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Opinion Committee

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SJS

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

ML-29627-94

Attention: Opinion Committee

29627

Dear General Morales:

Do elected officials have the authority themselves to purchase supplies and materials in a county with less than 150,000 population, where no purchasing agent has been appointed, and where the county judge has not waived but does not exercise his requisition approval authority, so long as their budgets permit, and subject to subsequent approval by the Commissioners Court in open court? If the official has already received the materials or supplies when the claim is submitted to court, and if the court rejects the claim, is the county nevertheless obligated to pay the vendor?

Do the specific provisions relating to appointment of a county purchasing agent in section 262.011 of the Local Government Code preclude the Midland County Commissioners Court (the "Court") from appointing a person to perform duties which do not have the same scope as the duties described therein for a purchasing agent? Can such an appointed "Purchasing Coordinator" be given the task of receiving requisitions for the county judge and verifying that the budget line item is correct and has sufficient funds to purchase the requested items? Can the appointed Purchasing Coordinator, on behalf of the Court, verify that proposed purchase transactions comply with legal requirements, and can he or she act as a contract administrator?

Does the Midland County Commissioners Court have authority under section 262.001(a) (3) of the Local Government Code to appoint a purchasing coordinator to perform the above duties? Is there a linkage between subsections (1) and (2), which speak of erecting or repairing county buildings, and subsection (3); or does subsection (3) when read with the lead paragraph stand alone? If there is a link would not the subparagraphs be joined by the word "and" rather

than "or"?

Does subsection 262.011(i), which requires the purchasing agent to file an inventory of the County's property, preclude the filing of such an inventory by the appointed Purchasing Coordinator?

Does the county auditor have the authority under section 112.001 of the Local Government Code to promulgate regulations for purposes of internal accounting control governing the manner in which purchases are made if, in his judgement, such regulations are consistent with law and with rules adopted by the Comptroller?

In March of 1993 the Court approved a plan, which had been endorsed by the District Judges of Midland County, to implement improved financial controls including: appointing a Purchasing Agent; implementing Generally Accepted Accounting Principles; installing a system of fixed asset controls; engaging a human resources consultant to develop and implement personnel policies and installing payroll and job classification systems, and centralizing computer operations. Most of the recommendations had been advanced by several different accounting firms who served as the County's independent certified public accountants over the past several years.

For the fiscal years ended September 30, 1992 and September 30, 1993, the affected officials and the Court responded officially and formally to the exceptions and recommendations that had been advanced by the independent accountants by stating positively that virtually all of the recommended actions would be taken, including that of implementing improved purchasing controls.

The Board of Judges did not appoint a Purchasing Agent. Because of the commitment to improved internal controls, I sought a compromise under which elected officials would not be denied their long-standing practice of personally initiating purchases of supplies, services and materials from their choice of vendors, but would be required to do so under a procedure which would institute the internal control features of centralized purchasing. The District Judges agreed to the alternate plan subject to the centralized purchasing function being under the County Auditor and subject to the Court's having authority to do so.

The Court, relying on its authority as the contracting body for the County under Section 262 of the Local Government Code, approved the proposal to appoint a "Purchasing Coordinator", approved the proposed purchasing procedures, adopted a purchasing code of ethics and established standard terms and conditions to be printed on each purchase order. We understand that a number of counties, including Travis County, have in the past taken similar action in reliance on the same authority. The final draft of Midland County Accounting Procedure No. 2, Documentation and

Accounting for Purchases (attached hereto as Exhibit "B"), became effective on April 1, 1994 and centralized purchasing began on that date.

The County Attorney, in his letter to the County Judge and members of the Court dated July 24, 1994 (a copy of which is attached hereto as Exhibit "A"), took exception to a draft resolution and order which I had proposed as a housekeeping measure in connection with the undertaking of a physical inventory of all of the County's fixed assets (the first since 1986). The Court had relied on its authority to appoint an agent under Section 262.001(a)(3) when it earlier approved the system; however, it had not formally specified who should sign purchase orders on its behalf and it had not designated anyone to file the fixed assets inventory.

The County Attorney's view is that the Court and I were attempting to appoint a de facto Purchasing Agent. I believe the County's procedure (see Exhibit "B"), when contrasted to the language in Section 262.011, demonstrates that this is not the case. The County Attorney further concludes that "the Commissioners' Court is without authority to appoint either the County Auditor or the Purchasing Coordinator to generally act as its agent in executing purchasing contracts on behalf of Midland County". Neither the Court nor I can follow the reasoning that subparagraph 262.001(a)(3): "any other purpose authorized by law", should be linked to its parallel subparagraphs (1) and (2) in a way to limit the meaning of the entire subparagraph 262.001(a).

The County Attorney also opined that "there exists no legal requirement that the Commissioners' Court conduct an annual inventory and accounting of property belonging to Midland County". Subsection 262.011(i) states that the purchasing agent must "...file with the county auditor and each of the members of the board that appoints the county purchasing agent an inventory of all the property on hand...". It follows that, where there is a purchasing agent, he is indeed the one to file the inventory; however, this does not preclude someone else from filing it in a county without a statutorily appointed purchasing agent.

It is my opinion that, if the Court is precluded from requiring the Purchasing Coordinator to file an inventory under section 262.011(i), the County Auditor may require it under section 114.002 in order to account for the General Fixed Assets of the County. Also, section 114.025 requires the county auditor to report "...on the condition of each account on the books..." which would include the General Fixed Assets account. There is a similar requirement in subsection 114.024(2).

Respectfully,

*Ernest D. Less*