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OPINION COMMITTEE

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WEBB COUNTY ATTORNEY'S OFFICE



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July 15, 2015

VIA EMAIL: Opinion_committee@texasattorneygeneral.gov

Honorable Ken Paxton
Attorney General of Texas
Request for Opinion T.G.C. 402.042
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Re: This is a request for an opinion regarding the Texas Local Government Code §111.041, §111.0415, §111.070, 111.0709 and the affect, if any, on §74.104 of the Texas Government Code.

Dear Mr. Paxton:

The Questions

1. Whether a commissioners court, that after it has approved, adopted and implemented its fiscal year budget pursuant to Subchapter B or C of The Texas Local Government Code §111, can subsequently adopt "standing orders" or budget policies that automatically reduce an already approved and budgeted salary upon the vacating of a position/slot by any employee without the need for further commissioner court action or approval, regardless if it is an elected officials budget?

a.) When a county commissioner's court approves and adopts its fiscal year budget, can they subsequently adopt and implement "standing orders" or policies that in effect act as automatic budgetary line item transfers that conflicts with other constitutional or statutory authority, such as §74.104; or restricts and interferes with the constitutional or statutory "sphere of authority" of elected officials?

b.) In the exercise of its budgetary authority under subchapter B or C of The Texas Local Government Code §111, what authority does a commissioners court retain, after approval and adoption of its fiscal budget, in the regulation of county budgetary matters as it relates to an elected officials' budgetary authority?

2. If a court coordinator, whose position is governed by Texas Government Code §74.104, retires in the middle of the County's fiscal year, does the commissioners court have the authority to reduce the approved salary, under Texas Local Government Code §111, without the recommendation by the district court judge as statutorily mandated by Texas Government Code §74.104; regardless of operation under Texas Local Government Code §111 Subchapter B or C?

- a.) Whether a commissioners court may adopt and implement a standing order to reduce the budget of an elected official outside the normal budgetary process without further formal court action as required under Texas Local Government Code §111?
- b.) Whether a commissioners court may adopt and implement a standing order during the normal budgetary process to reduce the budget of an elected official outside the normal budgetary process without further formal court action as required under Texas Local Government Code §111?

The fiscal year for 2016 for Webb County is October 1. The resolution of these questions will allow for a smoother transition into the upcoming normal budgetary process.

Factual Background

On September 22, 2014, the Webb County Commissioners Court approved and adopted its 2014/2015 fiscal year budget pursuant to Subchapter B of §111 of the Texas Local Government Code. (Webb County has since elected to follow Subchapter C for the 2015-2016 fiscal year budget. See **Exhibit 2** (2014/2015 Subchapter B Budget)).

Prior to said approval of the budget, the Webb County Commissioner's court initiated a wage and scale pay study in the hopes of implementing a standardized pay scale for all county departments and employees. The firm of Condrey & Associates, Inc., was selected to conduct a study and make recommendations to the commissioners court for the courts consideration with possible adoption and implementation of the standardized pay scale study in its 2014/2015 fiscal year budget. The Condrey plan consists of a comprehensive analysis conducted by a private company that sets the wages at what is deemed fair in comparative positions throughout the state of Texas. See **Exhibit 4** (Condrey Plan). The Condrey Plan sets out a classification of the person who has been hired by the county to a particular pay.

On August 25, 2014 the Webb County Commissioners adopted an updated version of the Condrey Plan. Shortly afterwards, the 406th District Court Judge, at the request of Webb County Commissioners Court, met with Condrey and specifically requested that the employee positions of court reporter and court coordinator be excluded from this wage and classification plan since it would impose on the judge's discretion to set and determine the salary as allowed by statute. Prior to the adoption of the 2014-2015 Webb County Budget, that included the budget for the 406th Judicial District Court, the Board of Judges agreed and determined, pursuant to TGC §74.104, to recommend the amount of \$57,862.00 to be set as the compensation for all district court coordinators, including slot #0801. Consequently, on September 22, 2014, the Webb County Commissioners Court approved the budget and the compensation for slot #0801, at \$57,862.00. See **Exhibit 6**.

On September 22, 2014, the Webb County Commissioners Court adopted the 2014-2015 fiscal year budget in Item 13 and on September 22, 2014, in Item 14, adopted the Condrey Plan. See **Exhibit 3**.

During the budget process, the court further approved, adopted and implemented the wage and scale standardized pay plan as presented by Condrey and approved by the court. Subsequent to the adoption of the budget and the Condrey plan, the commissioners' court adopted and implemented certain standing orders or policies regarding the Condrey Plan. On November 10, 2014, the Webb County Commissioner's Court approved the implementation of the Webb County Government Wage Classification/Step Increase Policy and ordered its incorporation into the Webb County Policies and Procedures. See **Exhibit 7**. The policies giving rise to this request is a commissioner court "standing order" policy requiring that during the fiscal year, the county administrative services department will immediately reduce the salary, as directed by the Condrey Plan, upon the vacancy of any county employee slot, regardless of department or elected office. The policy requires all salaries of vacated slots are to be reduced to an original starting point which is drastically lower than the originally budgeted, approved and adopted salary. In addition, a similar policy states that if an existing employee transfers or is promoted to said vacant slot, the department may not pay said transferred or promoted employee more than a 5% percent increase from their prior salary even if the approved and budgeted slot pays more than 5%. It is the implementation and effect of these policies that gives rise to this request as it pertains to a commissioner court's statutory budget authority. See **Exhibits 3 & 8**.

For Example: A secretary making \$30,000.00 dollars if promoted could only receive a \$1,500 dollar pay increase. The new amount if greater will increase to the minimum amount set by Condrey. See **Exhibit 3**. Assuming the new minimal salary amount is \$45,000.00 for an individual being promoted to court coordinator would then be paid less than \$57,862.00 that was set pursuant to Texas Government Code §74.104.

During the 2014-2015 Webb County Fiscal Year, the 406th District Court Coordinator retired after almost 30 years of service. See **Exhibit 1**. The retirement and subsequent application of the court adopted policies in its implementation of the Condrey Plan set into motion the commissioners' court standing order that when any employee (in this case a court coordinator) leaves their county employment and a new individual is hired in that particular pay slot, said policy requires that the salary to be automatically reduced to an entry level salary as set out by the Condrey Plan. See **Exhibit 7**. In this case, the 406TH District Court judge hired a new court coordinator to fill vacant slot #0801 and submitted the personnel worksheet to the Webb County Human Resources Department for processing. In said worksheet, the judge requested that the Webb County Administrative Services department include the appropriate compensation as set in his budget and as had been approved during the 2014-2015 budget process.

The judge was informed that the (forms) would not be accepted or approved, as the compensation exceeded the amount listed for this slot/position (Court Coordinator) pursuant to the Webb County Wage and Classification Plan and Policies as submitted by Condrey & Associates, Inc., and approved by the Webb County commissioner's court. The District Court

judge objected to such action and on April 27, 2015, the 406th District Court Judge placed an item on the commissioner court agenda requesting that the wage as set by the District Court and that was approved and adopted during the normal budget process by the Commissioners court on September 22, 2014 be reinstated. On May 11, 2015 the Webb County Commissioner's Court agreed to set the wage at the approved amount set on September 22, 2014 and requested that an Attorney General's Opinion still be sought to clarify the remaining questions.

On May 11, 2015, the discussion revolved around whether the position of a court coordinator, which is regulated by Texas Government Code §74.104, is exempted and not subject to the Condrey Plan policies as implemented and adopted with standing orders for predetermined budgetary line item transfers upon the vacancy of any county position during the fiscal year? This lead to the question of whether the commissioner court's authority to amend the budget under either Subchapter B of the Texas Local Government Code §111.041, §111.0415 or Subchapter C Texas Local Government Code §111.070, §111.0709 allows for such standing orders or policies which effectively amend the budget without the need for further court action. This policy has given rise to other issues that are interconnected and need to be addressed in this request. There are no exceptions found in the Condrey Plan regarding the employees of elected officials, and this standing order applies to all offices including elected officials. The "standing order" or policy allows for the reduction of an elected officials budget during the fiscal year without the need for further court action or the need for the declaration of an emergency. See **Exhibit 7**.

This request arises from the interplay of the Commissioners Courts authority to amend the budget under Subchapter B of the Texas Local Government Code §111.041, §111.0415 or Subchapter C Texas Local Government Code §111.070, §111.0709 and a District Courts statutory authority to determine reasonable compensation for the court coordinator position in accordance with Texas Government Code §74.104. Likewise, this has raised additional questions with respect to the interplay of the commissioner courts budgetary authority under the above mentioned sections and an elected officials "sphere of authority" once their budget has been adopted and approved.

So this leads to a question of whether a Commissioners Court can adopt a "standing order" or plan policy that sets the reasonable compensation and modification thereof to any entry level salary of the employees appointed by elected officials during the fiscal year?

Legal Authority

Texas Constitution

Article 5 Sec. 1.

The Texas Constitution grants judicial power to District Judges and Commissioner Courts; both Offices are elected positions.

Texas Government Code Subchapter E

Texas Government Code Sec. 74.101.

COURT COORDINATORS. (a) The local administrative judge and each district or statutory county court judge may establish a court coordinator system and appoint a court coordinator for his court to improve justice and expedite the processing of cases through the courts.

(b) Each court coordinator serves at the pleasure of the judge who appointed him.

Texas Government Code Sec. 74.102.

DUTIES. (a) The courts by local administrative rule shall designate the duties of the court coordinators.

(b) To promote uniform and efficient administration of justice in this state, the court coordinators shall cooperate with regional presiding and local administrative judges and state agencies having duties in the area of the operation of the courts.

Texas Government Code Sec. 74.103.

STAFF. The courts may appoint appropriate staff and support personnel according to the needs in each county.

Texas Government Code Sec. 74.104.

COMPENSATION. (a) The judges shall determine reasonable compensation for the court coordinators, subject to approval of the commissioners court.

(b) Upon approval by the commissioners court of the position and compensation, the commissioners court of the county shall provide the necessary funding through the county's budget process. County funds may be supplemented in whole or part through public or private grants.

Texas Government Code Sec. 74.105.

OTHER LAW. This subchapter does not affect other provisions of law relating to the pay and duties of court administrators, court managers, and court coordinators.

Texas Local Government Code Subchapter C

Texas Local Government Code 111.070.

EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER. (a) The commissioners court may spend county funds only in strict compliance with the budget, except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably

diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk and the clerk shall attach the copy to the original budget.

(c) The commissioners court *by order may*:

(1) *amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure*; or

(2) designate the county budget officer or another officer or employee of the county who may, as appropriate and subject to conditions and directions provided by the court, amend the budget by transferring amounts budgeted for certain items to other budgeted items.

Texas Atty. Gen. Op.

Tex. Atty. Gen. Op. L.O. No. 92-44 (1992)

Re: Responsibility of the commissioners court with respect to district court order decreeing pay increases for district court personnel.

....

We find that under the Texas Government and Local Government Codes, the county commissioners court may exercise its discretion in budgeting salaries for both the court coordinator and the secretary to the district judges. The appointment of court coordinators is governed by subchapter E of chapter 74 of the Government Code. Pursuant to these provisions, designated judges may establish a court coordinator system for their courts and appoint a court coordinator. Gov't Code §§ 74.101(a), 74.102(a). The court coordinator serves at the pleasure of the judge who appointed him. Id. § 74.101(b). However, the judges do not have the power to mandate the amount of the court coordinator's salary. The salaries of court coordinators are established in accordance with the following procedures:

(a) The judges shall determine reasonable compensation for the court coordinators, subject to approval of the commissioners court.

(b) Upon approval by the commissioners court of the position and compensation, the commissioners court of the county shall provide the necessary funding through the county's budget process. County funds may be supplemented in whole or part through public or private grants.

....

While this provision has not been interpreted by a court of record, the phrase "subject to approval of the commissioners court" relative to the establishment of salaries of assistant criminal district attorneys has been. In *Commissioners Court of Caldwell County v. Criminal Dist. Attorney*, 690 S.W.2d 932 (Tex.App.—Austin 1985, writ ref'd n.r.e.), the court harmonized two statutes, one authorizing the prosecuting attorney to "fix" the salaries of his assistants "subject to the approval of the commissioners court" and the other authorizing the commissioners court, following a public hearing, to finally approve and adopt a county budget incorporating any changes to the county judge's proposed budget that the commissioners court deemed legally necessary or proper. The court of appeals determined that the first statute authorized the prosecuting attorney to specify

salaries and include them as part of the county judge's proposed budget under the second statute. The phrase "subject to the approval of the commissioners court" in the first statute could then be read in harmony with the court's explicit authority under the second statute to finally approve and adopt the county's annual budget. The commissioners court therefore could change the salaries specified by the prosecuting attorney during its regular budget process. But see *Commissioners Court of Hays County v. District Judge*, 506 S.W.2d 630 (Tex.Civ.App.—Austin 1974, writ ref'd n.r.e.) (statute providing that district court judge fix salaries of probation officers with advice and consent of commissioners court did not give commissioners veto power over judge's decision); Attorney General Opinion JM-144 (1984).

Tex. Atty. Gen. Op. L.O. No. 96-003 (1996)

Re: Whether the Orange County Commissioners Court must order payment in accordance with a district court order adjusting salaries of court administration personnel within the amount approved and budgeted.

...

The italicized language of section 74.104(a) was construed in Letter Opinion No. 92-44 (1992) to mean that the judges shall recommend salaries for the court coordinators, subject to the authority of the commissioners court to change the recommended amounts during the regular budget adoption process.

...

After the commissioners court approves the county budget that includes salaries for the court administrator, the court administrator's secretary, and the court coordinators, it is subject to Local Government Code section 111.010, which provides in part:

(b) After final approval of the budget, the commissioners court may spend county funds only in strict compliance with the budget, except in an emergency.

(c) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity....

(d) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.

...

Tex. Atty. Gen. Op. JC-0214 (2000)

Generally, reductions in budgets of this sort are within the discretion of the court. As we have pointed out, it is well-settled that the commissioners court has broad authority in the essentially legislative act of setting the fiscal priorities of the county. See *Commissioners Court of Caldwell County*, 690 S.W.2d at 934; *Hooten*, 863 S.W.2d at 528. However, there are limits to this authority. The limits are described by the San Antonio Court of Appeals in *Vondy II*: "The Commissioners Court cannot attempt to restrict or abolish a constitutionally established office by refusing to reasonably compensate the holder of

such office. The Commissioners Court also cannot attempt to abolish or restrict the office of constable by refusing to allow or by preventing the elected official from performing those duties required of him." Vondy II, 714 S.W.2d at 422 (emphasis added).

...

After Vondy II, then, the rule in this matter may most succinctly be stated as follows: the commissioners court, in exercise of its budgetary powers, may take a different view of the importance of certain functions than an elected officer does, and may therefore budget that officer less to perform that function than he may request. What, under Vondy II, it cannot do is "prevent[] the elected official from performing those duties required of him." Vondy II, 714 S.W.2d at 422. Whether any particular budget cut is so severe as to meet this standard is a question of fact, upon which we cannot opine. A district court, were it to consider this matter, could not simply substitute its judgment as to what constitutes better public policy for that of the duly elected commissioners. See *id.* at 420; Bomer, 676 S.W.2d at 665; Sherrod, 854 S.W.2d at 923.

...

The commissioners court of a county, in the exercise of its authority to set a county budget, may take a different view of the importance of certain functions than does an elected officer and may budget that officer less money to perform that function than he requests. It may not prevent him thereby from performing his statutorily mandated duties. However, in determining whether the commissioners court has abused its discretion in this regard, the district court may not substitute its view of sound public policy for that of the commissioners.

Tex. Atty. Gen. Op. GA-0037 (2003)

Re: County commissioners court's authority over hiring and budgetary matters concerning an elected county officer.

...

We consider the court's authority generally and not with respect to any particular county officer. None of your questions refer to the commissioners court's authority vis-à-vis a particular county officer. Statutes specifically applicable to a particular county officer may provide the officer with more or less authority, relative to the commissioners court, and may lead to a different result. See, e.g., *Commissioners Court of Harris County v. Fullerton*, 596 S.W.2d 572, 576 (Tex. Civ. App.-Houston [1st Dist.] 1980, writ ref'd n.r.e.)

....

A county commissioners court's extensive authority over the county's budget is set forth in statutory law. See *Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App.-Austin 1997, writ denied) (stating that commissioners court may exercise only those powers that are expressly conferred upon it or that are necessarily implied from express powers); accord Tex. Att'y Gen. Op. No. JC-0584 (2002) at 17 (same).

...

§ 111.070(b). The commissioners court may, however, "amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure." *Id.* § 111.070(c). And the commissioners court may change the budget "for county purposes." *Id.* § 111.0709.

....

...although a county commissioners court sets an elected county officer's budget, the officer may determine how best to use the funds to accomplish the office's constitutional and statutory duties. See Tex. Att'y Gen. Op. No. JC-0214 (2000) at 6.

...

A commissioners court may not, on the other hand, reduce an elected official's budget in the middle of a budget year if it does not transfer the funds to another item already included in the county budget unless the commissioners court determines that there is an emergency.

...

A commissioners court may not impose the condition on a position of employment in an elected official's department such that, if the present employee vacates the position, ..., or (2) will be reduced to increase a promoted existing employee's salary no more than three percent.

...

A commissioners court may transfer funds from one line item in the county budget to another existing line item in the county budget without authorizing an emergency expenditure. See Tex. Loc. Gov't Code Ann. §111.070(c) (Vernon 1999). Thus, to the extent that a budget amendment consists of transferring funds from one budgeted item to another, section 111.070(c) of the Local Government Code clearly authorizes the court to so amend the county budget, even in the absence of an emergency. See *id.* On the other hand, to the extent that a proposed amendment is not a mere transfer, the court may not accomplish the amendment in the absence of an emergency. See *id.* §111.070(b)-(c).

In general, a county commissioners court has discretionary authority to approve an expenditure proposed by a county officer after the annual budget is adopted, although the court may not, by refusing to approve a requested expenditure, interfere with an elected officer's ability to perform his or her legal duties.

Tex. Att'y. Gen. Op. GA-0154 (2004)

....

A commissioners court may not delegate its authority to amend the county budget by transferring amounts between budgeted items. By its plain terms, section 111.070(c) requires that the commissioners court itself act to amend the budget. Because the authority to delegate is not necessary to the exercise of the express authority to amend the budget, this authority may not be implied. Moreover, section 111.070(c) authorizes a commissioners court to amend the county budget and prescribes how that authority may be exercised - by a commissioners court order transferring a specific amount of money from one budget item to another. This expressly prescribed method excludes budget amendments pursuant to a commissioners court order generally authorizing transfers between budgeted items pursuant to a delegatee's approval.

...

A commissioners court may not delegate its authority under Local Government Code section 111.070(c) to amend the county budget by transferring amounts between budgeted items. To the extent the county budget specifies items within a departmental budget, the commissioners court may not delegate its authority to approve amendments to

the county budget by transferring amounts between such items.

Tex. Atty. Gen. Op. GA-0322 (2005)

Re: Whether a commissioners court or another elected official may continue to pay compensation to a suspended employee.

....

Although a county commissioners court sets a county officer's budget, the officer may determine how best to use the funds to accomplish the officer's constitutional and statutory duties. See Tex. Atty Gen. Op. No. JC-0214 (2000) at 3. Texas county officials hold "virtually absolute sway over the particular tasks or areas of responsibility entrusted to [them] by state statute." *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980).

Tex. Atty. Gen. Op. GA-0656 (2008)

An elected officer's role — which the Beaumont court of appeals has described as encompassing "a broad discretion in the selection of their staff and their employees"—is based on the officer's responsibility to perform the constitutional and statutory duties assigned to the officer. *Williams v. Bagley*, 875 S.W.2d 808, 811 (Tex. App. — Beaumont 1994, no writ)." Tex. Atty Gen. Op. GA-0656 (2008).

TEXAS SENATE BILL

SRC-TNM S.B. 1395 75(R)BILL ANALYSIS

Senate Research Center S.B. 1395

By: Lindsay

Intergovernmental Relations

4-3-97

Committee Report (Amended)

DIGEST

Currently, Chapter 111, Local Government Code, provides for the preparation and adoption of an annual budget by counties. Subchapters A, B, and C of Chapter 111, Local Government Code, provide varying degrees of flexibility in amending the budget and in spending revenues not included in the budget, such as bonds and grants. There has been some concern as to whether counties operating under Subchapter C have the authority to spend bond proceeds, grants, or other revenue not included in the budget, or to amend the budget. S.B. 1395 would provide all counties the same flexibility to amend the budget and spend unanticipated revenues by copying into each subchapter in Chapter 111, Local Government Code, the relevant provisions of the other subchapters.

PURPOSE

As proposed, C.S.S.B. 1395 outlines provisions regarding the preparation of a county budget in certain counties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioners court under SECTIONS 1, 2, 4, 5, 6, 7, and 8 (Sections 111.0105, 111.0106, 111.041(c), 111.070 (c), 111.0705, 111.0706, 111.0107, 111.045, and 111.708, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 2. Amends Section 111.041, Local Government Code, as follows:

Sec. 111.041. New heading: EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER. Authorizes the commissioners court to spend county funds only in strict compliance with the budget except as provided by this section. Authorizes the commissioners court to authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. Provides that if the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk, and the clerk shall attach the copy to the original budget. Authorizes the commissioners court, by order, to amend the budget to transfer an amount budgeted for one item to another budget item without authorizing an emergency expenditure. Deletes text authorizing the commissioners court to transfer an existing budget surplus to a budget of a similar kind and fund and prohibiting the transfer from increasing the total of the budget.

SECTION 3. Amends Chapter 111B, Local Government Code, by adding Section 111.0415, as follows:

Sec. 111.0415. CHANGES IN BUDGET FOR COUNTY PURPOSES. Provides that this subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

SECTION 4. Amends Section 111.070, Local Government Code, to make conforming changes.

TEXAS HOUSE BILL

BWH C.S.S.B. 1395 75(R) BILL ANALYSIS

COUNTY AFFAIRS

C.S.S.B. 1395

By: Lindsay (Stiles)

5-14-97

Committee Report (Substituted)

BACKGROUND

Currently, Chapter 111, Local Government Code, provides for the preparation and adoption of an annual budget by counties. Chapter 111 has three subchapters: A, B, C. Subchapter A applies to counties with a population of 225,000 or less. Subchapter B applies to counties with a population of more than 225,000. Subchapter C applies to counties with

population greater than 125,000 who choose to operate under it and not Subchapter A or B.

The principal difference between the three subchapters is who serves as budget officer for commissioners court. Under Subchapter A, the budget officer is the county judge. Under Subchapter B, the budget officer is the county auditor. Under Subchapter C, the budget officer is appointed by commissioners court.

The three Subchapters provide varying degrees of flexibility in amending the budget and in spending revenues not included in the budget, such as bonds and grants. Subchapter A has provisions for amending the budget to deal with emergencies, while Subchapters B and C do not. Subchapter B has provisions for budgeting and spending proceeds of bonds or unanticipated revenues, grants and aid, though Subchapters A and C do not. Subchapter C has none of the flexibility provisions that Subchapter A and B have.

There has been some uncertainty as to whether counties operating under Subchapter C have the authority to spend bond proceeds, grants or other revenue not included in the budget, or to amend the budget.

PURPOSE

C.S.S.B. 1395 would provide all counties the same flexibility to amend the budget and spend unanticipated revenues by copying into each subchapter in chapter 111, Local Government Code, the relevant provisions of the other subchapters.

RULE MAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a stat officer, department, agency or institution.

....

SECTION 7. Amends Section 111.070, Local Government Code by providing guidelines for authorization of emergency expenditures and budget transfers.

SECTION 8. Amends Subchapter C, Chapter 111, Local Government Code, by adding Sections 111.0705, 111.0706, 111.0707, 111.0708 and 111.0709. Modifies existing provisions related to bonds and anticipation warrants to account for all of the various kinds of debt instruments that counties can now use. Adds provision to allow the commissioners court, when preparing the county budget, to pledge as security on bonds or other debt instruments revenue from existing state taxes that are turned over to the county. Makes conforming changes.

SECTION 9. Emergency clause.

COMPARISON OF ORIGINAL BILL TO SUBSTITUTE:

C.S.S.B. 1395 contains provisions which require certain county officers to furnish those county judges who are also budget officer, information necessary to prepare the budget; relate to bonds and obligations to account for all of the various kinds of debt instruments that counties use; and allow pledges of security on bonds or other debt instruments revenue from existing state taxes which are turned over to the county.

S.B. 1395 does not contain these provisions.

Reference Authority

1. Texas Constitution Art. V §8
2. Texas Government Code §74.104
3. Texas Local Government Code §111.070
4. Tex. Atty. Gen. Op. L.O. No. 92-44 (1992)
5. Tex. Atty. Gen. Op. L.O. No. 96-003 (1996)
6. Tex. Atty. Gen. Op. JC-0214 (2000)
7. Tex. Atty. Gen. Op. GA-0037 (2003)
8. Tex. Atty. Gen. Op. GA-0154 (2004)
9. Tex. Atty. Gen. Op. GA-0322 (2005)
10. Tex. Atty. Gen. Op. GA-0656 (2008)
11. Texas Senate Committee, SRC-TNM S.B. 1395 75(R) BILL ANALYSIS
12. Texas House Committee, BWH C.S.S.B. 1395 75(R) BILL ANALYSIS

Argument

When a county commissioner's court approves and adopts its fiscal year budget, can they, pursuant to their budgetary authority under Sections §111.041, §111.045, or §111.070, §117.0709 of the Texas Local Government Code, subsequently adopt and implement "standing orders" or policies that in effect act as automatic budgetary line item transfers that conflict with other constitutional or statutory authority, such as §74.104, or restricts and interferes with the constitutional or statutory authority of elected officials to select their employees.

Through research it is unclear from the attorney general opinions and statutes as to the interplay of Sections §111.041, §111.045, or §111.070, §117.0709 of the Texas Local Government Code and Section §74.104 of the Texas Government Code. Likewise, it is unclear as to the budget decision making spheres of authority between a county commissioner's court and an elected official once the budgets have been approved and adopted.

A county commissioner court's extensive authority over the county's budget is set forth in statutory law. *See Abbott v. Pollock*, 946 S W 2D 513(Tex. App-Austin 1997, writ denied). A commissioner's court may only exercise those powers expressly conferred upon it or that are necessarily implied from express powers. Generally, a commissioner's court, after approving the annual budget, may expend funds only in strict compliance with the budget with limited exceptions such as an emergency expenditure approved as an amendment to the budget, line item transfers without the need for an emergency declaration and changing the budget "for county purposes." Similarly, Texas Government Code §74.104 establishes that (a) the judges shall determine a reasonable compensation for the court coordinators, subject to approval of the commissioners court and (b) upon approval by the commissioners court of the position and compensation, the commissioner court of the county shall provide the necessary funding through the county's budget process. Pursuant to §74.104, the District Court will determine the reasonable compensation of anyone who is appointed as a court coordinator and the Commissioners Court as part of its authority may accept or reject that recommendation but may

not change the amount outside the normal budgetary process. Tex. Atty. Gen. Op. GA-0322 (2005).

Previous questions have resulted in the citing of rules that appear to lie within powers granted to both the Commissioners Court and the District Court. It is well settled that the Commissioners Court has the authority to control county spending. Tex. Atty. Gen. Op. GA-0322 (2005). If the Webb County Commissioners Court relies on §111.041(c), or §111.070(c) of the Texas Local Government Code arguing that they may “amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.” *Id.* §111.041(c), §111.070 (c). The Rule Making Authority of §111.070 as stated by the House Committee (HC), “It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency or institution. C.S.S.B. 1395 75(R). The HC also states, the enactment of §111.070 was to give broader discretion on spending of *surplus funds*. This interpretation is not meant to contradict Tex. Atty. Gen. Op. GA-0037 (2003) or Tex. Atty. Gen. Op. GA-0154 (2004). Both A.G. Opinions are based on different questions but do recite the law in relation to §111.070. In order to harmonize the two statutes, a strict reading of each statute would lead to the following conclusion.

The Texas Legislature added §74.104 to prevent commissioners courts from affecting the constitutional and statutory functions of the District Court. When a District Court exercises its powers and duties under §74.104 by appointing a court coordinator and setting the reasonable compensation, it is acting within its zone of authority as an elected official of a constitutionally created office. When a Commissioners Court transfers money from one budget item to another budgeted item, it acts within its zone of authority of §111.041, or §111.070, depending on which subchapter applies. In the instant case, on October 1, 2014, the Commissioners Court in Webb County approved the 2014-2015 fiscal year budget of the 406th District Court which included an approved fixed amount of pay for the court coordinator position of the 406th District Court. At that moment, the Webb County Commissioners court determined the reasonable salary for slot #0801 (the court coordinator for the 406th District Court of Webb County, Texas) when it approved that compensation in its 2014-2015 Budget on September 22, 2014.

Subsequent to the approval and adoption of the county budget, the commissioner’s court, adopted and implemented policies governing the implementation of the Condrey/Wage & Scale Plan. See **Exhibit 7**. The policy giving rise to the issue at hand is a “standing order” policy requiring the county administrative services department to automatically reduce the salary, as directed by the Condrey Plan, upon the vacancy of any county slot, regardless of department or elected office. The salary is to be reduced to a set starting point as adopted within the Condrey plan pay scale. In addition, a Wage & Scale policy states that if an existing employee transfers or is promoted to said vacant slot, the elected official may not pay said transferred or promoted employee more than a 5% percent increase or the Condrey amount whichever is more. *Id.*

In our case, upon the retirement of the district court judge's court coordinator, the district court judge's court coordinator slot salary was immediately reduced to a lower salary as per the commissioners court adopted Condrey Plan "standing order" or policy that was adopted in November of 2014. This reduction happened without any formal action by the commissioner's court other than adopting a "standing order" policy back in November of 2014. The "standing order" or policy required the immediate and automatic reduction of pay of, an already approved and budgeted, vacated slot to a pre-determined and approved amount. Also, the "standing order" or policy limits the amount of a raise an employee may receive because of a transfer or promotion to a new slot. The "standing order" requires that if there is to be an employee who transfers or is promoted, the policy restricts the elected official from paying the promoted employee more than a 5% percent salary increase from their previous salary even if the slot has sufficient funds allotted and approved in the originally adopted budget.

There are two reasons to believe that a "standing order" or policy requiring the automatic reduction of salary based on the filling of a vacant slot is contrary to §74.104; (1) the District Judge determines the reasonable compensation and (2) the District Court appoints the court coordinator.

This interpretation of law is not meant to state that during the next budgetary process the Commissioners Court cannot follow a budget they have determined to be appropriate for the next fiscal year within the limits set out in Vondy II. *see* Tex. Atty. Gen. Op. JC-0214 (2000)(section 111.070(c) authorizes a commissioners court to amend the county budget and prescribes how that authority may be exercised) *and* Tex. Atty. Gen. Op. GA-0322 (2005)(Having provided county officers with the resource of the established salary, the commissioners court is precluded from interfering with the county officer's use of that resource.).

Thus, in the instant case, the court should examine the 406th District Court's statutory authority in compensating its court coordinator and the manner in which the Webb County Commissioners created the challenged compensation policy that is lower than that contained in their 2014-2015 approved budget.

Also, these same policies raise additional concerns with respect to the proper application of a commissioner courts budgetary authority pursuant to §111.041, §111.045 or §111.070, §111.0709 and an elected officials "sphere of authority" over its budget once its budget has been adopted and approved shall be funded as required by law. While a commissioners court can set the county's budgetary priorities and decide generally how much of the country's funds to dedicate to each of the county's purposes, "... it cannot make those decisions for him. It may, in effect, tell that official what resources it will place at his disposal. But it may not micro-manage his decisions as to the use of those resources." Tex. Att'y Gen. Op. No. JC- 214 (2000) at pp. 2, 3. "The Commissioners Court sets the salary when it adopts the county budget. Once the commissioner's court provides the county officer with the resource of the salary, it may not interfere with his use of that resource for that budget year." Tex. Att'y Gen. Op. 0322 (2005)

citing Tex. Att'y Gen. Op. No. JC 0131 (1999) at 3 ("once the salaries of county officers and employees are set, the salaries may not be reduced, outside of the *regular* budget adoption and amendment process"); see also *Pritchard v. Abbott*, 350 S.W. 2d 333, 335 (Tex. 1961). Similarly, "A commissioners court may not, on the other hand, reduce an elected official's budget in the middle of a budget year if it does not transfer the funds to another item already included in the county budget unless the commissioners court determined that there is an emergency." See TEX. LOC. GOV'T CODE ANN. §111.070 (B) (emphasis added). Even the commissioner courts ability to change "the budget for county purposes" under TEX. LOC. GOV'T CODE ANN. §111.0709 applies only in emergency situations. See Tex. Att'y Gen. Op. JM- 784 (1987) at 14; *River Rd. Neighborhood Ass'n v. S. Tex Sports*, 720 S. W. 2s 551, 557 (Tex App.-San Antonio 1986, writ dism's) (defining "emergency"). Also, county commissioners court "may spend county funds only in strict compliance with the budget" unless an emergency exists. See TEX LOC. GOV'T CODE ANN. §111.070 (a). In our case, there is no record that an emergency determination was ever made in the specific 2014-2015 budget process within the Webb County Commissioner Court. Moreover, the Webb County Commissioners Court issued a general order on September 22, 2014, wherein they addressed amendments to the county budget as follows:

AMENDMENTS TO THE COUNTY BUDGET may be authorized by Commissioners Court but only after certification by the County Auditor as to the availability of funds. There will be no budget amendments, except for grants of or for emergency purposes, during the first six (6) months of the fiscal year. Commissioners Court can approve the transfer of funds from one budgeted line item to another budgeted line item but no amendments may be made which would result in exceeding the total expenditures under the budget nor may an amendment provide for expenditures not originally included in the budget unless there is an unforeseen emergency. With exception of Grants, Transfers from payroll line items will not be allowed for any purpose unless the transfer is to cover unforeseen shortfalls in payroll related expenses. Salaries in the adopted budget will not be increased for any reason regardless of whether they impact or not impact the department's total budget. Employee job title in the adopted budget may not be changed and department reorganizations will not be allowed during the fiscal year. See **Exhibit 5**.

Furthermore, the record only shows that in November of 2014, after adoption of the budget, the Webb County Commissioners court adopted and implemented certain "standing orders" and policies that seem to conflict with other constitutional and statutory authorities. In reading Tex. Att'y Gen. Op. GA-0656 (2008) it reaffirms that, "An elected officer's role — which the Beaumont court of appeals has described as encompassing "a broad discretion in the selection of their staff and their employees"—is based on the officer's responsibility to perform the constitutional and statutory duties assigned to the officer. *Williams v. Bagley*, 875 S.W.2d 808, 811 (Tex. App. — Beaumont 1994, no writ)." Tex. Att'y Gen. Op. GA-0656 (2008).

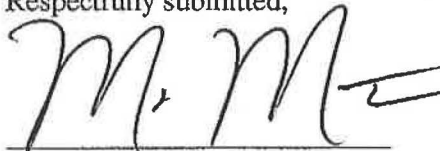
REQUEST FOR OPINION

In sum, Webb County needs clarification on (1) the proper application of §111.041, §111.045 or §111.070, §111.0709 and §74.104 with respect to reducing the budget of an district judge during the fiscal year on a standing order to reduce the salary of the vacated position of a court coordinator and;

(2) Whether a commissioners court may adopt and implement a standing order to reduce the budget of an elected official outside the normal budgetary process without further formal court action as required under Texas Local Government Code §111?

Thank you, in advance for your attention to this matter. If you have any questions, or if you require additional information, please do not hesitate to call. 956-523-4044.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'M. M.' followed by a stylized flourish.

Marco Montemayor
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