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SEP 03 1997

Opinion Committee

MICHAEL P. FLEMING

County Attorney
Harris County, Texas

August 29, 1997

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OPEN RECORDS DIVISION

Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

CERTIFIED MAIL RETURN RECEIPT REQUESTED

RQ-991

Sent Via Fax to 512/463-2092 and by Certified Mail

FILE # ML-39757-87

I.D. # 39757

Re: Whether the County Auditor's office is authorized or required to audit the Harris County Department of Education?
C.A. file # 62142

Ladies and Gentlemen:

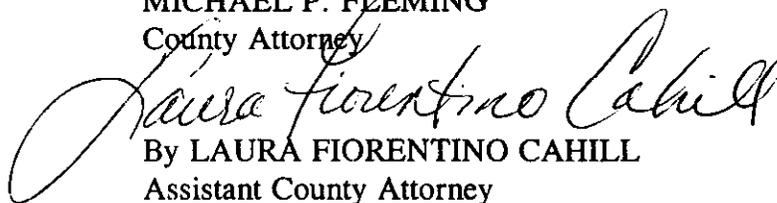
The Harris County Auditor requests your opinion on whether he must continue to audit the Harris County Department of Education.

Our Memorandum Brief is enclosed.

Please provide us with your opinion regarding this matter.

Sincerely,

MICHAEL P. FLEMING
County Attorney


By LAURA FIORENTINO CAHILL
Assistant County Attorney

cc: Tommy Tompkins

MEMORANDUM BRIEF

The Harris County Auditor requests your advice and asks, in substance, whether he must continue to audit the Harris County Department of Education ("HCDE") even though it is audited by an independent outside auditor?

HCDE, which was created 108 years ago, provides support services to the 24 independent school districts in Harris County. HCDE receives both state and federal funds, and is also funded through local taxes imposed by the Department. Tex. Educ. Code Ann. § 18.01 (Vernon 1996). HCDE is a political entity distinct from Harris County and therefore is not subject to the control of Commissioners Court of Harris County.

The Harris County Auditor audits HCDE annually. In Op. Tex. Att'y Gen. No. LO 93-83 (1993), your office considered whether the Harris County Auditor should be reimbursed for the costs associated with the audit. The County Auditor's office performed an audit for the years 1994-1996 and HCDE reimbursed the County for approximately \$4,000, the actual cost of the audit. In 1995, in order to comply with regulations to receive federal funding, HCDE hired an independent accounting firm to provide annual audit opinions.

While the legislature has substantially recodified and amended the Education Code, the County Auditor still has a duty to audit the books of the HCDE. This duty is set forth in Tex. Educ. Aux. Code art. 2919 g-1 (Vernon Pamph.1997), which provides:

Section 1. In any counties having a population of two million (2,000,000) or more according to the last preceding federal census, the county auditor is hereby authorized and required to audit all books, accounts, reports, vouchers and other records relating to all funds handled by the county department of education. The results of such audit shall be made public by the county auditor.

Sec. 2. The county auditor of any county to which this Act applies shall, as soon as practicable, audit all such books, accounts, reports, vouchers and other records of the county department of education from the effective date of this Act back to the last preceding audit made of such books, accounts, reports, vouchers and other records by a county auditor of said county. The county auditor shall be reimbursed from the funds of the county department of

education for all expenses incurred in performing the first audit. Thereafter, the county auditor shall audit such books, accounts, reports, vouchers and other records of the county department of education as often as is necessary to keep himself informed of the condition thereof, but in no case shall the interval between such audits exceed one (1) year.

Sec. 3. The county auditor of any county to which this Act applies shall set up such methods and procedures as are necessary to conduct audits effectively. The county department of education shall comply with such methods and procedures for facilitating audits as determined by the county auditor.

Sec. 4. This Act shall not be construed as precluding other government agencies or independent auditors from auditing certain funds handled by county departments of education, in counties to which this Act applies, in addition to the audit by county auditors as provided for herein.

Tex. Educ. Aux. Laws. art. 2919g-1 (Vernon Pamph. 1997) [Act of April 23, 1963, 58th Leg., R.S., ch. 87, 1963 Tex. Gen. Laws, 145, 145-146, *amended by* Act of May 15, 1981, 67th Leg., R.S., ch. 237, 1981 Tex. Gen. Laws 559, 580). (Emphasis added).

Apparently, HCDE does not want to compensate the County Auditor because the same or similar information is provided by the independent auditor. However, Article 2919g-1 states the auditor is required to audit the books of HCDE.

In general, we are to construe words of a statute consistently with their ordinary meaning unless they are used with reference to a particular trade or subject matter or used as a word of art. Tex. Gov't Code § 312.002 (Vernon 1988). The word "require" commonly means to direct, order, demand, instruct, command, claim, compel, request, need, or exact. See Black's Law Dictionary, Sixth Edition, 1304 (1979); *see also Needles v. Kansas City, Mo.*, 371 S.W.2d 300, 305-306 (Mo. 1963)(meaning of "required to" finance a contract interpreted to mean what was "needed, wanted, or called for.")

A mandatory statutory provision is one which must be observed, as distinguished from a directory provision, which leaves it optional with the department or officer to which it is addressed as to obey it or not. Black's Law

Dictionary, Sixth Edition, 962 (1979). When the word "require" is given its ordinary meaning, Article. 2919g-1 is mandatory commanding the County Auditor to audit HCDE. We have been unable to find any statute or case law that would authorize the HCDE to deny the County Auditor access to its books and records so that he may perform his statutory duty. We also note that because of federal and state grant guidelines other political subdivisions and entities face the same situation as HCDE and are audited by an independent auditor as well as the County Auditor. While the HCDE may wish to reduce its expenses by eliminating an audit mandated by the legislature and the terms of state and federal grants, Article 2919g-1 does not authorize this action.

CONCLUSION

In conclusion, HCDE may neither refuse to authorize the county auditor to perform an audit nor fail to compensate the County for the performance of this service.