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RQ# 272

State of Texas
District Attorney Office
64th & 242nd Judicial Districts

AREA CODE 806 296-2416 — 293-6481
COUNTIES OF HALE AND SWISHER
HALE COUNTY COURTHOUSE

Plainview, Texas 79072
November 25, 1991

11DA 14345
MJ

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

RECEIVED

DEC 02 91

Opinion Committee

ATTENTION: OPINIONS COMMITTEE

RE: IS THE FIVE (5) PERCENT INCREASE LIMITATION IMPOSED BY SECTION 111.013 OF THE TEXAS LOCAL GOVERNMENT CODE APPLICABLE TO AN INCREASE IN THE AMOUNT BUDGETED FOR THE SALARY OF AN ASSISTANT COUNTY AUDITOR OR TO AN INCREASE IN THE ACTUAL SALARY PAID TO AN ASSISTANT COUNTY AUDITOR FROM ONE FISCAL YEAR TO THE NEXT?

Dear General Morales:

In authority with Section 402.043 of the Texas Government Code, I request an opinion regarding whether the limitations imposed by Section 111.013 apply to only the amount budgeted for the salary of an assistant county auditor from one fiscal year to the next or whether the restriction applies to an increase in the actual salary paid to such an employee.

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 1992 fiscal year budget for the Hale County, Texas auditor. On that date, the District Judges set the salary of the Assistant County Auditor at \$18,000 for the 1992 year. A copy of this order is attached to this request as Exhibit "A". The order entered increased the salary paid to the Assistant County Auditor from \$15,000 dollars per year to \$18,000 per year, which figures to a 20 percent raise. However, Exhibit "A" reflects that the amount budgeted for the salary of the Assistant County Auditor in 1991 was \$18,000 and the proposed 1992 amount budgeted for the position is \$18,000. The current Assistant County Auditor was hired in January 1991 at the salary of \$15,000 and such amount has remained for the entire 1991 fiscal year even though \$18,000 was budgeted to the position. The Hale County, Texas Commissioners Court questions the legitimacy of the raise in actual salary paid to the Assistant Auditor under Section 111.013 of the Local Government Code because the 1992 salary is twenty (20) percent higher than that paid in 1991 and the Commissioners Court has not approved the increase beyond the five (5) percent

limitation. The population of Hale County, Texas is less than 225,000 persons. The fiscal year of the county begins January 1, and ends December 31.

The Texas Local Government Code does not offer clear guidance as to whether a raise in the assistant auditor's salary is subject to the 5 percent limitation imposed by Section 111.013 of the Code where there is an increase in the actual salary paid but not an increase in the amount budgeted for the position from one fiscal year to the next.

QUESTION PRESENTED

IS THE FIVE (5) PERCENT INCREASE LIMITATION IMPOSED BY SECTION 111.013 OF THE TEXAS LOCAL GOVERNMENT CODE APPLICABLE TO AN INCREASE IN THE AMOUNT BUDGETED FOR THE SALARY OF AN ASSISTANT COUNTY AUDITOR OR TO AN INCREASE IN THE ACTUAL SALARY PAID TO AN ASSISTANT COUNTY AUDITOR FROM ONE FISCAL YEAR TO THE NEXT?

LIST OF STATUTORY AUTHORITIES

The statutes which might influence an opinion are as follows:

TEXAS LOCAL GOVERNMENT CODE

| | |
|---------|---------|
| SECTION | 84.021 |
| SECTION | 111.013 |
| SECTION | 152.034 |
| SECTION | 152.905 |

BRIEF

Section 84.021 (a) of the Texas Local Government Code mandates as follows:

" . . . (a) . . . The District Judges, after careful consideration of the application for the appointment of the assistants and after inquiry concerning the appointees' qualifications, the positions sought to be filled, and the reasonableness of the requested salaries, shall prepare a list of the appointees that the judges approve and the salary to be paid each. The judges shall certify this list to the commissioners court, which shall order the salaries to be paid on the performance of services and shall appropriate an adequate amount of money for this purpose. . ."

Effective June 15, 1991, the Texas Legislature amended Chapter 111 of the 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:

" . . . 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."

The authority of the district judges in setting the salary of an assistant auditor seems to be limited by the newly enacted Section 111.013. This limitation seems to restrict the amount budgeted for an increase in the salary of an assistant auditor from one fiscal year to the next to percent per year without approval of the commissioners court. Any increase in the salary that is budgeted in an amount of over five percent can only be valid where the commissioners court ratifies a raise. In the current situation of Hale County, Texas, the assistant auditor salary for 1991 was budgeted at \$18,000 but only \$15,000 was paid to the person occupying the position. However, the 1992 budget of the auditor has the position budgeted at \$18,000 and \$18,000 will be paid to the assistant auditor per the order contained in Exhibit "A". Thus, the assistant auditor has received a \$3,000 raise but the amount budgeted for the salary of the position has not increased from the 1991 fiscal year to the 1992 fiscal year. The Commissioners Court construes this as an increase in salary subject to the limitations of Section 111.013 even though the amount budgeted for the salary has not increased. The statute, though, seems to limit an increase in the amount budgeted from year to year as opposed to an increase in the actual salary paid for the position of an assistant county auditor.

SUMMARY:

I propose that Section 111.013 of the Texas Local Government Code limits an increase in the amount budgeted for the salary of an assistant county auditor from one fiscal year to the next not more than five (5) percent without approval of the commissioners court but does not affect a raise in the actual salary paid to an assistant auditor where the amount budgeted for the position from one year to the next does not change.

We would sincerely appreciate a prompt reply so that we may hopefully resolve a dilemma in our budget process in 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

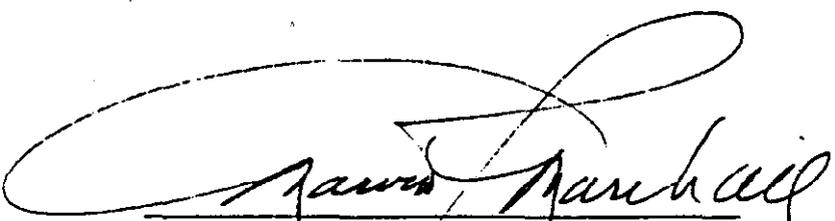
ON THIS THE 5th day of September, 1991, at a Public Hearing in the 242nd District Courtroom after notice being posted as required by law, come on for consideration the matter of setting the salary for the Hale County Auditor and Assistant Hale County Auditor, and setting the budget for Hale County Auditor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

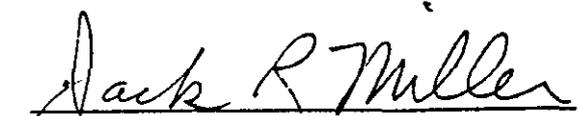
BE IT THEREFORE ORDERED by a majority of the District Judges of Hale County, Texas, that Jacqueline Latham, Hale County Auditor, shall receive compensation for services an annual salary in the amount of \$30,000, payable monthly out of the General Fund of Hale County, Texas, effective January 1, 1992.

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 5th day of September, 1991.


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


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

FILED
SEP -5 PM 2:48

EX-110

| | 1990 Actual | 1990 Original Budget | 1990 Rev. Budget | 66/20/91 Est. Exp. | 1991 Est. Actual | 1991 Revised Budget | 1992 Recommended |
|-----------------------------------|----------------|-------------------------|---------------------|-----------------------|---------------------|------------------------|---------------------|
| 4 Item and Labor Other | | | | | | | |
| 5 AUDITOR'S SALARY | 20,000 | 24,400 | 24,400 | 12,150 | 24,400 | 30,000 | 30,000 |
| 6 ASSISTANTS SALARY | 1,000 | 18,000 | 18,000 | 7,075 | 18,000 | 18,000 | 18,000 |
| 7 LONGEVITY | | | | | 75 | 76 | 76 |
| 8 EMPLOYERS FICA FUNDS DEBITED | 1,000 | 3,044 | 3,044 | 1,370 | 3,044 | 3,678 | 3,678 |
| 9 RETIREMENT | 1,000 | 2,544 | 2,544 | 1,634 | 2,566 | 4,005 | 4,005 |
| 10 GROUP HEALTH & LIFE INSURANCE | 1,000 | 4,691 | 4,691 | 2,025 | 4,039 | 4,000 | 4,039 |
| 11 MILEAGE | 100 | 350 | 350 | 0 | 200 | 260 | 200 |
| 12 POSTAGE | 50 | 250 | 250 | 36 | 150 | 150 | 150 |
| 13 OFFICE SUPPLIES | 332 | 1,150 | 1,150 | 263 | 300 | 300 | 300 |
| 14 MACHINE MAINTENANCE | 0 | 150 | 150 | 0 | 0 | 150 | 150 |
| 15 TRAVEL, CONFERENCE, COES, ETC. | 3,500 | 3,050 | 3,050 | 1,247 | 3,050 | 3,050 | 3,050 |
| 16 PUBLICATIONS | 3,154 | 1,500 | 1,500 | 1,025 | 1,300 | 1,500 | 1,500 |
| 17 ADVERTISEMENTS | 70 | 50 | 50 | 21 | 50 | 50 | 50 |
| 18 BOND FOR AUDITOR | 0 | 50 | 50 | 50 | 50 | 100 | 100 |
| 19 OFFICE EQUIPMENT | 51 | | | | 0 | 250 | 250 |
| Total for AUDITOR | 33,227 | 60,651 | 60,651 | 27,218 | 59,525 | 66,448 | 66,448 |