

RECEIVED

NOV 01 2012

OPINION COMMITTEE



TARRANT COUNTY

OFFICE OF THE
CRIMINAL DISTRICT ATTORNEY
www.tarrantda.com

JOE SHANNON, JR.
CRIMINAL DISTRICT ATTORNEY
817/884-1400

TIM CURRY CRIMINAL JUSTICE CENTER
401 W. BELKNAP
FORT WORTH, TX 76196-0201

October 29, 2012

FILE # ML-47163-12

I.D. # 47163

RQ-1096-GA

CM/RRR 7010 2780 0002 5457 4905

Honorable Greg Abbott
Texas Attorney General's Office
Post Office Box 12458
Austin, Texas 78711-2548

Re: Request for Opinion Regarding Inmate Property
and the Tarrant County Sheriff's Department

Dear General Abbott:

The Auditor of Tarrant County, Texas has requested we seek an opinion from your office regarding the following fact situation:

When an inmate is booked into the Tarrant County Jail, the Tarrant County Sheriff's Office takes possession of all inmate personal property. Non-cash personal property remains in the jail's property room. An officer records on a receipt the property stored and requests the inmate's signature on the receipt.¹ The Sheriff keeps the receipt in the inmate's file. Once eligible for release, the inmate signs the receipt acknowledging the return of his property.²

Attached as Exhibit A is a representative sample of the record completed by the Sheriff's Office itemizing the inmate's property with acknowledgments by the inmate on each end of the transaction. The property listed on Exhibit A remained in the property room during the inmate's incarceration. In attempting to conduct a full and false inclusion accounting test, the Auditor sought to compare the records – of which Exhibit A is a representative sample – with the physical property in the property room. The Sheriff, however, refused the Auditor's request for access to the inmate property for comparison with the Sheriff's inmate receipt records that he holds as required by state law. With that background, the Auditor's question is:

Does the Auditor have a right to access the inmate property to compare it with the inmate property receipts?

¹ 37 TEX. ADMIN. CODE § 265.10; see Exhibit A, a sample copy, Inmate Property Record.

² 37 TEX. ADMIN. CODE § 267.5; see Exhibit B, a sample copy, Inmate Property Record, showing signature of release.

Honorable Greg Abbott
Re: Inmate Property / TCSD
October 29, 2012
Page 2

It should be noted that the Sheriff provided full access to all records of inmate money and of his Office's handling of inmate money, but he was unwilling to allow the Auditor to compare documentation about non-monetary inmate property with the property itself, believing examination of these matters to be beyond her expertise and authority.

The question is not completely novel. The Auditor points to several statutes supporting her right of access. The first statute provides that "[t]he county auditor has general oversight of the books and records of a county, district or state officer authorized or required by law to receive or collect money or other property that is intended for the use of the county or that belongs to the county."³ Many years ago, a District Clerk argued that because his child support records contained no county money the records were not within the general oversight of the Auditor. Your office rejected this argument and determined that the Auditor has "the duty of overseeing and examining all the books of all the district officers in his jurisdiction."⁴ That general oversight applies equally to the Sheriff and to all his records.⁵ Your office has consistently supported this interpretation.

In 1987, Attorney General Mattox determined that inmate trust and commissary funds were subject to Auditor oversight, citing the statutory predecessor to section 112.006 of the TEXAS LOCAL GOVERNMENT CODE.⁶ The Sheriff, of course, believes that auditing money and auditing inmate personal property are distinct, different things. But, by seeking to compare the personal property receipts to the actual property described, the Auditor was attempting to determine the accuracy of the inmate property receipts. Traditionally, opinions on the issue of auditor authority pair an auditor's "general oversight" authority with the following statute, which provides: "[t]he county auditor shall have continual access to and shall examine and investigate the correctness of: (1) the books, accounts, reports, vouchers, and other records of any officer."⁷ In order for the Auditor to determine whether the inmate property records are correct, the Auditor needs to compare the record with the actual items. Without access to the inmate personal property, an audit of the inmate property records remains meaningless and incomplete. Your office has supported the auditor's right of broad access to the office under examination.⁸

³ Tx. Loc. Gov't Ann. § 112.006 (Vernon 2008).

⁴ Op. Tx. Att'y Gen. No. WW-1400 (1962).

⁵ Op. Tx. Att'y Gen. No. H-1185 (1978) (Bond money records of Sheriff subject to audit.)

⁶ Op. Tx. Att'y Gen. No. JM-702 (1987).

⁷ Tx. Loc. Gov't Ann. § 115.001 (Vernon 2008).

⁸ Op. Tx. Att'y Gen. No. JM-1275 (1990).

In 2011, a constable questioned the auditor's oversight of the books and records relating to state law enforcement officer standards and education. Despite the facts that those funds were subject to comptroller audit and were not county money, your opinion remained consistent in determining that the funds were subject to the "auditor's general oversight and auditing authority."⁹

Your office has cited one final statute when opining on this issue. In 2009, a sheriff claimed that neither funds forfeited to the sheriff's office nor commissary funds were county money, and, thus, bank statements were not available to the county treasurer. Your office rejected this argument stating, "the Legislature intended the county treasurer to examine all accounts held by the sheriff in his official capacity."¹⁰ This opinion dealt with a treasurer authority under section 115.901(a) of the TEXAS LOCAL GOVERNMENT CODE, which grants the same authority to the auditor. It is immaterial that the property does not "belong" to the county. The key question, in the Auditor's view, is whether the inmate property records are the sheriff's records.¹¹ And since they are, the Auditor believes that her rights to examine the accuracy of those records are broad.

On the other hand, the Sheriff believes that the Auditor's rights to examine his records begin and end with financial records, or records pertinent to the receipt, safekeeping, or disbursement of funds. He understands that the Auditor has the right to examine financial records relating to ANY money his office manages—not just "county money" or "public money." He simply believes that the Auditor has no authority to examine and critique the various records that he keeps unrelated to the handling of funds, such as offense reports, logs of activity in the jail, or logs of non-monetary inmate property. His argument is supported by the context of the statutes providing the Auditor with her authority.¹² A particular statute should be interpreted with reference to its surrounding statutory context; as stated in the latin phrase "*noscitur a sociis*"; a statute is "known by its associates" or "known by the company it keeps."¹³ In other words, the construction of particular statutory terms "may be guided by the interpretive context provided by the surrounding statutory landscape."¹⁴

⁹ Op. Tx. Att'y Gen. No. GA-0869 (2011).

¹⁰ Op. Tx. Att'y Gen. No. GA-0704 (2009).

¹¹ See Tx. LOC. GOV'T CODE ANN. § 115.901(a) ("the county auditor ... shall examine the accounts, dockets, and records of ... the sheriff ...")

¹² In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters...laws on the same or similar subjects. Tx. LOC. GOV'T CODE ANN. § 311.023 (4).

¹³ *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441-442 (Tex. 2011); *In re Reaud*, 286 S.W.3d 574, 580 (Tex. App.—Beaumont 2009, no pet.)

¹⁴ *American Zurich Ins. Co. v. Samudio*, __ S.W.3d __, 55 Tex. Sup. Ct. J. 1028, slip opinion at 4 (June 29, 2012).

Chapter 115 of the LOCAL GOVERNMENT CODE discusses auditing authority within counties. That Chapter is entitled "Audit of County Finances."¹⁵ Chapter 115 contains sixteen individually numbered sections. Every section of Chapter 115, except for one, refers explicitly to auditing financial matter, fiscal matters, or monetary matters.¹⁶ Arguably, fourteen of the fifteen remaining sections of Chapter 115 explicitly limit their scope to audit of financial matters.¹⁷ Only LOCAL GOVERNMENT CODE § 115.001 (a) refers to the audit of "books, accounts, reports,

¹⁵ A title or heading cannot limit or expand a statute's meaning, but it may give some indication of the Legislature's intent. *In re United Services Auto Ass'n.*, 307 S.W.3d 299, 307-308 (Tex. 2010).

¹⁶ One section makes no specification as to the type of records that may be audited, saying only that after a proper voter petition filed with a district judge, the judge "shall employ a person to prepare a special audit or **all county records**." TX. LOC. GOV'T CODE ANN. § 115.032 (b). (emphasis added) That section is obviously inapplicable in the situation at issue.

¹⁷ For example, LOCAL GOVERNMENT CODE § 115.002 refers to auditing the "books and reports" of county officers in subsection (b), and "canceled orders for payment" in subsection (c). "Books", in the context of financial affairs, commonly refers to monetary or financial records. While "reports" can be a broader term, subsection (a) delineates the kinds of "reports" within the reach of the statute: "reports **that are about the collection of money**." (emphasis added) TX. LOC. GOV'T CODE ANN. § 115.002. See also TX. LOC. GOV'T CODE ANN. § 115.003 (titled "Examination of Funds held by County Treasurer") (entitling audit of "cash" and examination of various "funds"); TX. LOC. GOV'T CODE ANN. § 115.0035 (defining "accounts" which may be examined under this section as limited to "public funds"); TX. LOC. GOV'T CODE ANN. § 115.004 (calling for auditing of "accounts", a term which referred solely to "funds" in the immediately preceding section); TX. LOC. GOV'T CODE ANN. § 115.021 (referring exclusively to audit of "accounts"); TX. LOC. GOV'T CODE ANN. § 115.022 (referring to audit of "accounts and reports that relate to county finances"); TX. LOC. GOV'T CODE ANN. § 115.031 (referring to audit of "all or part of the books, records, or accounts...[and] any other matter relating to or affecting the fiscal affairs of the county"); TX. LOC. GOV'T CODE ANN. § 115.033 (a), (b), and (c) (referring to a "finance committee" and charging it to "examine the financial condition of the county" by examining "all of the books, accounts, reports, vouchers, and orders of the commissioners court relating to county finances that have not been examined by a previous committee" and to "count all the money in the office of the county treasurer...and to make any other examination that it considers necessary and proper to determine the true condition of the county finances"); TX. LOC. GOV'T CODE ANN. § 115.041 (authorizing an independent audit of "books, records and accounts of each of the county officers, agents, and employees and of any other matter that relates to the county's fiscal affairs"); TX. LOC. GOV'T CODE ANN. § 115.042 (a) (authorizing an audit "for the purposes set forth in Section 115.031"—a section pertaining to "matters relating to or affecting the fiscal affairs of the county", as shown above); TX. LOC. GOV'T CODE ANN. § 115.042 (b) (authorizing an audit of county "books", which in context likely refers to financial records); TX. LOC. GOV'T CODE ANN. § 115.043 (b) and (c) (referring to an audit "to examine the condition of the county finances", an examination "of all the books, accounts, reports, vouchers, and orders of the commissioners court that relate to the county finances" and stating that the auditor shall "count all the money...that belongs to the county and shall make any other examination that the auditor considers necessary and proper to determine the true condition of the county finances"); TX. LOC. GOV'T CODE ANN. § 115.044 (authorizing an audit that "must cover all matters relating to the fiscal affairs of the county"); TX. LOC. GOV'T CODE ANN. § 115.045 (same language as § 115.044); TX. LOC. GOV'T CODE ANN. § 115.901 (referring to an audit of "accounts, dockets, and records" of various officers "to determine if any money belonging to the county and in the possession of the officer has not been accounted for and paid over according to law.")

vouchers, and other records of any officer" without linking the general words "reports" and "records" to some phrase relating to money or finances.¹⁸

Furthermore, we are not aware of any opinion of the Texas Attorney General in which the Attorney General has specifically opined that a county auditor had the authority to examine records of an officer which are not fiscal or financial in nature. If the auditor's right to examine "records and reports" is not limited to records and reports related to finances, then where does the outer boundary of county auditor authority lie? Is the auditor authorized to review offense reports to critique police procedures in order to guard against abuses that could potentially lead to civil rights liability?

The Auditor believes that the Sheriff's perspective is inconsistent with the plain language of the statute. The Sheriff seeks to engraft either "collection of money"¹⁹, "cash"²⁰, "public funds"²¹, or "county finances"²² onto § 115.001(a). Neither the actual statute, nor the Chapter heading, has such a limitation:

The county auditor shall have continual access to and shall examine and investigate the correctness of: (1) the books, accounts, reports, vouchers, and other records of any officer²³

The Sheriff is not free to add words to this statute.²⁴ The plain language of the statute grants the Auditor the access to the "other records" she seeks from the Sheriff.

The definition of "accounts" employed by the Sheriff is found in § 115.0035, and the definition is specifically limited to that section.²⁵ The Sheriff wishes to deny access to an admitted county record in his possession. This question has nothing to do with offense reports or jail logs. Hyperbole aside, there are reasonable justifications for the Auditor's use of this statute to fulfill her obligations. For example, the Commissioners Court may seek to have the Auditor verify the Sheriff's alleged manpower shortage for the purpose of budget analysis. But,

¹⁸ The other two subsections of Tx. Loc. Gov't Code Ann. § 115.001 explicitly refer to financial matters, specifically "orders of the commissioners court relating to county finances" and "vouchers given by the trustees of all common school districts of the county." See Tx. Loc. Gov't Code Ann. §115.001 (b) and (c).

¹⁹ Tx. Loc. Gov't Code Ann. § 115.002.

²⁰ Tx. Loc. Gov't Code Ann. § 115.003.

²¹ Tx. Loc. Gov't Code Ann. § 115.0035.

²² Tx. Loc. Gov't Code Ann. § 115.022.

²³ Tx. Loc. Gov't Code Ann. § 115.001.

²⁴ *H & C Communications, Inc. v. Reed's Food Intern., Inc.*, 887 S.W.2d 475, 478 (Tex.App. – San Antonio 1994).

²⁵ Tx. Loc. Gov't Code Ann. § 115.0035

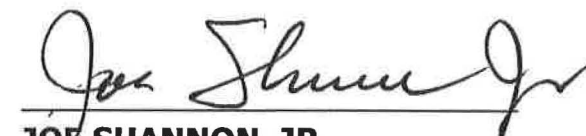
Honorable Greg Abbott
Re: Inmate Property / TCSD
October 29, 2012
Page 6

because the language of the statute is clear, the speculative use of legislative interpretation rules is unnecessary to your decision.

We respectfully ask your opinion regarding this question.

Sincerely,

CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS



JOE SHANNON, JR.
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

JS/apc