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By Opinion Committee at 3:19 pm, Jun 23, 2020



**Scott R. Peal**

COUNTY ATTORNEY  
CHAMBERS COUNTY

**RQ-0359-KP**

FILE# **ML-48822-20**

I.D.# **48822**

TELEPHONE: 409-267-2411  
FAX: 409-267-8296

POST OFFICE BOX 1200  
ANAHUAC, TEXAS 77514

Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

June 23, 2020

RE: In response to complaints of harassment and intimidation by a Chambers County employee against the County Auditor - whether (1) the appointing district judges (the "Judicial Board") may consider the County's independent investigation report as evidence supporting any decision to remove the auditor for official misconduct under Section 84.009(1)(as opposed to conducting its own investigation); (2) whether the removal of the County Auditor is within the sole discretion of the Judicial Board; (3) whether the County Auditor is entitled to any form of due process (public hearing or otherwise) in connection with any review of the Auditor's performance and consideration of removal; and (4) whether the undefined standard for "official misconduct" under Chapter 84 is the same as the definition of official misconduct under Chapter 87 of the Local Government Code (Removal of County Officers From Office).

Dear General Paxton:

A Chambers County employee complained to County Human Resources and the County Judge that he was being harassed and intimidated by the County Auditor, based on an alleged personal vendetta (unrelated to work) by the Auditor against the employee.

The County retained a third-party investigator (an employment attorney, Board Certified by the Texas Board of Legal Specialization) to conduct an independent investigation into the employee's complaints. Multiple County employees and elected officials were interviewed. The investigator then prepared a report summarizing the facts discovered during the investigation.

A county auditor is appointed by a board of district judges, in accordance with Texas Local Government Code Chapter 84. That same chapter provides for the removal of an auditor after "**due investigation** by the district judges who appointed the auditor" if it is "**proven** that the auditor ... has committed official misconduct." Texas Local Gov't Code Sec. 84.009 (emphasis added.)



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The phrase "due investigation" and the meaning of "proven" are undefined in the statute.

Here, as noted above, the County conducted its own independent investigation of the employee's complaint and has received a written report from the investigator.

Because the County has no authority to counsel, discipline, or remove the County Auditor, the following questions have been raised by all parties involved (including the County, the aggrieved employee, and the Judicial Board):

1. May the Judicial Board consider the County's independent investigation report as evidence supporting any decision to remove the auditor for official misconduct under Section 84.009(1)(as opposed to conducting its own investigation)?;
2. Whether the removal of the County Auditor (based on consideration of evidence it deems to establish official misconduct) is within the sole discretion of the Judicial Board. In other words, is the Judicial Board's decision to remove the Auditor subject to any standard of review, and if reviewable, by whom?;
3. Whether the County Auditor is entitled to any form of due process (public hearing or otherwise) in connection with any review of the County Auditor's performance and consideration of removal; and,
4. Whether Chapter 84's undefined standard for "official misconduct" is the same as or different from the definition of official misconduct under Chapter 87 of the local Government Code (Removal of County Officers From Office).<sup>1</sup>

In conclusion, the County received a serious complaint from a County employee and conducted a prompt and thorough investigation. The County also received a detailed report from its retained third-party investigator. However, given that the County has no direct control over the County Auditor, and considering the unanswered questions above regarding the applicable

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<sup>1</sup> See Attorney Gen. Op. GA-0442(2006).



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standard and procedure for the Judicial Board to take action, the County seeks guidance on the above questions in order to fully and properly address the aggrieved employee's complaint.

Sincerely,

A handwritten signature in blue ink that reads "Scott R. Peal".

Scott R. Peal  
County Attorney, Chambers County  
409-267-2411  
409-267-8296 (Fax)  
TBN: 24037253