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DEC 02 2013

**OPINION COMMITTEE**

**RICHARD N. COUNTISS**  
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Coldspring, Texas 77331-0403

FILE # ML-47469-13  
I.D. # 47469

November 19, 2013

The Honorable Greg Abbott  
Attorney General of Texas  
Attn: Opinion Committee  
P. O. Box 12548  
Austin, TX 78711-2548

**RQ-1170-GA**

*Via CM-RRR# 7013 1710 0001 4459 8036*

RE: Request for Opinion on Increasing Salary of Assistant Auditor/Administrative Assistant to Auditor after Passage of County Budget

Dear Attorney General Abbott,

I hereby request an opinion of the Attorney General on the following issue:

**Questions:**

1. Is the commissioners court under a duty to adopt a budget amendment to reflect an increase in the salary of an Assistant Auditor granted by the District Court Judges after the county's budget has been adopted and where the adopted budget designated the employee as an "Administrative Assistant" rather than an "Assistant Auditor"?
2. Whether the Order signed by the District Court Judges that changed the employee's designation to an "Assistant Auditor" and increased the salary for that position complied with section 84.021 of the Texas Local Government Code, and if said Order did not comply with section 84.021, is the Order invalidated such that the commissioners court does not have to pay the salary increase?

**Fact Situation**

At the recent budget hearings in San Jacinto County, the commissioners court determined that no raises would be given to any employees this upcoming budget year, which runs from October 1, 2013 to September 30, 2014. Upon reviewing the salary items of the

Auditor's Office, the court noticed the Auditor had taken an "Administrative Assistant" position and grouped it into the position of "Assistant Auditor", and increased the salary of that position by \$1664.00. Subsequently, the commissioners court changed the title of the position back to "Administrative Assistant" and reduced the salary to the original amount. The budget was then passed.

Afterward, the two District Judges for the courts that serve San Jacinto County (the 258<sup>th</sup> and 411<sup>th</sup> Judicial District Courts) signed an order approving the Auditor's budget which contained both the re-designation of the "Administrative Assistant" position to "Assistant Auditor" and the increase in salary. A copy of the order is attached hereto as "Exhibit A". When the County Judge inquired about these changes, he was told the commissioners court lacked the authority to undo what the District Judges had ordered, and that it was mandatory that the commissioners court adopt a budget amendment to reflect the changes.

### **Argument and Authority**

In Attorney General Opinion No. JC-0361 (2001), this office concluded that, in line with its prior opinions, District Court Judges can amend the salary of an Assistant Auditor after the county budget has been adopted if (1) the appropriate public hearing is held, (2) the salary amendment does not require an expenditure of county funds in excess of anticipated revenue, and (3) the necessary statutory procedures are followed.

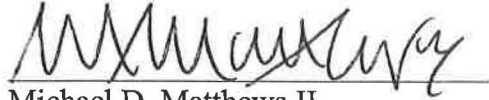
Further, such amendments must be prospective in nature as to not run afoul of article III, section 53 of the Texas Constitution, and become effective only after the commissioners court has adopted a budget amendment which reflects the amended salary. *Id.* at 1, quoting Tex. Att'y Gen. Op. No. JC-0147 (1999) at 3. If these requirements are fulfilled, the commissioners court cannot refuse to enact the amendment, and as such has a ministerial duty to pay the salary increase. *Id.* at 3.

However, in passing the Order which authorized the re-designation of the position to "Assistant Auditor" and the salary increase, members of the commissioners court claim that the District Judges did not strictly comply with the requirements set forth in the Texas Local Government Code. Specifically, section 84.021 sets forth the procedure for appointing Assistant Auditors. It states that "the county auditor may certify to the district judges a list stating the number of assistants to be appointed, the name, duties, qualifications, and experience of each appointee, and the salary to be paid to each appointee." Tex. Loc. Gov't Code §84.021(a).

That subsection goes on to say that after considering this list, the district judges "shall prepare a list of the appointees that the judges approve and the salary to be paid to each" and then "shall certify this list to the commissioners court" Loc. Gov. Code §84.021(a). Members of the commissioners court are of the opinion that since the Order presented to them by the district judges did not list the names of "the appointees", but rather just their titles, the requirements of section 84.021 were not strictly complied with, and they are therefore under no obligation to pass a budget amendment reflecting the salary increase.

Thus, I am respectfully requesting the above questions be answered in order to better define the authority of the commissioners court with relation to this specific issue.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Michael D. Matthews II", written over a horizontal line.

Michael D. Matthews II  
1<sup>st</sup> Asst. Criminal District Attorney  
San Jacinto County, T E X A S

Attachment: Order Passed by District Judges and Certified to Commissioners Court  
(Exhibit "A")

THE STATE OF TEXAS                   §                   IN THE DISTRICT COURTS OF  
COUNTY OF SAN JACINTO           §                   SAN JACINTO COUNTY, TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, ELIZABETH E. COKER, Judge of the 258<sup>th</sup> Judicial District and KAYCEE L. JONES, Judge of the 411<sup>th</sup> Judicial District in and for San Jacinto County, Texas in accordance with Section 152.031, Title 5, of the Local Government Code, after a public hearing held on August 16<sup>th</sup>, 2013, notice having been duly published in a newspaper of general circulation in San Jacinto County, set the compensation levels, to be paid in twenty-six equal payments, for the following positions in San Jacinto County for the budget and fiscal year commencing October 1, 2013 and closing September 30, 2014.

Position	Current Proposed Budget	Salary if Raised by Commissioner Court
County Auditor	\$49,191.77	\$50,191.77
Assistant County Auditor	\$32,136.00	\$33,136.00
Assistant County Auditor	\$30,642.50	\$31,642.50
Assistant County Auditor	\$27,744.08	\$28,744.08
Longevity	\$800.00	\$800.00

WITNESS our hands this the 16<sup>th</sup> day of August, 2013.

\_\_\_\_\_  
Elizabeth E. Coker, Judge 258<sup>th</sup> Judicial District

\_\_\_\_\_  
Kaycee L. Jones, Judge 411<sup>th</sup> Judicial District

Attest:

\_\_\_\_\_  
Rebecca Capers, District Clerk

\_\_\_\_\_  
Angelia Steele, County Clerk