of a requisition request form. We believe, however, that a county auditor may not refuse to issue a requisition to any county officer upon request, even if the county officer already has purchased the supplies or materials. Furthermore, the county auditor may not require that, prior to the purchase of supplies or materials, he or she certify on the requisition that an appropriate budget appropriation exists.

However, section 113.901 provides the county auditor with a pivotal role in the payment process. The county auditor may audit or approve an account for the purchase of supplies or materials only if a properly signed requisition is attached to the account. Local Gov't Code § 113.901(a); *Southern Sur. Co. v. McGuire*, 275 S.W. 845, 847 (Tex. Civ. App.--El Paso 1925, writ ref'd). Furthermore, the original copy of the triplicate requisition "must be delivered to the person from whom the purchase is to be made *before the purchase is made.*" *Id.* § 113.901(b) (emphasis added). A county auditor is required to approve an account if the prerequisites detailed in section 113.901 of the Local Government Code are met. *See* Attorney General Opinion WW-1346 (1962) (at 6) (construing statutory predecessor to Local Government Code section 113.901). We therefore believe that an auditor may, pursuant to section 113.901 of the Local Government Code, refuse to approve an account for a purchase of supplies or materials if

the vendor did not receive the original copy of the properly signed requisition before the county officer made the purchase.⁶

S U M M A R Y

For purposes of section 113.901 of the Local Government Code, a "purchase" is completed upon the transfer of title to the goods from the vendor to the buyer, in accordance with section 2.401(b) of the Business and Commerce Code. Section 113.901 does not authorize a county auditor to refuse to issue a requisition to any county officer upon request, even if the county officer already has purchased the supplies or materials. Pursuant to section 113.901, a county auditor may refuse to approve an account for a purchase of supplies or materials if the vendor did not receive the original copy of the properly signed requisition before the county officer made the purchase.

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

⁶In the event that a county auditor refuses to approve an account for goods that have already been delivered to the county, the vendor may bring a legal action against the county. See *Lovell v. Bynum*, 315 S.W.2d 20, 22 (Tex. Civ. App.--Austin 1958, writ ref'd n.r.e.); *Wyatt Metal & Boiler Works v. Lipscomb*, 87 S.W.2d 331, 333 (Tex. Civ. App.--Texarkana 1935, writ ref'd).