



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2019

The Honorable Courtney Tracy Ponthier
Newton County Criminal District Attorney
110 East Court Street
Newton, Texas 75966

Opinion No. KP-0235

Re: County payment of expenses for
contracted workers in specific circumstances
(RQ-0238-KP)

Dear Ms. Ponthier:

You ask whether the commissioners court of Newton County ("County") has authority to spend public funds to pay certain expenses, including transportation and tuition, for an individual who is not a County employee.¹ Your question arises from the following facts:

Following Hurricane Harvey, grant money made employment available in Southeast Texas through Workforce Solutions. Newton County contracted with Workforce to receive a number of those employees. One of those contracted workers went to work for the County Judge, assisting with floodplain issues, as well as performing other secretarial duties ["the contract worker"].

Request Letter at 1; *see also* TEX. LOC. GOV'T CODE § 81.032 (providing that commissioners court "may accept a donation of labor or services, gift, grant, [or] donation . . . for the purpose of performing a function conferred by law on the county or a county officer"); TEX. GOV'T CODE § 418.074(a) (providing that political subdivision may accept donated services for purposes of disaster recovery). You imply that the County did not pay the contract worker's salary but tell us that it paid for travel, education expenses, and professional membership fees incurred by the worker while performing certain duties assigned by the county judge. Request Letter at 1–2. Specifically, you tell us that the contract worker performed several activities related to floodplain management, including taking an exam to become a certified floodplain manager, enrolling in a course offered through the Texas Floodplain Management Association, traveling for trainings, and becoming a member of the Texas Floodplain Management Association. *Id.* at 1. You tell us that the county judge paid for these expenses with a county credit card issued to the judge and that the County then paid the charges. *Id.* at 1–2. You question whether the County had the authority to pay those expenses. *See id.* at 2.

¹*See* Letter from Honorable Courtney Tracy Ponthier, Newton Cty. Crim. Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1–2 (July 23, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

“[A] commissioners court may exercise only those powers expressly given by either the Texas Constitution or the Legislature.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003). However, when “the Constitution or Legislature imposes an obligation on a commissioners court, that commissioners court also has the implied authority to exercise the power necessary to accomplish its assigned duty.” *Id.* To address your question, we must therefore determine whether the commissioners court had authority, either express or implied, to pay the expenses incurred by the contract worker. *See id.*; Request Letter at 2.

We begin with express authority. Two legislative enactments are relevant to this issue. First, section 152.011 of the Local Government Code provides:

The commissioners court of a county shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds.

TEX. LOC. GOV'T CODE § 152.011. This provision vests the commissioners court with express authority to pay travel expenses and other allowances for county employees who are paid entirely from county funds. *See id.* However, you tell us that the contract worker is not a county employee and imply that the worker's salary is paid by another entity; thus, this provision does not apply. *See* Request Letter at 1. For those individuals who are not compensated wholly from county funds, the Legislature additionally enacted section 152.901:

- (a) The commissioners court of a county may authorize the payment of reasonable travel expenses incurred by a person who:
 - (1) is an agent of the county, or is a board or committee member appointed by the commissioners court; and
 - (2) is not a county or precinct officer or employee whose travel expenses may be set under Section 152.011.
- (b) The travel expenses must be incurred by the person while performing county business authorized by the commissioners court.

TEX. LOC. GOV'T CODE § 152.901. Under this provision, a commissioners court has discretion to authorize the payment of reasonable travel expenses incurred by an individual who is not a county employee but is acting as an agent of the county while performing county business authorized by the commissioners court. *Id.*

Section 152.901 does not define “agent of the county.” *See id.* Generally, however, agency “is defined as the legal relationship, based upon an express or implied contract of the parties or created by operation of law, by virtue of which one party, the agent, is authorized to act for the other party, who is the principal.” Tex. Att’y Gen. Op. No. JM-590 (1986) at 4; *see State v. \$1,760.00 in U.S. Currency*, 406 S.W.3d 177, 180 (Tex. 2013) (“Undefined terms in a statute are

typically given their ordinary meaning.”). “A basic test of agency is the right of the principal to control the actions of the agent.” Tex. Att’y Gen. Op. No. JM-590 (1986) at 4. You tell us that the County contracted for the services of the worker, then assigned this individual to work for the county judge, and that this individual then incurred travel expenses while performing duties assigned by the county judge. Request Letter at 1. While these facts suggest that the contract worker qualifies as an agent for purposes of section 152.901, ultimately the question of whether a principal-agent relationship exists is a question of fact and contract construction for the commissioners court to determine in the first instance subject to judicial review. *See* Tex. Att’y Gen. Op. No. GA-0633 (2008) at 4; *see also Weidner v. Sanchez*, 14 S.W.3d 353, 373–74 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (“[T]he fact that a person is normally an independent contractor does not preclude a finding of agency as to the particular transaction at issue.”). Similarly, the issue of whether the contract worker was performing county business authorized by the commissioners court will turn on specific facts, including the terms of the parties’ agreement.² *See* Tex. Att’y Gen. Op. No. JC-0302 (2000) at 2 (“[B]ecause contract questions usually involve disputed issues of fact of the sort this office cannot determine in the opinion process, this office does not construe such contracts in that process.”). To the extent section 152.901 does apply, it only authorizes the commissioners court to pay the contract worker’s travel expenses. *See* TEX. LOC. GOV’T CODE § 152.901. As no other statute directly authorizes the County to pay the other expenses at issue, we must additionally look to whether the expenses fall within the commissioners court’s implied authority.³

You tell us that the County has adopted a Flood Damage Prevention Order, and at the time the expenses were incurred, the commissioners court was serving as the designated floodplain manager for the County. Request Letter at 1–2. Section 16.315 of the Water Code vests political subdivisions with broad authority related to flooding, including the power to “engag[e] in floodplain management” and numerous other powers aimed at flood prevention, such as “authorizing and engaging in continuing studies of flood hazards” and “participating in floodplain management and mitigation initiatives . . . developed by federal, state, or local government.” TEX. WATER CODE § 16.315; *see also* 44 C.F.R. § 60.1(a) (requiring certain counties to implement a floodplain management plan consistent with federal criteria to obtain federal flood insurance in designated areas). Given that the Legislature vested the County with express authority to engage in floodplain management, the commissioners court therefore also has “implied authority to exercise a broad discretion to accomplish the purposes intended.” *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941). Thus, depending on whether a particular expenditure is necessary to accomplish the County’s express directives, expenses related to qualifying an individual to assist with floodplain management could fall within the commissioners court’s implied authority. *See, e.g.,* Tex. Att’y Gen. Op. No. GA-0472 (2006) at 3 (noting implied authority of county to pay

²To the extent the contract worker was not an agent or performing authorized business at the time of incurring these travel expenses, “[t]hat which the commissioner’s court could authorize in the first instance could be ratified by it at a subsequent date.” Tex. Att’y Gen. Op. No. JM-818 (1987) at 5; *see also Boydston v. Rockwall Cty.*, 24 S.W. 272, 236–37 (Tex. 1893) (concluding that unauthorized contract of a county judge could be ratified on a later date by commissioners court when the contract was within the court’s authority).

³The commissioners court does have express authority to pay “reasonable continuing education expenses incurred by a county or precinct officer if the expenses are related to the officer’s official duties.” TEX. LOC. GOV’T CODE § 152.907 (emphasis added). The contract worker, however, is not a county or precinct officer.

travel and related expenses of a prospective employee when the expenditure was necessary to fulfill the county's duty to hire personnel). However, to be constitutional, the payment of such expenses "must be necessary for the direct accomplishment of a legitimate public purpose, [the County] must receive adequate consideration for its expenditure, and there must be appropriate controls in place to assure that the public purpose will be carried out." *Id.*; see TEX. CONST. art. III, § 52(a); *Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002). Whether these expenses accomplish an express purpose of the County and satisfy constitutional concerns is for the commissioners court to determine in the first instance, subject to judicial review. *See id.*

S U M M A R Y

Local Government Code section 152.901 authorizes a commissioners court to pay travel expenses for a contract worker who is not wholly compensated from county funds but is acting as an agent on behalf of the county while performing county business authorized by the commissioners court.

No constitutional or statutory provision vests a commissioners court with express authority to pay floodplain management expenses incurred by a contract worker who is not wholly compensated from county funds. However, pursuant to its duty under section 16.315 of the Water Code to engage in floodplain management within the county, a commissioners court may have implied authority to pay these expenses depending on whether the costs are necessary to accomplish an express duty of the county and are consistent with Texas Constitution article III, section 52.

Very truly yours,



KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

ASHLEY FRANKLIN
Assistant Attorney General, Opinion Committee