

L. Mariessa Clark, CPA
Hamilton County Auditor
hamaudit@htcomp.net



Hamilton County Courthouse
Hamilton Texas 76531
(254) 386-3549

January 21, 2005

Opinions Committee
Office of Attorney General
PO Box 12548
Austin, Texas 78711-2548

RQ-0311-6A

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JAN 24 2005
OPINION COMMITTEE

FILE # ML-44102-04

I.D. # 044102

VIA CERTIFIED MAIL 7099-3220-0002-3091-2636

Re: Request for opinion relating to the expenditure of funds received from the State Comptroller pursuant to § 26.008 of the Texas Government Code and the County Auditor's authority to account for those funds.

Gentlemen:

THE STATUTES IN QUESTION

1. Sec. 26.008. EXCESS CONTRIBUTIONS.

a) At the end of each state fiscal year the comptroller shall determine the amounts deposited in the judicial fund under Section 51.703 and the amounts paid to the counties under Section 26.007. If the total amount paid under Section 51.703 by all counties that collect fees and costs under that section exceeds the total amount paid to the counties under Section 26.007, the state shall remit the excess to the counties that collect fees and costs under Section 51.703 proportionately based on the percentage of the total paid by each county.

(b) The amounts remitted under Subsection (a) shall be paid to the county's general fund to be used only for court-related purposes for the support of the judiciary as provided by Section 21.006.

2. Sec. 112.001. ACCOUNTING SYSTEM IN COUNTY WITH COUNTY AUDITOR AND POPULATION OF LESS THAN 190,000

In a county with a population of less than 190,000, the county auditor may adopt and enforce regulations, not inconsistent with law or with a rule adopted under Section 112.003, that the auditor considers necessary for the speedy and proper collecting, checking, and accounting of the revenues and other funds and fees that belong to the county.

PREVIOUSLY ISSUED ATTORNEY GENERAL'S OPINIONS

Attorney General's Opinion JC-0158 addresses this same principle as it relates to an almost identical statute found in § 25.0016 of the Texas Government Code as it relates to "excess contributions"

Sec. 25.0016. EXCESS CONTRIBUTIONS.

a) At the end of each state fiscal year the comptroller shall determine the amounts deposited in the judicial fund under Section 51.702 and the amounts paid to the counties under Section 25.0015. If the total amount paid under Section 51.702 by all counties exceeds the total amount paid to counties under Section 25.0015, the state shall remit the excess to the counties proportionately based on the percentage of the total paid by each county.

(b) The amounts remitted under Subsection (a) shall be paid to the county's general fund to be used only for court-related purposes for the support of the judiciary as provided by Section 21.006.

QUESTIONS:

1. Does the first statute infer that a separate fund be created to account for these "excess contributions" and that a separate budget be adopted accordingly?
2. Does the first statute allow an accumulation of these funds from year to year because of timing differences inherent in the payment receipt from the Comptroller near year end or because of a desire to accumulate funds over time?
3. Would the offsetting payment of day to day expenses in support of the judiciary, that is, court appointed attorney fees, court reporters, juvenile detention, wages and benefits of the court employees, etc., be acceptable "court-related purposes" and would the second statute allow the County Auditor to dictate that accounting?
4. Is the intent of the first statute to budget these funds for only extraordinary expenses of the judiciary?

OPINION LETTER ISSUED BY HAMILTON COUNTY ATTORNEY

A copy of the Opinion Letter issued by the Hamilton County Attorney, that is the basis of my request from this Committee, has been sent under separate cover by Andy J. McMullen. Needless to say we have agreed to disagree on the interpretation of these statutes.

Thank you for your consideration of this matter.

Sincerely,



L. Marliessa Clark, CPA
Hamilton County Auditor

ANDY J. McMULLEN
HAMILTON COUNTY ATTORNEY

100 West Main
P. O. Box 706
Hamilton, TX 76531
(254) 386-8191
Telecopier: (254) 386-8511

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JAN 24 2005
OPINION COMMITTEE

FILE # ML-44602-05
I.D. # 044103

January 10, 2005

Texas Attorney General
Opinions Committee Division
Price Daniel, Sr. Building
209 W. 14th Street
P. O. Box 12548
Austin, TX 78711-2548

Also VIA FAX 512-463-2063

Re: Proper handling of funds paid to Counties pursuant to § 26.008 of *Texas Government Code*

Ladies and Gentlemen:

Hamilton County Auditor Marliessa Clark will be requesting an opinion concerning the above matter.

For your information, I am enclosing my opinion letter.

Please advise if I may be of assistance to you in this matter.

Respectfully,



ANDY J. McMULLEN

AJMcM:kn
Enclosure

cc: All Members of Hamilton County Commissioners Court

Debbie Rudolph
Hamilton County Clerk

Debbie Eoff
Hamilton County Treasurer

Marliessa Clark
Hamilton County Auditor

**ANDY J. McMULLEN
HAMILTON COUNTY ATTORNEY**

100 West Main
P. O. Box 706
Hamilton, TX 76531
(254) 386-8191
Telecopier: (254) 386-8511

December 28, 2004

To All Members of the Hamilton County Commissioners Court

Re: Opinion Letter concerning the proper handling of funds paid to Hamilton County by the State of Texas pursuant to §26.008 of the *Texas Government Code*

Gentlemen:

This letter states my opinion as to the proper method of accounting for and spending funds received by Hamilton County from the State of Texas pursuant to § 26.008 of the *Texas Government Code*.

Subsection (b) of that Section states

The amounts remitted under Subsection (a) shall be paid to the county's general fund to be used only for court-related purposes for the support of the judiciary as provided by Section 21.006.

§ 21.006 of the *Texas Government Code* provides

The judicial fund is created in a separate fund in the state treasury to be administered by the comptroller. The fund shall be used only for court-related purposes for the support of the judicial branch of this state.

All funds paid to the County by the State Comptroller pursuant on § 26.008 of the *Texas Government Code* should be placed in a separate fund and spent in accordance with a special budget. At the end of each fiscal year, any balance remaining in this fund will be carried forward in the same fund.

The Commissioners Court has directed the County Auditor to certify the balance for this account. She has already determined the total of funds paid to Hamilton County by the State pursuant to § 26.008, since its effective date (June 19, 1999). The County Auditor is further in the process of determining any annual offsets, being any annual total budget overages for County Court since June 19, 1999.

The net amount of the calculations set out in the previous paragraph will then be certified to the Commissioners Court by the County Auditor. The County Judge will then propose, and the Commissioners Court will consider the adoption of, a budget for

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this special fund for the current fiscal year (2005). Any balance remaining in the special fund at the end of the current fiscal year will be carried forward. In order to avoid duplication of effort, I recommend that a special budget for the next fiscal year (2006) for this special account be prepared only after funds related to the State's current fiscal year (2005) have been received from the State.

Respectfully,



ANDY J. McMULLEN

AJMcM:kn

cc: Debbie Rudolph
Hamilton County Clerk
Hamilton, TX 76531

Marliessa Clark
Hamilton County Auditor
Hamilton, TX 76531