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Opinion Committee

BRUCE ISAACKS

CRIMINAL DISTRICT ATTORNEY

5TH FLOOR CARROLL COURTS BUILDING

P.O. BOX 2344

DENTON, TEXAS 76202

MAIN NUMBER (940) 565-8556

METRO (972) 430-1751

HOT CHECKS (940) 565-8557

FAX (940) 565-8588

October 27, 1997

Via Certified Mail P 094 162 570

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

FILE # ML-39884-97

LD.# 39884

RR-1020

Re: Request for Attorney General Opinion

Dear Honorable Morales:

This letter is a request on behalf of the Denton County Commissioners Court and Denton County Sheriff for your opinion concerning the proper interpretation and application of V.T.C.A. Local Government Code §262.011.

Background:

Prior to August 25, 1992, the Denton County Purchasing Agent operated under LOCAL GOVERNMENT CODE §262.011. The Board, composed of the District Court Judges and County Commissioners, abolished the office of County Purchasing Agent. On August 25, 1992, the Denton County Commissioners Court appointed a purchasing agent pursuant to LOCAL GOVERNMENT CODE §262.0115. The Denton County Purchasing Policy ("Policy") was approved by the Commissioners Court on March 19, 1996. A copy of the Policy is attached and marked Exhibit "A."

The Denton County Commissioners Court considered amendments to the Policy on October 1, 1997. Copies of the Agenda including the subject agenda item and submitted materials are marked Exhibit "B" and attached hereto. Prior to that date, a question was raised regarding the means by which the subject policy could be enforced. This Office responded to that question by memo dated September 29, 1997, a copy of same is attached, marked Exhibit

"C" and made part hereof. The Denton County Sheriff responded to that memo questioning whether LOCAL GOVERNMENT CODE §262.011 and its criminal provision under (m), were applicable to Denton County since the Commissioners Court had appointed a purchasing agent under §262.0115.

Question Presented:

Are the provisions of LOCAL GOVERNMENT CODE §262.011 applicable in a county whose purchasing agent is appointed under LOCAL GOVERNMENT CODE §262.0115?

Discussion:

Subchapter B of Chapter 262, Purchasing and Contracting Authority of Counties deals with "purchasing agents," their appointment, duties and obligations. LOCAL GOVERNMENT CODE §262.011 provides for a county purchasing agent appointed by a board composed of three district court judges and two county commissioners. The appointment, duties and obligations of a purchasing agent so appointed are set forth in subsections (a) through (o), inclusive. Subsection (m) makes a violation of "this section" an offense.

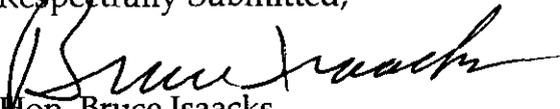
LOCAL GOVERNMENT CODE §262.0115 provides for the appointment of a purchasing agent by the Commissioners Court and who serves at the pleasure of that body. See LOCAL GOVERNMENT CODE §262.0115 (a). Subsection (a) further states, "However, this section does not apply to a county that has appointed a purchasing agent under Section 262.011 and that has not abolished the position as authorized by law." Subsection (d) states:

Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for the county auditor in regards to county purchases and contracts and shall administer the procedures prescribed by law for notice and public bidding for county purchases and contracts.

The duties of the county auditor regarding county purchases are very limited. See Texas Attorney General Opinions WW-1121 (1961) and O-1338 (1939). Limiting the duties of a purchasing agent appointed under §262.0115 to the duties of the county auditor regarding county purchases would seem to defeat the purpose of the statute. However, if that result is the one intended by the legislature, the Denton County Purchasing Policies may be an unlawful delegation of the authority of the Commissioners Court.

Please advise if additional information is required in rendering your opinion. If you have any questions or need additional information, please contact me at 1-800-346-3189 or (817) 565-8660.

Respectfully Submitted,



Hon. Bruce Isaacks  
Denton County  
Criminal District Attorney

cc: Denton County Commissioners Court  
Sheriff Weldon Lucas  
Beth Fleming, Purchasing Director