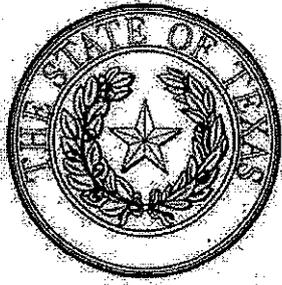


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OPINION COMMITTEE



**J. RUSSELL ASH  
REAGAN COUNTY ATTORNEY**

P.O. Box 924 300 North Plaza  
Big Lake, Texas 76932

(325) 884-2247 (325) 884-4164 Fax

February 24, 2010

The Honorable Greg Abbott  
Attorney General  
Price Daniel Building  
P.O. Box 12548  
Austin, Texas 78701-2548

FILE # RL-46361-10  
I.D. # 46361

**RQ-0872-GA**

RE: Whether a Salary Supplement paid from the Reagan County Attorney's Hot Check Fund must be paid monthly to qualify as a Supplement and related questions

Dear General Abbott:

For several years the Reagan County Attorney has been paying a salary supplement, pursuant to Article 102.007(f) of the Code of Criminal Procedure, to his secretary for her duties in collecting hot checks for the County Attorney's office. This supplement has been paid in this manner, without objection from the Commissioners Court or the County Auditor, for at least nine years. The Auditor has recently attempted to interfere with the sole discretion of the County Attorney in the payment of that supplement and has promised to continue questioning the County Attorney's authority to have the supplement paid as shown in her letter to the County Attorney dated February 17, 2010, attached hereto.

Moreover, the Commissioners Court has attempted to interfere with the County Attorney's sole discretion in making this expenditure by refusing to approve a budget amendment to the County Attorney's budget.

My questions are as follows:

1. If the County Attorney should decide to pay a supplement to his secretary in the future, is there any requirement that it be paid on a monthly basis or may it be paid at such times and in such amounts as in the sole discretion of the County Attorney?
2. Is a budget entry required when any funds are expended from the Hot Check Fund regardless of whether the expenditure is for salary supplement or office supplies?

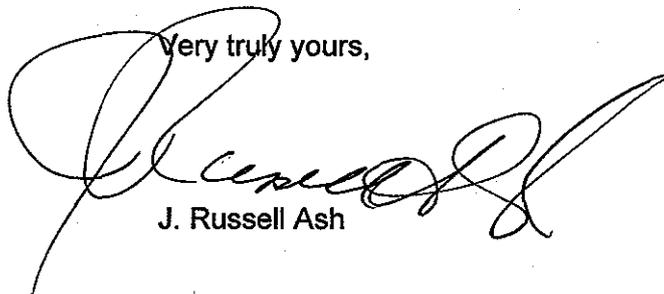
3. Is a budget line item required to be placed in the County Attorney's budget to reflect expenditures described in paragraph 2, above?
4. Does such a budget line item require approval by the Commissioners Court or the County Auditor as to the budgeted amount or any expenditure from that line item?

The basis in law for these questions is found in the Texas Code of Criminal Procedure Article 102.007(f). Attorney General Opinion No. JM-313 appears to be conclusive as to each of the above questions. The undersigned attorney has rendered an opinion to the Commissioners Court and to the Auditor regarding this matter. Based on my reading of Art. 102.007(f) and Opinion No. JM-313 and subsequent opinions,

- 1) The County Attorney may pay a supplement to the County Attorney's secretary in such an amount, if any, and at such times as in the sole discretion of the County Attorney. There is no requirement under the statute or elsewhere that requires a supplement to be paid monthly.
- 2) In order to expend monies from the Hot Check fund, it is not required that a line item be shown under the County Attorney's budget. The County Treasurer is required to maintain a record of the expenditures, only, and that such expenditures are subject to audit.
- 3) See 2), above.
- 4) Commissioners Court approval is not required prior to the County Attorney making an expenditure from the Hot Check Fund. The County Auditor may review the expenditure, but may not object to nor interfere in any way with the County Attorney's sole discretion in making that expenditure.

Thank you in advance for attention in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Russell Ash".

J. Russell Ash

**OFFICE OF THE COUNTY AUDITOR  
REAGAN COUNTY  
CATHY SELLMAN  
P.O. BOX 100  
PHONE 325-884-2233 OR FAX 325-884-4138  
BIG LAKE, TX 76932**

Reagan County Attorney Russell Ash  
300 N. Plaza  
Big Lake, TX 76932

February 17, 2010

RE: Requested Check to Secretary

As per your request for a check to your secretary from the Hot Check Fund, the check can be issued from this Budget Year according to "the sole discretion of the County Attorney".

I am still of the opinion that for this to be a supplement, it should be paid in monthly installments. This can be revisited at Budget preparation for the coming year.

Please clarify to me if you are requesting a check for \$500.00 or if you want the \$600.00 you indicated on your last letter to Judge Isom. If you have any requests or questions, please let me know and I will be glad to assist you.

Sincerely,



Cathy Sellman,  
Reagan County Auditor