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Tina Driskell
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Opinion Committee

Hon. Dan Morales
 Attorney General of Texas
 Austin, Texas 78711

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Dear General Morales:

I respectfully request that you issue your opinion on a matter concerning the lines of demarcation of the official duties of the County Treasurer and County Auditor, respectively, of this County with respect to certain aspects of the handling of the payroll function for employees of this County.

These are the relevant facts: On March 28, 1994, the Commissioners Court of Titus County voted unanimously to ".....combine duties of county payroll, the insurance program, and the personnel responsibilities with the duties of monitoring and receiving purchase orders and their payment." The latter duties are, and had previously been, a function of the County Auditor.

The action was intended to delegate the ministerial tasks involved in the payroll function to the County Auditor. The data processing system for this County is centered in the office of the County Auditor. The Commissioners Court concluded that the delegation of those duties to the County Auditor would promote efficiency and accomplish cost savings through the centralization of data processing activities.

At the same time, the Commissioners Court recognizes that the disbursement of money belonging to the County is exclusively the function of the County Treasurer. Thus, it was intended that, upon completion of the ministerial tasks of preparing the salary warrants, they would be delivered to the County Treasurer for verification, signature and distribution and such other action as that officer might deem appropriate. A question has now arisen as to whether the action by the Commissioners Court was proper.

I am not unaware of Opinion No. JM-986 issued by the Hon. Jim Mattox on November 21, 1988, in which it was concluded that:

".....the county auditor simply has no statutory power to assume payroll duties and.....the commissioners court has no power to confer such duties on the auditor."

The opinion further states that, in counties with a population of less than 190,000:

".....the county treasurer must prepare the county payroll and present the payroll to the commissioners court for its approval. It is the duty of the commissioners court to review the payroll and, upon approval of the payroll, order the issuance of warrants to pay salaries.

.....The commissioners court may, however, delegate the task of preparing salary warrants -- i.e., the clerical task of writing the warrant or filling in blank spaces -- since this involves only ministerial actions.....We believe the county treasurer is the officer to whom this function should be delegated." (emphasis added)

The fact the opinion uses the word "should" -- as opposed to "must" or a comparable mandatory term -- seems not to foreclose the delegation of such ministerial tasks to other officials. I also have other difficulties with the opinion. For example, although the constitution, in Article 16, Section 44, clearly provides that the Legislature shall prescribe the duties of a County Treasurer, the opinion states that "only the people through constitutional amendment.....may deprive the county treasurer of (the) essential duty" of drawing checks to pay salaries. Thus, the opinion seems to ignore the power of the Legislature in this area.

At the same time, the statutes are not entirely clear on the issue of which county official has the authority and responsibility with respect to the physical act of payment of salaries. The law does not specify with particularity that the County Treasurer is the only county officer to have payroll responsibilities -- at least in some areas. Section 152.051 of the Code defines "county payroll officer," for the purposes of Subchapter D of Chapter 152, as "the county auditor or other appropriate county officer who issues paychecks to county or precinct personnel." It is true

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that the latter subchapter itself is of very limited application, but the definition certainly suggests that the conclusion in Opinion No. JM-986 that "the county auditor simply has no statutory power to assume payroll duties" is open to some question as an absolute statement of the law.

Accordingly, I would respectfully request a clarifying opinion as to whether the Commissioners Court of this County may properly delegate to the County Auditor the clerical activities involved in the preparation of payroll warrants so long as the warrants are then delivered to the County Treasurer for verification, signature, and distribution.

Respectfully submitted,



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