



MIDLAND COUNTY
200 West Wall • Midland, Texas 79701

RQ 791

January 31, 1995

FEB 02 95

SJS 32704
file # ml-31895-95
ID# 31895
32704

Ms. Sarah J. Shirley
Chair, Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Attorney General's Opinion ID#30955

Dear Ms. Shirley:

In reference to your letter dated January 25, 1995, enclosed are copies of correspondence written between the former Midland County Auditor, Mr. James D. Ross, and the Midland County Attorney, Mr. Mark H. Dettman, regarding the issue of whether the County Attorney Fee Account should be included as a component of the overall county budget. As evidenced by this written dialogue, there was a long standing disagreement regarding this issue which promulgated the request for an Attorney General opinion.

Please reconsider the request for an opinion given the documentation provided. Thank you for your attention to this matter. If you need additional information, please call me at (915)688-1823.

Sincerely,

A handwritten signature in cursive script that reads "Carole Wayland".

Carole Wayland
Acting County Auditor

Enclosures, as stated.

MARK H. DETTMAN
COUNTY ATTORNEY

ASSISTANT COUNTY ATTORNEYS

JANE LUNDY BELAZI
MARVIN L. MOORE
DANNA GALLEGOS
MITZI H. PURVIS

P. O. BOX 2559
MIDLAND, TEXAS 79702
(915) 688-1084
FAX (915) 682-8004

April 29, 1994

INVESTIGATORS
JESSE PRIEST
REUBEN RICHARDSON
ADMINISTRATIVE ASSISTANT
BOBBI CARR

Mr. James D. Ross
Midland County Auditor
Midland County Courthouse
Midland, Texas 79701

Dear Mr. Ross:

Attached please find our proposed 1995 Budget per Judge Seltzer's correspondence of April 11, 1994. Pursuant to the instructions contained in such correspondence, we have prepared a budget for operating expenses only and are relying upon the Treasurer's Office for the preparation of our personnel budget.

Judge Seltzer also requested that this office prepare a budget for the County Attorney Fee Account. As previously advised, this fund is not subject to any type of budget or approval by any body other than the elected County Attorney. See, e.g., Article 102.007, Texas Code of Criminal Procedure, Atty.Gen.Op. JM-313 (1985), Atty.Gen.Op. JM-738 (1987), Atty.Gen.Op. 1034 (1989). Therefore, please eliminate this matter from your budget process. Additionally, it has come to my attention that a budget has been prepared by your office for this account. As this account is not subject to the budget process and is to be administered solely by the elected County Attorney, please eliminate any budget for this account which your office has adopted.

Also, in response to your letter dated March 21, 1994, please be advised that this office has no funds received as the result of seizure and forfeiture statutes.

Thank you for your assistance in these matters. Please let me know if I may be of further service.

Very truly yours,



MARK H. DETTMAN
County Attorney

MHD/lh
cc: Judge Seltzer



MARK H. DETTMAN

COUNTY ATTORNEY

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P. O. Box 2559
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November 1, 1994

INVESTIGATOR
JESSE PRIEST
ADMINISTRATIVE ASSISTANT
BOBBI CARR

Mr. James D. Ross
Midland County Auditor
Midland County Courthouse
Midland, Texas 79701

Dear Mr. Ross:

I have this date obtained a copy of your office's "Abbreviated Budget Report" for the County Attorney Fee Account for the period ending September 30, 1994. This report is dated October 25, 1994, and I have attached a copy of this report to this correspondence.

Initially, I must again remind you of the unique status of this fund. This fund is created under the provisions of Article 102.007, Texas Code of Criminal Procedure. Pursuant to the provisions of Section (f) of Article 102.007, "Expenditures from this fund shall be at the sole discretion of the attorney." I have advised you for the past two (2) years that this fund was not subject to the budget process generally applicable to county funds and have specifically instructed you not to prepare a budget for this fund as all expenditures from this fund are subject to the discretion of the elected prosecutor alone. Despite my directions to you, you have prepared a budget, without my consent, for this fund for the past two (2) budget years. In preparing such a budget for this fund, you have arbitrarily assigned budget line items to this fund and have arbitrarily assigned specific allocated dollar amounts to these line items. As this fund is to be administered solely at my discretion, you are again advised that your actions are without legal authority and I direct you to cease taking any further action of this nature with this fund unless specifically instructed to do so by me personally.

The result of your actions, as reflected on the attached report, is a presentation of this fund to the public in a wholly false light. Your report indicates that the County Attorney Fee Account overspent funds in three (3) separate line items, to wit: Travel, Telephone, and Miscellaneous. As this office never prepared or authorized a budget for this fund, and as the expenditure of these funds are at my sole discretion, it

Mr. James D. Ross
November 1, 1994
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would be impossible to overspend any monies from this fund so long as there were any monies remaining in this account. Your arbitrary assignment of certain monies to arbitrary line items has created the false impression that funds were improperly overspent. However, as you are well aware, these monies were expended strictly in compliance with the statutes which created this fund and were spent in an effort to spare the scarce tax revenues which are held in trust by the County. I expect your immediate action in correcting this matter and your assurance, in writing, that you will immediately cease your unauthorized exercise of authority over this fund.

While your actions set forth above are without justification, I must express my great concern for the status of this fund. In reviewing the attached report, it indicates that as of the close of fiscal year 1994 (September 30, 1994) the County Attorney Fee Account had an unencumbered balance of \$707.18. However, according to the records maintained by the County Treasurer, the actual balance in the County Attorney Fee Account as of September 30, 1994, was \$72,474.68. This equals a discrepancy in the amount of \$71,767.50. I trust that there is some explanation for the difference in these amounts and the apparent disappearance of more than \$70,000.00 from this account. Please provide me with a written explanation of this discrepancy as soon as possible, but in no event more than three (3) days from the date of this letter.

Finally, due to the nature of your actions, as well as the current investigation of your office, it is necessary for me to refer the matters referred to in this correspondence to the proper authorities for inquiry as to whether certain provisions of the law have been violated. I provide this information to you only as a courtesy so that you will be in a position to answer the questions raised in this letter to the proper law enforcement authorities as well as to me.

I trust that you will take no further unwarranted actions in regard to the matters of concern herein and that you will take corrective action, with a written explanation to me, per my request.

Very truly yours,



MARK H. DETTMAN
County Attorney

MHD/lld
Attachment

MIDLAND COUNTY
 ABBREVIATED BUDGET REPORT
 CALENDAR - 09 94 FISCAL - 12 93

ACCOUNT NUMBER DESCRIPTION	ORIG APPR RECEIPTS-MTD	RE-ENCUMBERED RECEIPTS-YTD	TRANSFERS EXPENDED-MTD	NET APPR EXPENDED-YTD	OUTSTND ENC % RECEIVED	UN-EXP BAL % EXPENDED	UN-ENC BAL % ENCUM
COUNTY ATTORNEY FEE ACCOUNT							
10-02-25-5026 SALARY - EMPLOYEES	34740.00 0.00	0.00 0.00	0.00 495.00-	39335.00 38715.00	0.00 0.00	620.00 98.42	620.00 0.00
10-02-25-5028 SALARY - PART TIME	8400.00 0.00	0.00 0.00	0.00 0.00	8400.00 7242.35	0.00 0.00	1157.65 86.22	1157.65 0.00
10-02-25-5050 PAYROLL BURDEN	6841.00 0.00	0.00 0.00	0.00 11.05	7306.00 7287.90	0.00 0.00	18.10 99.75	18.10 0.00
10-02-25-5140 AW ENFORCEMENT SUPPLIES	0.00 0.00	0.00 0.00	0.00 14.00-	410.00 292.28	0.00 0.00	117.72 71.29	117.72 0.00
10-02-25-5215 EDUCATION	1400.00 0.00	0.00 271.00	0.00 0.00	3545.00 3565.25	0.00 7.64	250.75 100.57	250.75 0.00
10-02-25-5240 MEMBERSHIP & DUES	1400.00 0.00	0.00 0.00	0.00 0.00	2370.00 2266.25	0.00 0.00	103.75 95.62	103.75 0.00
10-02-25-5280 TRAVEL	2000.00 0.00	0.00 730.38	0.00 2449.69	3560.00 6539.12	0.00 20.52	2248.74- 183.68	2248.74- 0.00
10-02-25-5400 ELECTRICAL	300.00 0.00	0.00 88.44	0.00 275.98	1730.00 1990.56	0.00 5.11	172.12- 115.06	172.12- 0.00
10-02-25-5725 PROFESSIONAL SERVICES	0.00 0.00	0.00 0.00	0.00 690.00	8190.00 7380.00	0.00 0.00	810.00 90.11	810.00 0.00
10-02-25-5890 MISCELLANEOUS	0.00 0.00	0.00 0.00	0.00 154.00	720.00 769.97	0.00 0.00	49.97- 106.94	49.97- 0.00
10-10-25-7200 CAPITAL OUTLAY - EQUIPMENT	0.00 0.00	0.00 0.00	0.00 0.00	8525.00 8424.96	0.00 0.00	100.04 98.83	100.04 0.00
TOTAL EXPENDITURES-CO. ATTORNEY FEE ACCT.	55081.00 0.00	0.00 1089.82	0.00 3071.72	84091.00 84473.64	0.00 1.30	707.18 100.46	707.18 0.00

James D. Ross
County Auditor



November 2, 1994

Honorable Mark H. Dettman, County Attorney
Midland County Courthouse
Midland, Texas

Dear Mr. Dettman:

With all due respect, I cannot agree with your letter of yesterday about not budgeting your hot check fund.

As your letter acknowledges, you refused during budget study to furnish the budget for this fund required by LGC 111.003, and my office then assisted the budget officer in preparing an estimate of expenditures for budget purposes. I suppose the budget officer and the commissioners court could amend the county's official budget to show zero expenditures from the fund. In that event, however, I believe the auditor would be obliged not to countersign checks representing disbursements from the fund. The county auditor's countersignature under LGC 113.043 validates an expenditure as "a proper and budgeted item of expenditure".

As I have said, I do not consider your hot check fund to be exempt from budget requirements, even though you are the only person who may prescribe the budget and you are the only person who can direct disbursements. Nevertheless, an appropriation is required before any disbursement can be made from any county fund. Also, as I explained to you in my July letter, I have prescribed and installed an accounting system which compares expenditures to budgets for all county funds.

The Abbreviated Budget Report for fiscal 1994 simply shows the balance of the 1994 budget, after all expenditures and encumbrances for committed expenditures, to be \$707.18. This particular report does not reflect cash balances. Cash owned by the fund at September 30, 1994 was \$72,474.68 according to the general ledger.

As to broadening the investigation of my office, I certainly do not object to your furnishing whatever information you wish to whomever you deem appropriate.

For your information, I enclose a copy of the Ector County budget for the County Attorney's fee account to demonstrate that we are not the only county which requires such a budget.

Respectfully,

Copies: Budget Officer
Commissioners Court

ORIGINAL SIGNED BY
JAMES D. ROSS

ECTOR COUNTY, TEXAS
1994-95 COUNTY BUDGET
REVENUES

COUNTY ATTORNEY HOT CHECK FUND

LINE ITEM DESCRIPTION	1992-93 ACTUAL	1993-94 ESTIMATED	1994-95 ESTIMATED
CHARGES FOR SERVICES			
70-000			
4086 HOT CHECK FEES	81,881	75,000	80,000
OTHER REVENUE			
4161 INTEREST	2,814	0	0
TOTAL OTHER REVENUE	2,814	0	0
TOTAL CO. ATTY HOT CHECK	84,695	75,000	80,000

ECTOR COUNTY, TEXAS

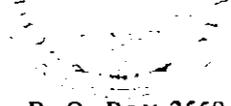
Budgeted Appropriations for the 1994-95 Fiscal Year
 County Attorney Hot Check Fund
 C. A. Hot Check

Line Item and Description.....	92-93 ...Actual..	93-94 Est Actual.	94-95 ..Approved.
70-180-			
5103 Salaries.Full Time	\$ 118,523	\$ 75,723	\$ 60,629
5121 Social Security Taxes	8,827	5,610	4,639
5122 Health Insurance	7,200	3,686	2,400
5123 Retirement	7,805	4,785	4,966
5161 Educational Travel	3,278	57	2,000
5171 Office Supplies	2,539	0	1,000
5173 Copier Supplies	203	0	250
5174 Reproduction Expense	432	0	0
5179 Data Processing Supp.	465	152	250
5183 Law Enforcement Supp.	0	0	0
5252 Office Equip. Maint. & Rep.	0	0	250
5282 Hardware Maintenance Contracts	0	0	0
5283 D.P. Software Maint.	0	0	0
5302 Prof. Dues & Fees	80	317	300
5321 Law Library Maint.	723	0	0
5332 Investigation Expense	0	0	0
5351 Telephone	82	0	0
5361 Health Ins. Admn Fee	1,388	721	847
5391 Equipment Rental	3,568	3,494	4,420
5507 Special Dept. Equip.	178	0	0
Total C. A. Hot Check	\$ 155,291	\$ 94,543	\$ 82,011
Total County Attorney Hot Check Fund	\$ 155,291	\$ 94,543	\$ 82,011

MARK H. DETTMAN
COUNTY ATTORNEY

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FAX (915) 682-8004
November 8, 1994

INVESTIGATORS
JESSE PRIEST
REUBEN RICHARDSON
ADMINISTRATIVE ASSISTANT
BOBBI CARR

Mr. James D. Ross
Midland County Auditor
Midland County Courthouse
Midland, Texas 79701

Dear Mr. Ross:

I am in receipt of your correspondence dated November 2, 1994. This letter was in reponse to my request to you dated November 1, 1994. I received your response on November 4, 1994.

While I appreciate your responding to me in a timely fashion, you apparently did not understand what I requested in my correspondence to you. I was not inquiring as to your reasoning for your interference with the County Attorney Fee Account. I was directing you to take certain actions in reference to that account and was requesting written assurance from you that such directions were complied with.

While I am sure that you feel comfortable with the conclusions expressed in your correspondence to me, they are erroneous and do not resolve the current situation. Sec. 111.003 of the Local Government Code does not apply to the County Attorney Fee Account. This general budgeting statute sets forth the method the Commissioners' Court is to utilize for the budgeting of county funds. To subject the County Attorney Fee Account to this process would subject that fund to the control of the Commissioners' Court, a procedure which has clearly been rejected. See Atty.Gen.Op. MW-439 (1982); Atty.Gen.Op. JM-967 (1988). Further, it is clear that the specific statutory scheme set forth under Article 102.007, Code of Criminal Procedure, overrides any general provision found in the county budgeting statutes. See Sec. 311.026, Texas Government Code; Mitchell v. City of Dallas, 870 S.W.2d 21 (Tex. 1994). Accordingly, it is clear that the County Attorney Fee Account is not a county fund subject to the budgeting process and you and the Commissioners' Court acted without authority in both budgeting that account and in assigning expenditures from such budgeted account.

Mr. James D. Ross
November 8, 1994
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Secondly, it has come to my attention that you closed the County Attorney Fee Account with the county depository effective on or about May 19, 1994. The County Attorney Fee Account is "a special fund which is in the county treasury, but which is segregated from other county funds and earmarked for a specific purpose." Atty.Gen.Op. MW-439 (1982) (emphasis added). As such, it is to be maintained in a separate bank account in the county depository and not comingled with general county funds. See, e.g., Letter Opinion No. 92-7 (1992). Accordingly, in addition to my previous directives to you, you are instructed to re-establish the County Attorney Fee Account as a separate account with the county depository. This action will result in not only the fund being maintained in compliance with the law, but will hopefully prevent the recurrence of the present situation where your records indicated that some \$71,767.50 is missing from that fund.

This letter will also acknowledge your statement that in the event that the County Attorney Fee Account is not budgeted, you would be obligated not to countersign any checks. Please be advised that any such action on your part would, in my opinion, unlawfully interfere with the expenditure of funds from this account. I, of course, cannot force you to sign any checks from any account, but be advised that you take such action at your own peril.

Further, I am obligated to advise you that your actions are, in my opinion, taken with an intent to cause harm to another and with an intent to obtain a benefit. Your persistence in such a course of conduct will serve only to reinforce such a conclusion.

Finally, I again direct your attention to my correspondence to you dated November 1, 1994. You are instructed to take the corrective action requested in that letter and I ask that you provide me with your written assurance that such corrective action has been taken and with your written assurance that you will not engage in further unauthorized activities in regard to the County Attorney Fee Account. Additionally, per the directive in this letter, you are to re-establish the County Attorney Fee Account in a separate account with the county depository immediately. I would also appreciate your written assurance that you have taken this corrective action. As it has been a full week since I made my request to you, I trust that you will complete the corrective action required and provide me with your written assurance of your compliance with my directives no later than 5:00 p.m. on Wednesday, November 9, 1994.

Mr. James D. Ross
November 8, 1994
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I look forward to your response.

Very truly yours,

A handwritten signature in cursive script, reading "Mark H. Dettman". The signature is written in dark ink and is positioned above the typed name.

MARK H. DETTMAN
County Attorney

MHD/lld