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JOHNSON COUNTY

Opinion Committee

BILL MOORE
COUNTY ATTORNEY

September 15, 1997

RQ-1000 FILE # ML-39787-97
I.D. # 39787

Honorable Sarah J. Shirley, Chairperson
Opinion Committee
Attorney General's Office
P. O. Box 12548
Austin, TX 78711

Re: Request For An Attorney General's Opinion Concerning Whether the Commissioner Court May, Within Its Discretion, Assign Payroll Preparation Responsibilities, Which Are Non-core Functions Of The County Treasurer, To The Personnel Director

Dear Ms. Shirley:

I am writing to request an Attorney General's Opinion interpreting Section 155.062 of the Local Government Code, Vernon's Texas Codes Annotated.

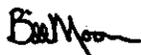
The Commissioners Court of Johnson County has requested that my office submit this request for an Attorney General's Opinion interpreting Section 155.062 of the Local Government Code as it relates to the following question:

May the Commissioner Court, pursuant to Section 155.062, Local Government Code, assign payroll preparation responsibilities, which are non-core functions of the county treasurer to the personnel director?

I have enclosed a copy of the brief prepared on this question.

I would appreciate an answer on this request as soon as possible.

Sincerely,


Bill Moore
County Attorney

BM/ts

enclosure

BRIEF

QUESTION: Whether the commissioner court may, within its discretion, assign payroll preparation responsibilities, which are non-core functions of the county treasurer, to the personnel director?

FACTUAL BACKGROUND

Johnson County has an elected county treasurer, a county auditor appointed by the District Judges, and a personnel department which consists of a personnel director and personnel assistant hired and under the supervision of the commissioners court. The commissioners court recognizes that the county treasurer must perform certain core functions legislatively delegated to the county treasurer. The recent case of The Commissioners Court of Titus County v. Aqan, 940 S.W. 2d 77, (Tex. 1997), has held that the commissioners court may delegate payroll preparation responsibilities to the county auditor. The commissioners court of Johnson County wants to delegate or assign the payroll preparation responsibilities to the personnel director. The present elected county treasurer is opposed to the commissioners court delegating the payroll preparation responsibilities to the personnel director. The commissioners court has asked the County Attorney of Johnson County to request an Attorney General's Opinion on whether or not the commissioners court may, within its discretion, assign payroll preparation responsibilities, which are non-core functions of the county treasurer, to the personnel director.

STATUTES IN QUESTION

Section 155.062, Local Government Code, Vernon's Texas Codes Annotated.

LEGAL ANALYSIS

The commissioners court wants to delegate or assign the payroll preparation responsibilities, which are non-core functions of the county treasurer, to the personnel director. In The Commissioners Court of Titus County v. Aqan, 940 S. W. 2d 77 (Tex. 1997), the Court reviewed Art. XVI Sec. 44(a), Texas Constitution, Sections 113.001, 113.002, 113.003, 113.041(a), 155.021, 152.002(a)(2), 152.051, and 155.062(a)(2) of the Local Government Code, and Texas Attorney General's Opinions No. JM-911 (1988) and JM-986 (1988) in reaching its decision that the commissioners court has the discretion to assign non-core functions of the county treasurer to the county auditor. The Court found that our Texas Constitution does not specifically designate the county office which must prepare payroll, and that payroll preparation is a task left to the legislature. The legislature though has not assigned payroll preparation responsibilities to any county official. The Court found that because the legislature has not assigned payroll preparation responsibilities, the commissioners court acting in its legislative capacity may delegate the responsibilities to an appropriate county official. The court further found that the county auditor is an appropriate county official because pursuant to Sections 152.051 and 155.002(a)(2) of the Local Government Code, the county auditor has authority to perform clerical functions associated with payroll preparation. Id. at 81. The Court concluded that the commissioners court, may within its discretion, assign those non-core functions to other county officials the legislature authorizes to perform those functions. Id. at 82.

In The Commissioners Court of Titus County v. Agan, the court wrote in its opinion that Section 155.062(a)(2) of the Local Government Code suggests that anyone the commissioners court authorizes has authority to administer payroll. Id. at 81. Section 155.062(a)(2) states in part: (a) A request for an insurance deduction must: (2) be submitted to the County Officer authorized by the Commissioners Court to administer payroll deductions. Section 155.001(a) provides that the Commissioners Court, on request of a county employee, may authorize a payroll deduction to be made from the employee's wages or salary for payment to a credit union. Section 155.021 states in part: The county treasurer, or if another officer is specified by law, that other officer shall make the deductions from, or take other similar actions with regard to, the compensation of county employees as required...

Attorney General's Opinion No. DM-440 states, if the legislature has not assigned a function to a specific officer, the commissioners court acting in its legislative capacity may delegate that responsibility to an appropriate county official. The county auditor has been found to be an appropriate official to whom payroll preparation responsibilities could be delegated, because the auditor has statutory authority to perform clerical functions associated with payroll preparation. Attorney General Opinion No. DM-440(1997) at 2459.

The question arises as to whether or not the personnel director is an appropriate county official. Said personnel director is a county employee who is under the direct control and authority of the commissioners court with no legislatively prescribed qualifications, duties, responsibilities or term of office. The county treasurer is an elected county official who before entering upon the duties of office

must execute a bond and must take an oath. Chapter 83, Local Government Code. Chapter 113 of the Local Government Code prescribes the duties and responsibilities of the county treasurer. Chapter 84 of the Local Government Code sets forth the requirements, appointment, qualifications, term of office, oath of office, and bond for a county auditor. Certain duties and responsibilities of the county auditor are listed in Chapters 113 and 152 of the Local Government Code.

It could be argued that based upon Section 155.062(a)(2) of the Local Government Code that the commissioners court may delegate or assign payroll preparation responsibilities to the personnel director.

Conversely, pursuant to Sections 155.002 and 155.021, and the holding of The Commissioners Court of the Titus County v. Agan it could be argued that the personnel director is not an appropriate county officer to which the commissioners court may delegate payroll preparation responsibilities because the personnel director is not a county official or officer the legislature has authorized to perform those functions.

CONCLUSION:

The commissioners court may not, within its discretion assign payroll preparation responsibilities, which are non-core functions of the county treasurer, to the personnel department because the personnel director and personnel department are not created by constitution or statute and because the personnel director is not a county official the legislature has authorized to perform those functions.