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OPINION COMMITTEE



JESSE GONZALES, JR.

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FILE # ML-45349-07

I.D. # 45349

Aldo Gonzales
Investigator

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September 7, 2007

The Honorable Greg Abbott
Texas Attorney General
Opinions Committee
P.O. Box 12548
Austin, TX 78711-2548

RQ-0620-GA

Re: **Request for Opinion:** Whether the County Auditor may present for payment, an invoice for labor, that in the opinion of the County Attorney, has been determined to violate the County Purchasing Act? Specifically, can a project be set up to be performed in "phases" that are each under \$25,000 and not be subject to the County Purchasing Act, if the entire project, when completed, is over \$25,000?

Dear General Abbott:

Pursuant to Chapter 402, Subchapter C, Texas Government Code, please accept this letter as a request for an opinion regarding the County Purchasing Act, Local Government Code Chapter 262, Subchapter C, based on the following facts.

The Pecos County Commissioner for Precinct #3 contracted with a local contractor for a concrete slab in a county park. An invoice, dated September 18, 2006, was submitted to the County Auditor for \$8,775.00. The Auditor processed the invoice and submitted it for approval by the Commissioners Court and it was paid. Phase I of the project, as described by the Commissioner, consisted solely of construction of the concrete (labor and materials). Clearly, this phase alone is not subject to the County Purchasing Act. A breakdown of the invoice is as follows:

1. \$4,635.16 for 43 yards of concrete, anchor footers, 8 weld plates and under columns.
 2. \$4,139.84 for Weld plate anchor, pored concrete and finished concrete.
- \$8,775.00 Total 09/18/2006 Invoice.

What has been described as "Phase II" of the project, consisted of the material and labor for the structure. In December, 2006, material was purchased for a structure to be built on the concrete slab that had been built in the County park. The total amount of a December 21, 2006 invoice was \$12,921.52.

An invoice dated March 1, 2007 for \$13,500.00 for the labor and erection of the pavilion caused Phase II to exceed the \$25,000.00 bid limit, and as a result, the County Auditor refused to submit the invoice to the Commissioners Court for approval and payment.

In a subsequent invoice, the contractor adjusted the invoice and included a memo stating that the previous invoice for \$13,500.00 was incorrect. The new invoice (dated March 31, 2007) was for \$12,000.00. The total cost of Phase II now stands at \$24,921.52.

Pursuant to Government Code §41.007, I advised the Auditor that, because the \$12,000.00 invoice, if paid using county funds, would cause the entire project to exceed \$25,000.00, and because the job was not bid in compliance with the County Purchasing Act, she (the Auditor) I could find no authority for her to submit the invoice to the Commissioners Court for payment. Accordingly, she has refused to submit the remaining invoice (see copy of letter dated August 31, 2007, attached). All work has been completed.

It should also be noted that, except for the invoices being submitted for payment, no action was taken through the entire commissioners court regarding this project.

Further, all invoices for either labor or materials were from the same contractor by the same county official. See Lov Govt Code sec 262.023(c).

The Commissioner for Precinct #3 of Pecos County, Texas, disagrees with the opinion I provided to the County Auditor. I respectfully submit this request for an opinion on her behalf. Should it be necessary for her to submit it herself, please advise me of such as soon as possible.

Thank you for your professional courtesies.

Sincerely,


Jesse Gonzales
Pecos County Attorney

CM/RRR # 7006 0810 0001 4333 3326

Cc: The Honorable Judge Joe Shuster, Pecos County Judge
The Honorable Kay Hardwick, Pecos County Auditor