

**KINNEY COUNTY AUDITOR**

Cheryll A. Jones
COUNTY AUDITOR

September 29, 2025

Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

RE: Request for Attorney General Opinion regarding the authority of the Commissioners' Court to approve purchases with no mechanism for payment and order pre-payment of goods and services without the approval of the county auditor.

Dear Attorney, General Paxton:

This letter serves as a formal request for an expedited opinion regarding whether a Commissioners' Court has the authority to purchase goods and services without budgeting for payment and order payment for goods and services not yet received without the approval of the county auditor.

Background:

The Kinney County Commissioners' Court approved the purchase of a new ambulance on July 22, 2024, with the financial option to be determined at a later date. It was the hope that the County would receive grant funding to pay for the ambulance but proceeded to approve entering into a purchase agreement with no clear mechanism for payment. Approving this purchase and creating a debt is in violation of article XI, section 7 of the Texas Constitution since the court did not simultaneously provide for the levying and collection of a sufficient tax to pay for the purchase as cited in Attorney General Opinion JC-0395.

This was not an emergency purchase but a specialty build from the vendor for an additional ambulance to be added to the existing fleet. The sales agreement was also not approved by the Commissioners' Court and an agent was not delegated by the Court to make the contract per Local Government Code section 262.001 or Attorney General Opinion JC-0395, which says that only a commissioners court may execute a contract that binds the county. The sales agreement was signed by the Emergency Management Services (EMS) Director on December 03, 2024, without a requisition being submitted or a purchase order issued by the Auditor's office in accordance with the County's purchasing policy. The amount of the sales agreement also exceeded the amount approved by the Commissioners' Court on July 22, 2024.

According to Attorney General Opinion GA-0247, if the county auditor determines that the county awarded a contract without complying with the County Purchasing Act, section 113.065 of the Local Government Code prohibits the auditor from approving a claim for payment on the

contract. While I understand that the Commissioners' Court can amend their court order approving the increased amount of the purchase, the opinion further states that the Commissioners' Court lacks the authority to ratify such a contract.

Since grant funding has not been secured for the purchase of the ambulance the Commissioners' Court budgeted for the purchase in the 2025-2026 Fiscal Year Budget. However, the Court is attempting to authorize payment in advance of delivery through a court order and pressure the auditor to make payment as the ambulance is scheduled to be ready in October 2025.

Attorney General Opinion GA-0383 upholds Local Government Code section 113.064(a) which prohibits a county from paying any claim, bill, or account until the county auditor has examined and approved payment. This has been further substantiated with Texas Supreme Court cases *Smith v. McCoy* which says that a Commissioners' court may not exercise its duty under section 115.021 to audit and settle accounts against the county if the auditor has not reviewed and approved the account. *Cridler v. Cox* follows that by saying that a Commissioners' court may not even review a claim until the county auditor has approved it: "The Auditor's approval is a *condition precedent* to the Commissioners Court's consideration of the [claim]".

Local Government Code section 113.901 says that a county auditor may not audit or approve an account for the purchase of supplies or materials for use of the county or of a county officer unless a requisition, signed by the officer ordering the supplies or materials and approved by the county judge is attached to the account. While an ambulance is not supplies or materials, would a requisition not be required in order to encumber county funds and properly record the purchase in accordance with LGC 113.901.

How can an auditor audit a claim for payment in accordance with the Local Government Code section 115.065 when the County has not received the goods or services? Local Government Code section 2251.021 supports this by providing that a payment is overdue on the 31st day after the later of: 1) the date the governmental entity receives the goods under the contract; 2) the date the performance of the service under the contract is completed; or 3) the date the governmental entity receives an invoice for the goods or service.

Questions Presented

- 1. Can the Commissioners' Court approve the purchase of an asset with no mechanism for payment under article XI, section 7 of the Texas Constitution?**
- 2. Does this approval violate the procurement process defined under LGC § 262 and the County's own purchasing policy?**
- 3. Can the Emergency Management Services Direct bind the County in a contract not approved by the Court and with no delegation of authority under LGC § 262.001?**
- 4. If the contract is valid, can the auditor audit and approve the purchase when a requisition was not signed and approved prior to signing the sales agreement?**
- 5. Can the Commissioner' Court authorize payment of goods and services without the approval of the county auditor?**
- 6. What defines supplies and materials, does it include capital equipment and vehicles?**
- 7. Can the auditor audit a claim for payment before goods or services are received by the County?**

Thank you for your time and consideration of this request. Please do not hesitate to contact my office should you require additional information or clarification.

Respectfully,

A handwritten signature in blue ink, reading "Cheryl A. Jones". The signature is fluid and cursive, with the first name "Cheryl" and last name "Jones" clearly distinguishable.

Cheryl A. Jones
County Auditor
Kinney County, Texas