



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

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ATTORNEY GENERAL

232-57
274-61

Hon. R.S. Wyche, County Auditor
Gregg County
Longview, Texas

Dear Sir:

Opinion No. 0-1053
Re: County budget.

This department is in receipt of your letter of June 26, 1939, wherein you request our opinion upon three questions involving the Texas Budget Law. We quote from your letter as follows:

"Here are three questions involving the Texas Budget Law, article 689a-9, 10, 11, 12 and 20, R.C.S., on which we desire your interpretation:

"1. We direct your attention to that part of article 689a-11 which reads, 'and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the court as amendments to the original budget.' What constitutes grave public necessity? May the budget be amended by the court only in case of grave public necessity?

"2. May a county legally expend its funds if such funds are not expended according to a legally adopted, adequate budget?

"3. What is the significance of article 689a-20 which reads, in part, 'Nothing

Hon. R.S. Wyche, County Auditor, Page 2

contained in this Act shall be construed as precluding . . . the County Commissioners' Court from making changes in the budget for county purposes . . . " Does this mean, among other things, that the Commissioners' Court may amend the adopted county budget at will, without regard to the existence of grave public necessity?"

Article 689a-9, Revised Civil Statutes of Texas, provides for the preparation of the county budget. Article 689a-10, Revised Civil Statutes of Texas, provides that when the county judge has completed the budget for the county that a copy of the same should be filed with the clerk of the county court, available for the inspection of any taxpayer.

Article 689a-11, Revised Civil Statutes of Texas, in part, reads as follows:

"The Commissioners' Court in each county shall each year provide for a public hearing on the county budget - which hearing shall take place on some date to be named by the Commissioners' Court subsequent to August 15th and prior to the levy of taxes by said Commissioners' Court. Public notice shall be given that on said date of hearing the budget as prepared by the County Judge will be ~~considered~~ by the Commissioners' Court. Said notice shall name the hour, the date and the place where the hearing shall be conducted. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the County Judge shall be acted upon by the Commissioners' Court. The Court shall have authority to make such changes in the budget as in their judgment the law warrants and the interest of the taxpayers demand. When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court shall be filed with the Clerk of the

Hon. R.S. Wyche, County Auditor, Page 3

County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the court as amendments to the original budget. In all cases where such amendment to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted."
(Underlining ours).

Article 689a-20, Revised Civil Statutes of Texas, reads as follows:

"Nothing contained in this Act shall be construed as precluding the Legislature from making changes in the budget for State purposes or prevent the County Commissioners' Court from making changes in the budget for county purposes or prevent the governing body from making changes in the budgets for school purposes; and the duties required by virtue of this Act of State, County, City and School Officers or Representatives shall be performed for the compensation now provided by law to be paid said Officers, respectively."

Corpus Juris, Volume 28, page 824, defines the term "grave" as follows:

"As an adjective, deserving serious consideration or thought; important; weighty."

Corpus Juris, Volume 50, Section 57, page 856, defines the term "public necessity" as follows:

Hon. R.S. Wyché, County Auditor, Page 4.

"Needed for reasonable convenience, facility, and completeness in accomplishing a public purpose; great or urgent public convenience; with reference to legislative action, that urgent, immediate public need arising from existing conditions, which, in the judgment of the Legislature, justifies a disturbance of private rights which otherwise might be legally exempt from such interference."

This department held, in an opinion written by Hon. Joe J. Alsup, Assistant Attorney General, dated October 3, 1935, that the Commissioners' Court of a county was unauthorized to make changes in a budget after its final adoption except in cases of emergency and grave public necessity. We quote from said opinion as follows:

"It is an elementary principle of law that in the construction of statutes that they must be construed as a whole and in such a manner as to give force and effect to each and every clause found therein. Section 11, quoted above, specifically provides that after a hearing of the taxpayers that the Commissioners' Court should act upon said budget. The article further provides that the Commissioners' Court shall have authority to make such changes in the budget as in their judgment the law warrants. These changes, under this article, are to be made prior to the adoption of the budget and after a full hearing of the taxpayers.

"It is also significant to note that the Legislature has enacted in this law an emergency clause providing that in case of great public necessity the budget so approved by the court may be amended. This may only be done, however, in case conditions exist which could not be foreseen at the time of the adoption of the budget."

"We are not of the opinion, upon consid-

Hon. R.S. Wyohe, County Auditor, Page 5

ering the act as a whole, that Section 20, quoted above, does not authorize the Commissioners' Court to make changes so as to increase the amount of the budget after its final adoption except in cases of emergency . . . We do not think it authorizes the Commissioners' Court to increase the budget after its adoption. To so hold, would destroy the very purpose of the act."

This department held in an opinion written by Hon. James M. Neff, Assistant Attorney General, dated October 29, 1937, that the Commissioners' Court of a county was unauthorized to make any expenditure of funds of the county, except in fixed compliance with the budget, except the emergency expenditures in case of grave public necessity, in which event the court was authorized to amend the budget in order to provide for such emergency expenditures. We enclose, herewith, a copy of this opinion.

As to what constitutes "grave public necessity" will largely depend upon the facts in each case.

In answer to your questions, you are respectfully advised that it is the opinion of this department that after the county budget has been finally approved by the Commissioners' Court, that the Commissioners' Court would not be authorized to amend the original budget, unless the expenditures set out in the amendment to the budget were emergency expenditures, and were caused and necessitated by a grave public necessity to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention have been included in the original budget.

You are further respectfully advised that it is the opinion of this department that the Commissioners' Court of a county is unauthorized to make any expenditure of the funds of the county, except in strict compliance with the budget, except emergency expenditures in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably

Hon. R.S. Wyche, County Auditor, Page 6

diligent thought and attention, have been included in the original budget, said emergency expenditures being made by proper amendment to the budget by the Commissioners' Court.

Therefore, your first question is answered in the affirmative. Your second question is answered in the negative. Your third question is answered in the negative.

Trusting that this answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*
Wm. J. Fanning
Assistant

WJF:ob
APPROVED JUL 21, 1939

Encl.
W. J. Fanning
FIRST ASSISTANT
ATTORNEY GENERAL

