



GRIMES COUNTY AUDITOR

Mary L. Nichols

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February 17, 2011

The Honorable Greg Abbott
Office of the Attorney General
Opinion Division
P.O. Box 12548
Austin, TX 78711-2548

OPINION COMMITTEE

Re: Request for opinion concerning the authority of Grimes County Commissioners Court and the Grimes County Auditor related to budget amendments, and other issues.

Dear General Abbott:

This is to request your opinion concerning the authority of Grimes County Commissioners Court and Grimes County Auditor with respect to the following issues:

1. Must the County Auditor create new budget lines for a new department in the middle of a budget year to accommodate a budget amendment Order passed by Commissioners Court, when the Auditor does not agree that there was a grave public necessity as a result of an unusual or unforeseen situation?
2. Does the County Auditor's statutory duty to "see to the strict enforcement of the law governing county finances" authorize her to decline to create such budget lines?
3. Is the Commissioners Court agenda item sufficient to notify the public that it intends to declare an emergency and amend the current year's budget?
4. Is the position of Human Resources Director, if the department is created, an "appropriate official" to whom payroll preparation duties may be assigned?
5. May the County Judge countersign a county check, instead of the County Auditor?

Background Facts:

In past years, Grimes County Commissioners Court has discussed whether to remove human resource duties from the office of the County Treasurer. After the County Treasurer objected strenuously, no change was made.

During the 2010-2011 budget preparation cycle, the budget for the County Treasurer's office included line items for Human Resources. In the past, the human resources employee also prepared payroll under the supervision of the County Treasurer.

After the November 2010 election, and before the new Treasurer could take office, the Commissioners Court on December 28th voted to remove the human resources employee from the Treasurer's office and to create a new Human Resources Department. The agenda item read: "Consider and take action to modify the Treasurer's Budget to identify resources of the Human Resource Department."

No budget amendment document was presented to the Court at that December 28, 2010 meeting. The County Attorney prepared an Order and submitted it to the County Judge later for execution. The remaining members of the Court saw the Order at its next meeting on January 11th when considering approval of the minutes from December 28th. The County Attorney asked the Court to review the document and determine whether it expressed their decision of December 28th. Two commissioners requested additional time to review the Order; the other two plus the County Judge voted to accept the minutes and thus the Order.

The Order, entitled "An Order Declaring an Emergency Due to Unforeseeable Circumstances and Approving a Budget Amendment For:," declares that the "Commissioners' Court has found that a grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention has arisen."

I do not agree that there was a grave public necessity as a result of an unusual or unforeseen situation, and declined to create budget line items for the new department. I notified the County Judge and all Commissioners of this decision

In the past, the Treasurer's Office sought the County Judge to countersign a county check when the County Auditor was not available. Recently, the Treasurer's office has sought the County Judge's signature even when the Auditor was available.

I respectfully seek the opinion of the Attorney General in these matters.

Sincerely,

Mary L. Nichols

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January 17, 2011

Mary Nichols
Grimes County Auditor
114 W.
Anderson, TX

Re: Legal Opinion

Dear Mrs. Nichols:

This is to respond to your request for my opinion concerning the authority of Grimes County Commissioners Court and Grimes County Auditor with respect to the following issues:

1. Must the County Auditor create new budget lines for a new department in the middle of a budget year to accommodate a budget amendment Order passed by Commissioners Court, when the Auditor does not agree that there was a grave public necessity as a result of an unusual or unforeseen situation?
2. Does the County Auditor's statutory duty to "see to the strict enforcement of the law governing county finances" authorize her to decline to create such budget lines?
3. Is the Commissioners Court agenda item sufficient to notify the public that it intends to declare an emergency and amend the current year's budget?
4. Is the position of Human Resources Director, if the department is created, an "appropriate official" to whom payroll preparation duties may be assigned?
5. May the County Judge countersign a county check, instead of the County Auditor?

Questions 1 & 2:

"One of the functions of the office of County Auditor is to operate as part of a delicate system of checks and balances to protect county funds." Crider V. Cox, 960 S.W.2d 703,706 (Tex.App.—Tyler 1997), citing Smith v. McCoy, 533 S.W.2d 457, 459 (Tex. Civ. App.—Dallas 1976)

Subtitle B of Title IV of the Texas Local Government Code is entitled "County Finances." As you know, Section 112.006(b) mandates that "the county auditor shall see to the strict enforcement of the law governing county finances."

Texas Local Government Code 111.010(b) requires to commissioners court to "spend county funds only in strict compliance with the budget, except in an emergency." Subsection 111.010(c) authorizes the commissioners court to amend the original budget "only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention."

It is my opinion that the requirements of Section 111.010 constitute a portion of "the law governing county finances," which you as County Auditor are bound by statute to enforce. It is appropriate for you to advise the commissioners court when you find that it is operating outside the law governing county finances, and to seek legal advice in such important matters. I advise that Section 112.006(b) authorizes you to enforce Section 110.010. I further advise that you may not create new budget lines for a new department in the middle of a budget year to accommodate a budget amendment Order passed by Commissioners Court, when you do not find that the situation rose to the level of a grave public necessity or that it arose as a result of an unusual or unforeseen situation.

Question 3:

Texas Government Code 551.041 requires those entities subject to the Open Meetings Act, such as county commissioners courts, to "give written notice of the date, hour, place and subject of each meeting of the governmental body." The notice must be sufficient to advise the public of the matters to be discussed and decided.

The legislature was careful to enact statutes to allow the public to be advised of the preparation of the county's budget. The proposed budget must be made available for inspection before it is adopted. Section 110.006. A special newspaper notice is required to advise the citizenry of a public hearing regarding the proposed budget. Section 110.0075. Any person may attend and participate in the budget hearing. Section 110.007.

It seems logical that the public be adequately notified when the commissioners court is considering an amendment to the budget due to an emergency. The agenda item for December 28, 2010 reads: "Consider and take action to modify the Treasurer's Budget to identify resources of the Human Resource Department." There is no mention of a budget amendment, or the fact that the commissioners court intends to declare an emergency. In my opinion, this is not sufficient notice.

Governmental actions taken in violation of the notice requirements of the Open Meetings Act are voidable. Texas Government Code Section 551.141. Section 551.142(a) provides that "an interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body."

Question 4:

County payroll preparation duties are not mandated as constitutional or statutory duties of any county official. Commissioners Court of Titus County v. Agan, 940 S.W.2d 77 (Tex. 1997). Texas Local Government Code Section 152.051 defines county payroll officer for that subchapter as the county auditor or "other appropriate county officer who issues paychecks to county or precinct personnel."

Texas Attorney General Letter Opinion 98-013 states that "In our opinion, the Supreme Court, if presented with the issue, would find that the commissioners court of Johnson County is authorized to transfer responsibility for preparation of the county payroll to 'an appropriate county official,' including the county director of personnel." However, Texas Attorney General Opinion GA-0503 states:"a commissioners court may delegate duties that are not assigned by the constitution or statutes to an elected county official whom the commissioners court determines is appropriate." Of course, a director of personnel or human resources director is not a elected county official. It is prudent to request the Attorney General to clarify the definition of "appropriate county official."

Question 5:

Texas Government Code Section 113.043 is quite clear. A check or warrant may not be paid unless it is "countersigned by the county auditor to validate it as a proper and budgeted item of expenditure." I find no authority for you to delegate that duty to anyone other than your assistant auditor(s). It is improper for the County Judge to countersign a check in your stead.

Please contact me if you have further questions or concerns.

Sincerely,

Debra S. Mergel