



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 13, 2019

The Honorable Sharen Wilson
Tarrant County Criminal District Attorney
401 West Belknap
Fort Worth, Texas 76196-0201

Opinion No. KP-0264

Re: Purchasing authority of a criminal district attorney's office as a specialized local entity under Local Government Code section 140.003 (RQ-0272-KP)

Dear Ms. Wilson:

You ask whether a criminal district attorney's office must comply with purchasing procedures and rules adopted by a county purchasing agent.¹ A criminal district attorney is "a class or kind" of district attorney. *Hill Cty. v. Sheppard*, 178 S.W.2d 261, 263 (Tex. 1944). The Legislature creates the office of criminal district attorney for certain counties, and where created, the criminal district attorney acts in lieu of and performs the functions of the county attorney. Tex. Att'y Gen. Op. No. GA-0523 (2007) at 2; see TEX. CONST. art. V, § 21; TEX. GOV'T CODE § 44.001. This office generally classifies criminal district attorneys as district officers, but depending on the function performed, these officers can qualify as state or local officials. Tex. Att'y Gen. Op. No. MW-252 (1980) at 2; see *Esteves v. Brock*, 106 F.3d 674, 677-78 (5th Cir. 1997); *Crane v. Cty. of Dallas*, 766 F.2d 193, 194-95 (5th Cir. 1985). For purposes of purchasing and financial accounting, the Legislature designates criminal district attorneys as "specialized local entities" under Local Government Code section 140.003 and provides that these entities are separate and distinct from the county in which the criminal district attorney exercises jurisdiction. See TEX. LOC. GOV'T CODE § 140.003(a), (f); *El Paso Cty. v. Solorzano*, 351 S.W.3d 577, 582-83 (Tex. App.—El Paso 2011, no pet.). However, section 140.003 delegates certain responsibilities to the county with respect to the finances of a specialized local entity.²

As a specialized local entity, a criminal district attorney must deposit funds allocated to the office into the county treasury.³ TEX. LOC. GOV'T CODE § 140.003(f) ("Each specialized local

¹See Letter and Brief from Honorable Sharen Wilson, Tarrant Cty. Crim. Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 2 (Feb. 15, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter" and "Brief," respectively).

²"If a specialized local entity has jurisdiction in more than one county, the district judges having jurisdiction in those counties, by a majority vote, shall designate from among those counties the county responsible for managing the entity's funds." TEX. LOC. GOV'T CODE § 140.003(f).

³The criminal district attorney may receive funding from a variety of sources, including county and state resources. See, e.g., TEX. GOV'T CODE §§ 41.107 (county may furnish items necessary for prosecuting attorney's office and may pay expenses incident to the operation of the office), 41.201, .203 (providing state appropriations for

entity shall deposit in the county treasury of the county in which the entity has jurisdiction the funds the entity receives.”). The county must then “hold, deposit, disburse, invest, and otherwise care for the funds” on behalf of the criminal district attorney, and the funds are subject to audit by the county auditor to the same extent county funds are subject to the auditor’s authority. *Id.* § 140.003(f), (g); *see* Tex. Att’y Gen. Op. Nos. GA-0978 (2012) at 1–2 (discussing role of county auditor with respect to specialized local entity’s funds), GA-0053 (2003) at 2 (discussing that certain state funds distributed to a prosecutor are not subject to county audit). The criminal district attorney must also prepare and file a financial statement and budget with the county commissioners court. TEX. LOC. GOV’T CODE § 140.003(c); *but see* Tex. Att’y Gen. Op. No. JM-70 (1983) at 2 (“It is our opinion that the budgetary statutes permit the commissioners court to determine the [district attorney’s] use of county funds only.”). The statute therefore vests the county with some oversight and responsibility for the criminal district attorney’s funds; however, section 140.003 also provides that the criminal district attorney is distinct from the county for financial purposes and that the county must “disburse” the funds on behalf of the criminal district attorney as the entity directs. TEX. LOC. GOV’T CODE § 140.003(f); *see Solorzano*, 351 S.W.3d at 583 (recognizing Attorney General Opinion DM-460’s conclusion that section 140.003 provides that the criminal district attorney is distinct from the county for financial accounting and purchasing purposes because if the office was part of the county, “there would be no need to require” the deposit in the county treasury or disbursement by the county). Thus, upon deposit in the county treasury, “the funds become funds of the [criminal district attorney] to be disbursed as directed by [that office] and lose their character as county funds.” Tex. Att’y Gen. Op. No. JC-0209 (2000) at 4.

Regarding the purchasing authority of the criminal district attorney, subsection 140.003(b) provides:

A specialized local entity shall purchase items in accordance with the same procedures and subject to the same requirements applicable to a county under Subchapter C, Chapter 262 [the County Purchasing Act]. For the purposes of this section, a specialized local entity is treated as if it were a county. A specialized local entity may make a contract with a county under which the county performs purchasing functions for the entity.

TEX. LOC. GOV’T CODE § 140.003(b) (footnote omitted). This subsection—consistent with section 140.003’s other provisions—provides that a criminal district attorney is not a subdivision of the county for purchasing purposes. *See id.* Rather, the criminal district attorney “is treated as if it were a county” for purchasing purposes and may contract with the county to perform its purchasing functions. *Id.* However, subsection 140.003(b) mandates that the criminal district attorney purchase items in accordance with the requirements applicable to a county under subchapter C,

counties with criminal district attorney), 46.002(2), .004(a) (providing state funding for certain criminal district attorneys under the Professional Prosecutors Act), 46.003 (providing that counties may supplement state prosecutor’s salary); TEX. CODE CRIM. PROC. arts. 59.06 (providing that criminal district attorney may obtain funding from the disposition of forfeited property), 102.007 (providing that criminal district attorney may collect fees for processing hot checks). Depending on the source of the funding, more specific expenditure laws may apply in certain circumstances.

chapter 262 of the Local Government Code. *Id.* Commonly known as the County Purchasing Act, this subchapter generally requires counties to make certain purchases using competitive bidding procedures. *Id.* §§ 262.021–.037 (“County Purchasing Act”).

With this background in mind, we turn to your question as to whether a criminal district attorney must comply with rules and procedures adopted by a county purchasing agent. Request Letter at 2. Subchapter B of chapter 262 of the Local Government Code provides that a county may employ a person to act as the county purchasing agent. TEX. LOC. GOV’T CODE §§ 262.011(a), .0115. Under subchapter B, the duties of the purchasing agent depend upon whether a purchase or contract is subject to competitive bidding. *Id.* § 262.011(d). For purchases and contracts subject to competitive bidding, subchapter B requires the purchasing agent to supervise these transactions. *Id.* § 262.011(e). For purchases and contracts not subject to competitive bidding, the purchasing agent must “purchase all supplies, materials, and equipment . . . and contract for all repairs to property used, by the county or a subdivision, officer, or employee of the county.” *Id.* § 262.011(d) (providing that a “person other than the county purchasing agent may not make the purchase of the supplies, materials, or equipment or make the contract for repairs”), 262.011(m) (providing criminal penalties for violation of section). Subchapter B also vests the purchasing agent with the authority “necessary to implement” these duties subject to approval by the commissioners court. *Id.* § 262.011(o).

With respect to the criminal district attorney, subsection 140.003(b) does not expressly provide that subchapter B of chapter 262 governs specialized local entities. *Id.* § 140.003(b). Rather, it requires specialized local entities to comply only with subchapter C of that chapter (the County Purchasing Act). *Id.* Moreover, as subsection 140.003(b) provides that a specialized local entity is not part of the county for purchasing purposes, a criminal district attorney is not generally subject to subchapter B as a subdivision of the county. *See id.* Accordingly, a criminal district attorney is not subject to rules adopted by a county purchasing agent pursuant to subchapter B.

However, the County Purchasing Act—which governs specialized local entities—also provides the purchasing agent with specific grants of rule-making authority. *See id.* §§ 262.0235, .0245. Section 262.0235 provides that the purchasing agent “shall adopt rules” ensuring the “identification, security, and confidentiality of electronic bids or proposals.” *Id.* § 262.0235. The purchasing agent, under section 262.0245, must also adopt procedures providing “for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement or for which the county receives no responsive bid.” *Id.* § 262.0245.⁴ Thus, for county purchases not subject to competitive bidding or for which the county receives no responsive bids, the county purchasing agent must adopt other procedures for competitive procurement. *Id.* Subsection 140.003(b) instructs that, for purposes of the County Purchasing Act, a criminal district attorney is “treated as if it were a county” and “subject to the same requirements applicable to a county.” *Id.* § 140.003(b). Accordingly, to the extent a county is subject to rules adopted by the purchasing agent under the County Purchasing Act, a criminal district attorney is likewise subject to those rules.

⁴In a county without a purchasing agent, “the commissioners court shall adopt” these procedures. TEX. LOC. GOV’T CODE § 262.0245.

S U M M A R Y

A criminal district attorney is not subject to rules adopted by the county purchasing agent pursuant to subchapter B of chapter 262 of the Local Government Code; however, the entity is subject to rules implemented by the agent pursuant to the County Purchasing Act.

Very truly yours,



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