Tim Rodgers
Wise County Auditor

RQ-809

WISE COUNTY AUDITOR

P. O. Box 899
DECATUR, TEXAS 76234
(817) 627-5744 - VOICE
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STATE OF TEXAS · COUNTY OF WISE

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Opinion Committee

January 31, 1995

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

Dear Ms. Shirley:

On January 23, 1995, I submitted to Wise County District Attorney Barry S. Green seven questions for which I needed an opinion.

At this time, Mr. Green is unable to answer those questions.

Therefore, in accordance with Section 402.042 of the Government Code, I am submitting these questions to you for an Attorney General's opinion.

Attached is copy of the letter I wrote to Mr. Green asking my questions and a copy of his letter of declination to me.

Thank you for your attention to this matter.

If you have any further questions or comments, please do not hesitate to contact me.

Sincerely,

Tim Rodgers

Tim Rodgers,
Wise County Auditor

TDR:tdr

Certified Mail, Return Receipt Requested
Return Receipt Number P 865 243 142

Tim Rodgers
Wise County Auditor

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P. O. Box 899
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January 23, 1995

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Mr. Barry Green,
District Attorney
271st Judicial District
Wise County Courthouse, Suite 200
Decatur, Texas 76234

HAND DELIVERED

Dear Barry:

As you know, my office has been having an ongoing discussion with the Justice of the Peace (JP), Precinct #4, for some time regarding the maintenance of a checkbook by that JP.

Let me apprise you of the particulars.

The JP has maintained for years a separate checking account into which he deposits, for the most part, hot check restitutions and fines.

From this account, he reimburses the affected merchants and remits the fines to the County Treasurer.

I am of the opinion that Section 113.022 of the Local Government Code (LGC), which states that "A county officer who receives funds shall deposit the funds with the County Treasurer on or before the next regular business day after the date on which the funds are received," is the prevailing piece of legislation on this issue and that that section mandates that the JP deposit his moneys directly with the County Treasurer rather than depositing those funds into a checking account and then writing the Treasurer a check for the period's collections.

To rectify the situation, I requested the JP to close the account, remit the balance of the account to the Treasurer's Office and begin making his periodic deposits directly to the Treasurer--a request with which the JP refused to comply.

Then, in accordance with Section 112.001 of the LGC which states, "In a county with a population of less than 190,000, the County Auditor may adopt and enforce regulations not inconsistent with law or with a rule adopted under Section 112.00 that the Auditor considers necessary for the speedy and proper collecting, checking and accounting of the revenues and other funds and fees that belong to the County," I readopted a regulation I had previously adopted that mandates that any and all demand accounts being maintained by the JP be transferred to the County Treasurer's Office--a regulation with which the JP again refused to comply.

My questions, therefore, follow.

1. Is there any statute that directs or mandates that a JP maintain a checking account as opposed to depositing collections directly with the County Treasurer?

2. If not, does any statute permit the County Auditor of Wise County, a county with a population of less than 40,000, according to the 1990 census, to require a JP to cease using the checking account and begin depositing all collections directly with the County Treasurer?

3. Does Section 113.022 of the LGC require the JP to do away with his checking account and deposit the funds directly with the County Treasurer?

4. If Section 113.022 of the LGC does not require the JP to do away with his checking account, is the County Auditor precluded in any way from requiring that he do so?

5. Is the County Auditor of Wise County within his statutory limitations under Section 112.001 of the LGC or any other statute to require the JP to do away with his checking account and deposit the funds directly with the County Treasurer?

6. If the County Auditor of Wise County is within his statutory limitation under Section 112.001 of the LGC or any other statute to require the JP to do away with his checking account and compliance is not forthcoming, what remedial measures can be taken?

7. Since the JP is receiving hot check restitution moneys from the hot check writer, are those restitution moneys considered to be "fees and funds that belong to the County" as that phrase is used in Section 112.001 of the LGC and other places?

Thank you for your attention to this matter.

If you have any further questions or comments, please do not hesitate to contact me.

Sincerely,

Tim Rodgers

Tim Rodgers,
Wise County Auditor

TDR:tdr

LINDY BORCHARDT
ASSISTANT DISTRICT ATTORNEY

MARK PETERSON
INVESTIGATOR

DARRELL SHAVER
INVESTIGATOR

BARRY S. GREEN

DISTRICT ATTORNEY
JACK & WISE COUNTIES
271ST JUDICIAL DISTRICT
COURT OF TEXAS

January 25, 1995

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Opinion Committee

Mr. Tim Rodgers
Wise County Auditor
P.O. Box 899
Decatur, Texas 76234

Dear Tim:

Thank you for your letter of January 23, 1995, wherein you posed six specific questions regarding monetary policy and procedure of the Justice of the Peace, Precinct 4, Wise County, Texas. For the reasons previously discussed, I will respectfully refrain from answering those questions.

Please feel free to call if you have any additional comments or questions.

Sincerely,

Barry S. Green

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