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**State of Texas**  
**District Attorney Office**

**64th & 242nd Judicial Districts**

AREA CODE 806 296-2416 — 293-8481  
COUNTIES OF HALE AND SWISHER  
HALE COUNTY COURTHOUSE

Plainview, Texas 79072

November 11, 1991

RA-259

ID# 14289  
MS

Honorable Dan Morales  
Attorney General, State of Texas  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

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Opinion Committee

ATTENTION: OPINIONS COMMITTEE

RE: IS A COUNTY AUDITOR'S SALARY CONSIDERED TO BE A PART OF THE "AMOUNT BUDGETED FOR EXPENSES OF THE COUNTY AUDITOR'S OFFICE" WITHIN THE MEANING OF THIS TERM IN SENATE BILL NO. 1035, 72ND LEGISLATURE, AMENDING SUBCHAPTER A, CHAPTER 111, LOCAL GOVERNMENT CODE BY ADDING SECTION 111.013, LIMITING AN INCREASE IN THE BUDGET OF AN AUDITOR'S OFFICE FROM ONE FISCAL YEAR TO THE NEXT IN AN AMOUNT NOT TO EXCEED 5% WITHOUT APPROVAL OF THE COMMISSIONER'S COURT.

Dear General Morales:

In authority with Section 402.043 of the Texas Government Code, I request an opinion regarding whether a county auditor's salary is considered to be a part of the "amount budgeted for expenses of a county auditor's office" within Section 111.013 of the Local Government Code.

FACTUAL BACKGROUND:

On September 5, 1991, the District Judges of the 64th and 242nd Judicial Districts held a public hearing in accordance with state law to set the salaries of the Hale County, Texas auditor, the Assistant Auditor, and to set the 1992 calendar year budget for the Hale County Auditor. On that date, the District Courts set the salary of the County Auditor at \$30,000, the salary of the Assistant County Auditor at \$18,000, and the budget of the Auditor at \$66,448.00 for the 1992 calendar year. A copy of this order is attached to this request as Exhibit "A". As reflected in Exhibit "A", the order entered increased the budget of the County Auditor from \$60,651 in 1991 to \$66,448 in 1992 which is more than a five (5) percent increase. Exhibit "A" further reveals that the \$66,448 total 1992

budget prepared by the District Courts includes the \$30,000 proposed salary for the Auditor in 1992. The Hale County Auditor maintains that her salary should not be part of the amount budgeted for expenses of her office within the meaning of Senate Bill 1035 and thus, the order entered by the District Court did not increase the amount budgeted for expenses of the County Auditor under this statute beyond the five (5) percent cap without approval of the Hale County Commissioners Court. The population of Hale County, Texas is less than 225,000 persons.

The Texas Local Government Code does not offer clear guidance as to whether the auditors salary should be included in the computation of the "amount budgeted for expenses of the county auditor's office" within the interpretation of Senate Bill 1035 and Section 111.013 of the Code. To my knowledge, case law has not precisely addressed the issues presented for consideration. Due to lack of guidance, I propose the following question for your opinion:

**QUESTION PRESENTED:**

IS A COUNTY AUDITOR'S SALARY CONSIDERED TO BE A PART OF THE "AMOUNT BUDGETED FOR EXPENSES OF THE COUNTY AUDITOR'S OFFICE" WITHIN THE MEANING OF THIS TERM IN SENATE BILL NO. 1035, 72ND LEGISLATURE, AMENDING SUBCHAPTER A, CHAPTER 111, LOCAL GOVERNMENT CODE BY ADDING SECTION 111.013, LIMITING AN INCREASE IN THE BUDGET OF AN AUDITOR'S OFFICE FROM ONE FISCAL YEAR TO THE NEXT IN AN AMOUNT NOT TO EXCEED 5% WITHOUT APPROVAL OF THE COMMISSIONER'S COURT.

**LIST OF STATUTORY AUTHORITIES**

THE STATUTES WHICH MIGHT INFLUENCE AN OPINION ARE AS FOLLOWS:

**TEXAS LOCAL GOVERNMENT CODE**

SECTION 84.901  
SECTION 111.013  
SECTION 152.031  
SECTION 152.032  
SECTION 152.035  
SECTION 152.905

**BRIEF**

Effective June 15, 1991, the Texas Legislature, in passing Senate Bill No. 1035, amended Chapter 111 of the Texas Local Government Code by adding Section 111.013. This section, which applies to counties with a population of less than 225,000 persons, reads in pertinent part the following:

"Section 111.013. LIMITATION ON BUDGET OF COUNTY AUDITOR  
An Increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five percent without approval of the commissioners court."

To the knowledge of this writer, only Sections 84.901 and 152.035 of the Code refer to specifically enumerated items that are named expenses of a county auditor. Section 84.901 states that the auditor can purchase at the county's expense those materials which the auditor needs to perform the functions of the office and Section 152.035 mandates that the auditor be reimbursed for mileage expense in the performance of his or her job duties. The question thus becomes whether the auditor's salary itself is an amount budgeted for "expenses of the auditor's office" regarding Section 111.013.

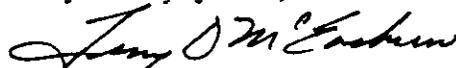
Section 152.031 of the Code requires that the district judges who appoint a county auditor shall set the salary of the auditor, travel expenses, and other allowances after a public hearing on the issue and certify an order to the commissioners court for its observance. The authority of the district judges in this regard is limited, however, by Section 152.032 of the Local Government Code which states that the amount of compensation and allowances of the county auditor may not exceed the amount of compensation and allowances received from all sources by the highest paid elected county officer. Section 111.013 would further seem to limit the amount of compensation and allowances paid to an auditor without the approval of the commissioners court where the salary of the auditor is a line item in a prepared budget for the office of the auditor and an increase in such salary increases the total budget more than five percent over the previous year. As is evident in the attached Exhibit "A", the salary of the auditor is an item in the budget approved by the District Judges of the 64th and 242nd Judicial Districts for the auditor and the budget reflects an increase in this salary of \$5,600. This salary raise, depending on the interpretation of the Section 111.013, may or may not violate the limitations imposed by the statute.

**SUMMARY:**

I propose that under Section 111.013, the salary and compensation of an auditor is an amount budgeted for expenses of the county auditor's office where the salary is included as a line item in a budget adopted by district court order and thus, such budget of a county auditor is subject to approval of the commissioners court where the budget increases more than five percent from one fiscal year to the next.

We would sincerely appreciate a prompt reply so that we may hopefully resolve a dilemma in our budget process in Hale County, Texas for 1991.

Very truly yours,



Terry D. McEachern  
District Attorney  
Hale County, Texas

EXHIBIT "A"

STATE OF TEXAS  
COUNTY OF HALE

IN THE 242ND AND 64TH DISTRICT COURTS  
OF HALE COUNTY, TEXAS

ORDER SETTING THE SALARIES AND BUDGET  
FOR HALE COUNTY AUDITOR

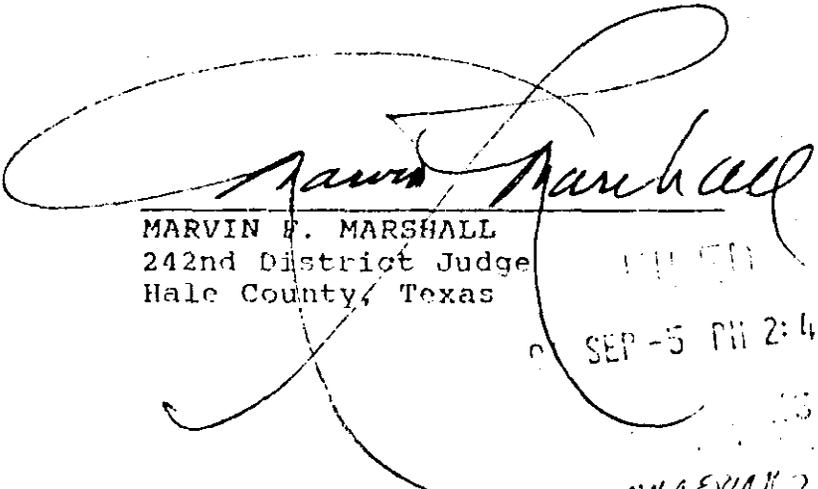
ON THIS THE 5th day of September, 1991, at a Public Hearing in the 242nd District Courtroom after notice being posted as required by law, come on for consideration the matter of setting the salary for the Hale County Auditor and Assistant Hale County Auditor, and setting the budget for Hale County Auditor for the 1992 calendar year.

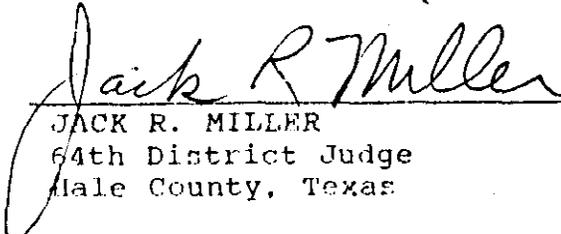
BE IT THEREFORE ORDERED by a majority of the District Judges of Hale County, Texas, that Jacqueline Latham, Hale County Auditor, shall receive compensation for services an annual salary in the amount of \$30,000, payable monthly out of the General Fund of Hale County, Texas, effective January 1, 1992.

BE IT ALSO ORDERED by a majority of the District Judges of Hale County, Texas, that Marsha Ball, Assistant Hale County Auditor shall receive compensation for services an annual salary in the amount of \$18,000, payable monthly out of the General Fund of Hale County, Texas, and accumulate longevity at the rate of \$4.00 per month to be paid annually from the General Fund of Hale County, Texas, effective January 1, 1992.

BE IT FURTHER ORDERED by a majority of the District Judges of Hale County, Texas, that the budget for Hale County Auditor be adopted and set at \$66,448 for the 1992 calendar year and be paid from the General Fund, Hale County, Texas.

SIGNED AND ENTERED this 5<sup>th</sup> day of September, 1991.

  
MARVIN F. MARSHALL  
242nd District Judge  
Hale County, Texas

  
JACK R. MILLER  
64th District Judge  
Hale County, Texas

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	1950	1951	1951	65-100-11	1951	1951	1952
	Actual	and Budget	and Budget	Est. Exp.	Est. Actual	Estimated	Recommended
Person and Labor - (Total)							
400 AUDITOR'S SALARY	24,400	24,400	24,400	24,400	24,400	24,400	24,400
405 ASSISTANTS SALARY	16,000	16,000	16,000	16,000	16,000	16,000	16,000
408 LONGEVITY					76	76	76
409 EMPLOYERS FICA FUNDS DEDUCTED	2,144	2,144	2,144	1,378	2,144	2,144	2,144
400 RETIREMENT	3,566	3,566	3,566	1,634	3,566	3,566	4,000
412 GROUP HEALTH & LIFE INSURANCE	4,239	4,239	4,239	2,025	4,239	4,239	4,239
410 MILEAGE	200	200	200	0	200	200	200
411 POSTAGE	150	150	150	36	150	150	150
402 OFFICE SUPPLIES	900	1,150	1,150	960	900	900	900
4151 MACHINE MAINTENANCE	150	150	150	0	0	150	150
4107 TRAVEL, CONFERENCES, CUES, ETC	3,050	3,050	3,050	1,267	3,050	3,050	3,050
4431 PUBLICATIONS	1,500	1,500	1,500	1,025	1,500	1,500	1,500
4432 ADVERTISEMENTS	50	50	50	21	50	50	50
4450 BOND FOR AUDITOR	50	50	50	50	50	100	100
4571 OFFICE EQUIPMENT	51				0	250	250
<b>Total for AUDITOR</b>	<b>78,227</b>	<b>60,651</b>	<b>60,651</b>	<b>27,318</b>	<b>59,525</b>	<b>66,448</b>	<b>66,448</b>