



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1998

The Honorable Bruce Isaacks
Denton County Criminal District Attorney
P. O. Box 2344
Denton, Texas 76202

Letter Opinion No. 98-115

Re: Whether the provisions of Local Government Code section 262.011 apply to a county that has employed a purchasing agent under section 262.0115 (RQ-1020)

Dear Mr. Isaacks:

On behalf of the Denton County Commissioners Court and the Denton County Sheriff, you ask whether the provisions of Local Government Code section 262.011, in particular those with respect to enforcement, apply to a county that has employed a county purchasing agent under section 262.0115 of the Local Government Code. You advise us that previously the Denton County purchasing agent operated under section 262.011. The Denton County Board, composed of the district court judges in the county and two members of the Denton County Commissioners Court, abolished the office of the section 262.011 county purchasing agent.¹ On August 25, 1992, the commissioners court appointed a purchasing agent pursuant to section 262.0115. You indicate that both you and the commissioners court believed that the provisions of section 262.011, in particular those with respect to enforcement, continued to apply to Denton County. The Denton County Sheriff, however, has questioned whether these provisions indeed apply to the county. We conclude that the section 262.011 provisions do not apply to the county. We also conclude, however, that the duties of a purchasing agent employed under section 262.0115 are not limited to the duties of the county auditor with respect to county purchasing. A section 262.0115 purchasing agent is required to carry out the county auditor's purchasing function in addition to the usual duties of a county purchasing agent.

Section 262.011, originally enacted in 1939,² authorizes a board, in a county with a population of 150,000 or less comprising the judges of the district courts in that county and the county judge or in any other county the three district court judges and two members of the commissioners court, to appoint a county purchasing agent with a two-year term. Local Gov't Code

¹See Letter Opinion No. 97-064 (1997) (section 262.011 county purchasing agent position may be abolished by majority vote of board).

²See Act of Mar. 24, 1939, 46th Leg., R. S., ch. 9, 1939 Tex. Gen. Laws 602, 602.

§ 262.011(a). Section 262.011(d) provides that only the purchasing agent shall purchase supplies, materials, and equipment required or used and make contracts for repairs to property used by the county, except purchases and contracts required to be competitively bid.³ The purchasing agent must still supervise the competitive bid purchases. *Id.* § 262.011(e). Additionally, the county auditor may not draw and the county treasurer may not honor a purchase warrant unless the purchase is made by the purchasing agent or pursuant to competitive bid.⁴ *Id.* § 262.011(f). Subject to the commissioners court's approval, the purchasing agent also must adopt rules and procedures necessary to implement the agent's duties. *Id.* § 262.011(o). Finally, subsection (m) of section 262.011 provides that

[a] person, including an officer, agent, or employee of a county or of a subdivision or department of a county, commits an offense if the person violates *this section*. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, by confinement in the county jail for not less than 30 days or more than one year, or by both the fine and confinement. Each act in violation of this section is a separate offense. [Emphasis added.]

Section 262.011 by its terms allows but does not require the appointment of a county purchasing agent. *See id.* § 262.011(a) ("A board composed as provided by this subsection by majority vote, *may* appoint a suitable person to act as the county purchasing agent.") (emphasis added). Thus the statute's provisions, including subsection (m), apply only in those counties in which a purchasing agent under this section has been appointed by a board. *Id.* § 262.011(a), (m) ("person . . . commits an offense if the person violates *this section*."). (Emphasis added.)

Section 262.0115, originally enacted in 1987,⁵ which you ask about, provides as follows:

(a) In a county with a population of more than 100,000, the commissioners court may employ a person to act as county purchasing agent. However, this section does not apply to a county that has appointed a purchasing agent under Section 262.011 and that has not abolished the position as authorized by law.

(b) A purchasing agent employed under this section serves at the pleasure of the commissioners court.

³See Attorney General Opinion JM-974 (1988) (county purchasing agent must make all purchases not subject to competitive bid).

⁴See Attorney General Opinions H-1237 (1978) (commissioners court may not direct payment and auditor may not approve claim on purchases not made by county purchasing agent), H-482 (1974) (commissioners court may not ratify contract for road gravel not made by county purchasing agent).

⁵See Act of Apr. 27, 1987, 70th Leg., R. S., ch. 57, § 5, 1987 Tex. Gen. Laws 153, 155.

(c) The commissioners court may employ other persons necessary to assist the purchasing agent in performing the agent's functions.

(d) Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for the county auditor in regard to county purchases and contracts and shall administer the procedures prescribed by law for notice and public bidding for county purchases and contracts.

(e) A county that has established the position of county purchasing agent under this section may abolish the position at any time. On the abolition of the position, the county auditor shall assume the functions previously performed by the purchasing agent.

Section 262.0115 does not specifically delineate the authority of a purchasing agent employed by the commissioners court or provide a method for enforcing that authority as does section 262.011. Given these omissions, your question requires us to determine whether the section 262.011 provisions apply to section 262.0115 to fill the gaps.

Section 262.0115 does not incorporate by reference or otherwise the section 262.011 provisions with respect to a purchasing agent's authority and enforcement mechanism. Likewise, section 262.011 does not extend its application by reference to section 262.0115 or other laws that might authorize employment of a purchasing agent. Section 262.011 by its terms applies only to a county whose purchasing agent has been appointed under that statute. There is nothing in the language of section 262.0115 or elsewhere that indicates a legislative intent that the provisions of section 262.011 apply to section 262.0115. While it might have been desirable to provide for the gaps in section 262.0115 by reference to the provisions of section 262.011, the legislature did not do that. It is not the function of a reviewing court or this office to supply omissions in the law.⁶

You suggest that the section 262.011 provisions must apply to a county whose agent is employed under section 262.0115 given the restrictive effect of section 262.0115(d) standing alone. Your letter indicates subsection (d) could be read to authorize a section 262.0115 purchasing agent to perform only those duties that a county auditor may perform with respect to county purchases. Since the county auditor's purchasing duties are very limited,⁷ you reason, the legislature must have intended the section 262.011 provisions, including those with respect to the county purchasing

⁶*Railroad Comm'n v. Miller*, 434 S.W.2d 670, 672 (Tex. 1968); *Central Educ. Agency v. Independent Sch. Dist.*, 254 S.W.2d 357, 361 (Tex. 1953).

⁷See Local Gov't Code §§ 262.012(a) (county auditor employed jointly by 2 or more counties under section 84.008 shall act as purchasing agent), .012(b) (county auditor in county of bracketed population shall act as purchasing agent); *Attorney General Opinion WW-1121(1961)* (discussing limited duties of county auditor with respect to county purchasing); see generally 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 18.23 (Texas Practice 1989).

agent's authority, to apply to section 262.0115 or otherwise the legislature would have enacted a useless statute.

We agree that authorizing a county purchasing agent employed under section 262.0115 to perform only the limited purchasing duties of a county auditor would defeat the purpose of the statute, and that the legislature is never presumed to do a useless act.⁸ However, we do not interpret subsection (d) of section 262.0115 to so limit the authority of a purchasing agent.

The ultimate purpose of statutory interpretation is to effect the legislature's intent.⁹ In construing a statute, like a court, we look first to the literal language because that best indicates the legislature's intent.¹⁰ If the language clearly and unambiguously expresses the legislature's intent, we must give effect to its plain meaning.¹¹ On the other hand, if application of the statute's plain language would lead to absurd results that the legislature could not possibly have intended or if the language is not plain but ambiguous, we may consider extra-textual factors such as the purpose of a statute and its legislative history to arrive at a reasonable construction.¹² Based on the purpose and legislative history of section 262.0115, we believe that the more reasonable construction is that subsection (d) enlarges rather than restricts a purchasing agent's duties: Subsection (d) requires a county purchasing agent employed under section 262.0115 to carry out the county auditor's purchasing functions *in addition* to the usual duties of a purchasing agent.

The purpose of section 262.0115 is to allow the commissioners court, rather than a board as authorized by section 262.011, to hire a purchasing agent who performs all the duties commonly associated with that position as generally described in section 262.011. The legislature intended by enacting section 262.0115 to grant certain counties additional authority with respect to a county purchasing agent, not to restrict the county purchasing agent's authority. The House of Representatives added the substance of section 262.0115 into Senate Bill 355 on the floor of the house during

⁸*State v. Broaddus*, 952 S.W.2d 598, 601 (Tex. App.--Houston [14th Dist.] 1997, pet. granted); *Rodriguez v. State*, 879 S.W.2d 283, 286 (Tex. App.--Houston [14th Dist.] 1994, pet. ref'd).

⁹*Texas Water Comm'n v. Brushy Creek Mun. Util. Dist.*, 917 S.W.2d 19, 21 (Tex. 1996).

¹⁰*Eldridge v. State*, 940 S.W.2d 646, 652 (Tex. Crim. App. 1996); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); *Broaddus*, 952 S.W.2d at 602.

¹¹*Boykin*, 818 S.W.2d at 785; *Broaddus*, 952 S.W.2d at 602.

¹²*Boykin*, 818 S.W.2d at 785; Gov't Code § 311.023(1), (3).

the bill's second reading.¹³ Representative Guerrero, the proponent of the amendment, explained its purpose as follows:

Mr. Speaker, members, the amendment would simply allow a county of more than 125,000¹⁴ population to hire a county purchasing agent--doesn't take away the right for those who already have one--would allow those counties who would like to do that to do that.¹⁵

Senator Parmer, who had introduced Senate Bill 355, laid out the house floor amendment during the second reading of the bill in the senate with the following explanation:

Senate Bill 355 was the bill that we passed which permissively allowed county commissioners courts in counties of 125,000 to hire budget officers. Few days later we passed a bill which permissively allowed the six counties that do not currently have purchasing agents to allow the commissioners courts to hire purchasing agents [for the] same population classification. The House of Representative put those two bills together in one bill and sent them back to us in one bill¹⁶

The other bill that the House of Representatives incorporated into Senate Bill 355 as the house floor amendment was Senate Bill 363 that Senator Parmer had also introduced in the Seventieth Legislature, which passed the Senate but did not make it to the floor of the house.¹⁷ It is clear from that bill's history that the legislative objective was to allow the commissioners court to hire a purchasing agent who would perform all the county purchasing functions. The bill analysis for Senate Bill 363 lays out the background by stating the applicable law at the time, the predecessor to section 262.011 authorizing a board composed of the district judges and the county judge to appoint the county purchasing agent, and notes that the "purchasing agent purchases the counties supplies and equipment and contracts for repairs to county property, except when competitive bidding is required by law."¹⁸ The significance of this description is that that is what the legislature believed a county purchasing agent did. The bill analysis then states that Senate Bill 363 "allows

¹³See H.J. of Tex., 70th Leg., R.S. 1209 (1987).

¹⁴In 1995, the legislature reduced the population requirement from 125,000 to 100,000. See Act of Apr. 28, 1995, 74th Leg., R.S., ch. 63, § 1, 1995 Tex. Gen. Laws 441, 442. (Footnote added.)

¹⁵Debate on S.B. 355 on the Floor of the House, 70th Leg., R.S. (Apr. 22, 1987) (tape available from House Video/Audio Committee Services).

¹⁶Debate on S.B. 355 on the Floor of the Senate, 70th Leg., R.S., (Apr. 27, 1987) (tape available from Senate Staff Services Office).

¹⁷See S.B. 363, 70th Leg., R.S. (1987); S.J. of Tex., 70th Leg., R.S. 2930 (1987).

¹⁸Senate Comm. on Intergovernmental Relations, Bill Analysis, S.B. 363, 70th Leg., R.S. (1987) (Background).

the commissioners courts in certain counties to employ a purchasing agent.”¹⁹ Thus, the legislature intended the commissioners courts to employ a purchasing agent who would perform all the duties the legislature understood a county purchasing agent to perform. That intent is further supported by the statements made during the Senate Committee on Intergovernmental Relations’ hearing on Senate Bill 363. Senator Parmer stated that the bill

would allow the five counties who do not have a purchasing agent and that are using, as they describe it, slipshod methods—some of the purchases get done [by] the commissioners courts and some get done by the department heads—we’re just trying to give those five counties an opportunity to have an option to have the commissioners courts, if they want to, to consolidate the purchasing functions and appoint a purchasing agent. We’re not interfering with the county auditor’s independence.²⁰

Other testimony in support of the bill indicated that the counties advocating the legislation wanted the commissioners courts to have the authority to hire and fire the county purchasing agent.²¹ Apparently, counties in which a county purchasing agent had not been appointed did not want a purchasing agent appointed by a board since the commissioners courts would have to fund the position but would have no control over it.²² However, the consequence of not having a board-appointed county purchasing agent was that purchasing in these counties’ was done by the commissioners court, the county auditor, and the department heads.²³ This “slipshod” method of purchasing created a need to consolidate the purchasing functions.²⁴ Accordingly, the purpose of Senate Bill 363 was to allow certain counties to centralize the purchasing functions but under the commissioners courts’ control.

In sum, the legislative purpose for adopting section 262.0115 was to allow the commissioners courts, in those counties that did not want a county purchasing agent appointed by a board, to hire a county purchasing agent, if they so desired, and consolidate the purchasing functions. That purpose would clearly be defeated if section 262.0115(d) were construed to restrict the section 262.0115 purchasing agent’s duties to those of the county auditor’s with respect to county purchasing, which are limited. In our opinion, the legislature could not possibly have intended that

¹⁹*Id.* (Purpose).

²⁰Hearings on S.B. 363 Before the Senate Comm. on Intergovernmental Relations, 70th Leg., R.S. (Mar. 24, 1987) (tape available through Senate Staff Services Office).

²¹*Id.* (statement of Tom Vickers, Bexar County Judge).

²²*Id.* (statements of Paul Elizondo, Bexar County Commissioner, Raymond Matkins, McLennan County Agent).

²³*Id.* (statements of Senator Parmer, Raymond Matkins).

²⁴*Id.*

result. Therefore, we believe the more reasonable construction is that subsection (d) requires a county purchasing agent employed under section 262.0115 to carry out the county auditor's purchasing functions *in addition* to the usual duties of a county purchasing agent as generally described in section 262.011.

While a commissioners court has only those powers specifically granted to it by the state constitution or statutes, it has broad discretion to take actions necessary to exercise those powers expressly conferred.²⁵ Section 262.0115 authorizes a commissioners court to appoint a purchasing agent but does not prescribe the full extent of the agent's duties. In such a case, a commissioners court may prescribe the agent's duties within the parameters of the legislative intent of the statute authorizing the position.

S U M M A R Y

The provisions of Local Government Code section 262.011 do not apply to a county that has employed a county purchasing agent under Local Government section 262.0115. The duties of a county purchasing agent employed under section 262.0115 are not limited to the duties of a county auditor with respect to county purchasing. A section 262.0115 purchasing agent is required to carry out the county auditor's purchasing function in addition to the usual duties of a county purchasing agent. The commissioners court may prescribe the purchasing agent's duties within the parameters of the legislative intent of section 262.0115.

Yours very truly,



Sheela Rai
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Opinion Committee

²⁵*Guynes v. Galveston County*, 861 S.W.2d 861, 863-64 (Tex. 1993).