



RECEIVED
MAY 06 2004
OPINION COMMITTEE

Mike Stafford
Harris County Attorney

May 3, 2004

FILE # ML-43680-04
I.D. # 43680

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Greg Abbott
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

RQ-0219-GA

Attention: Opinion Committee

Re: Administration of funds by a Crime Control and Prevention District

Dear General Abbott:


We have been asked by City of South Houston Councilman Al Thiel to request your opinion regarding the following questions:

1. May a political subdivision which created a crime control and prevention district deposit district funds in a "pooled cash account" and be in compliance with section 363.208 of the Local Government Code?
2. Do sections 363.153 and 363.208 of the Local Government Code conflict regarding what control, if any, a political subdivision that creates a crime control and prevention district exercises over funds of a district?
3. May the governing body of a political subdivision which created a crime control and prevention district amend and pass the district's budget without the district's approval?

Our memorandum brief is attached. Thank you for your consideration of this request.

Sincerely,

MIKE STAFFORD
County Attorney

By 
T. SCOTT PETTY
Assistant County Attorney

Enclosure

Approved:


JOHN R. BARNHILL
First Assistant County Attorney

MEMORANDUM BRIEF

QUESTIONS PRESENTED

1. May a political subdivision which created a crime control and prevention district deposit district funds in a commingled "pooled cash account" and be in compliance with section 363.208 of the Local Government Code?
2. Do sections 363.153 and 363.208 of the Local Government Code conflict regarding what control, if any, a political subdivision that creates a crime control and prevention district exercises over funds of a district?
3. May the governing body of a political subdivision which created a crime control and prevention district amend and approve the district's budget without the district's approval?

DISCUSSION OF QUESTION ONE

We ask whether a political subdivision which created a crime control and prevention district may deposit district funds in a "pooled cash account" and still be in compliance with section 363.208 of the Local Government Code. Here, a resolution of the City Council of the City of South Houston directed the South Houston Crime Control and Prevention District to deposit all funds received by the District in the City's treasury by depositing the same in the City's pooled cash account.

Chapter 363 of the Local Government Code governs the creation and administration of crime control and prevention districts. A district is governed by a board of seven directors appointed by the governing body of the political subdivision that created the district. TEX. LOC. GOV'T CODE ANN. § 363.101 (Vernon Supp. 2004). Section 363.208 states:

- (a) The board shall deposit district funds in a *special account* in the treasury of the political subdivision that created the district.
- (b) District funds, other than those invested as provided by Section 363.206(c), shall be deposited as received in the treasury of the political subdivision and must remain on deposit.
- (c) The board shall reimburse the political subdivision for any costs, other than personnel costs, the political subdivision incurs for performing the duties under this section.

TEX. LOC. GOV'T CODE ANN. § 363.208 (Vernon 1999) (emphasis added).

While we have found no authority that resolves whether a district's funds may be deposited into a pooled cash account of the political subdivision which created the district, the situation is similar to an issue the San Antonio Court of Appeals faced in *State v. \$50,600.00*.

See State v. \$50,600.00, 800 S.W.2d 872 (Tex. App. – San Antonio 1990, writ denied). The issue was whether property seized by a county sheriff's department and subject to forfeiture under the Texas Controlled Substances Act¹ was to be forfeited under such act to the county as a political subdivision of the State and deposited by the county treasurer into a special fund to be administered by the sheriff, subject to supervision by the county auditor and commissioners court budget process, or whether the property should be forfeited to the sheriff's department and deposited in a special fund administered solely at the discretion of the sheriff's department without any outside supervision from any source. *Id.* at 876.

The judgment under appeal ordered that the seized property belonged to the county and that the property should be turned over to the county treasurer and deposited into an account established for that purpose. *Id.* at 881. The court affirmed the judgment and held that the special fund account was to be kept separate from other treasury funds and, while the separate fund was to be administered by the sheriff's department, such administration was subject to supervision of the audit authority of the county auditor. *Id.*

According to applicable statutory and common law, it would appear that the funds of the South Houston Crime Control and Prevention District must be deposited in a "special account" in the City of South Houston's treasury. Whether a pooled cash account in which the funds are commingled with other City funds is considered to be a "special account" for purposes of section 363.208 of the Local Government Code is the question.

DISCUSSION OF QUESTION TWO

We next ask whether sections 363.153 and 363.208 of the Local Government Code conflict regarding what control, if any, a political subdivision that creates a crime control and prevention district exercises over funds of a district. Section 363.153 states that the board of a district shall manage, control, and administer the district funds except as provided by Section 363.205. TEX. LOC. GOV'T CODE ANN. § 363.153 (Vernon 1999). However, section 363.208 states that funds shall be deposited in a special account in the treasury of the political subdivision that created the district. TEX. LOC. GOV'T CODE ANN. § 363.208 (Vernon 1999). The apparent conflict that exists regards who controls the funds, the board of the district or the political subdivision that created the district as a holder of the funds in its treasury.

What power a political subdivision which created a crime control and prevention district may have over the district's funds may only be derived from, and is therefore limited by, the process of approving the district's annual budget. Therefore, determining whether a conflict exists between sections 363.208 and 363.153 will involve placing those statutes in context with the statutes that govern the budget process.

Under section 363.204 of the Local Government Code, the board of a crime control and prevention district shall adopt an annual budget and submit its budget to the governing body of

¹ The Texas Controlled Substances Act was later codified as part of the Health and Safety Code, effective September 1, 1989. In the same year the codified provisions were repealed, and new statutes were enacted dealing with the same subject matter in the Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. arts. 59.02, 59.05, 59.06, 59.08 (Vernon Supp. 2004).

the political subdivision that created the district. See TEX. LOC. GOV'T CODE ANN. § 363.204 (Vernon 1999). The governing body shall approve or reject the budget submitted by the board, but it may not amend the budget on its own. If the governing body rejects the budget submitted by the board, the governing body and the board shall meet together and amend and approve the budget before the beginning of the fiscal year. TEX. LOC. GOV'T CODE ANN. § 363.205 (Vernon 1999). Money may be spent only for an expense included in the annual budget or an amendment to it. TEX. LOC. GOV'T CODE ANN. § 363.206(a) (Vernon Supp. 2004).

Other provisions of Chapter 363 of the Local Government Code indicate that outside of the budgeting process, the power of a political subdivision over a district it creates is limited. For example, according to section 363.155 it is the board of the district which prescribes accounting and control procedures for the district. TEX. LOC. GOV'T CODE ANN. § 363.155(b) (Vernon Supp. 2004). Under section 363.106 the board of a district may contract with a public agency or private vendor to assist in the administration or management of the district or to assist in the review of applications for funding. TEX. LOC. GOV'T CODE ANN. § 363.106 (Vernon 1999).

Section 363.207 of the Local Government Code states that not later than the 60th day after the last day of each fiscal year, an administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money. TEX. LOC. GOV'T CODE ANN. § 363.207 (Vernon 1999). Additionally, the board shall have an annual audit made of the financial condition of the district by an independent auditor. TEX. LOC. GOV'T CODE ANN. § 363.202(a) (Vernon 1999).

It would appear that, in the context of all the provisions of Chapter 363 of the Local Government Code which deal with the powers and duties of the board, the City Council's ability to exert influence in the board's decision making process is limited by its duty to approve or reject the South Houston Crime Control and Prevention District's proposed annual budget. The resolution of whether a conflict exists between sections 363.153 and 363.208 seems to be that, though the City has a fiduciary duty to account for the District's funds on deposit in a special account in its treasury, the District, through the accounting and control procedures it prescribes, administers all funds in strict compliance with the budget. The City's involvement is limited to what steps it must take which are necessary for the release of the District's funds from the City's treasury upon request by a properly authorized District representative.

DISCUSSION OF QUESTION THREE

We next ask whether the governing body of a political subdivision which created a Crime Control and Prevention District may amend and pass the District's budget without the District's approval. Section 363.205 of the Local Government Code states:

- (d) Not later than the 30th day before the date the fiscal year begins, the governing body shall approve or reject the budget submitted by the board. The governing body may not amend the budget.

- (e) If the governing body rejects the budget submitted by the board, the governing body and the board shall meet and together amend and approve the budget before the beginning of the fiscal year.
- (f) The budget may be amended after the beginning of the fiscal year on approval by the board and the governing body.

TEX. LOC. GOV'T CODE ANN. § 363.205 (Vernon 1999).

This provision clearly indicates that the creation of an annual budget of a crime control and prevention district is a cooperative effort between the district and the governing body of the political subdivision which created the district. It appears that the City of South Houston lacks the authority to independently amend a budget which the City previously rejected without the involvement of and approval by the Board of the South Houston Crime Control and Prevention District. Any budget approved by the City without such a cooperative effort would be a budget approved outside of proper statutory procedures.