



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
**ATTORNEY GENERAL**

January 9, 1961

Honorable George Gray  
County Attorney  
County of Ector  
Room 201  
Ector County Courthouse  
Odessa, Texas

Opinion No. WW-980

Re: The effect of the appointment of a purchasing agent for a county over 73,000 population as to (a) The continued necessity of having the County Judge approve purchases (b) Purchases by the sheriff of food and medicine for county prisoners, (c) Purchases of food, clothing and supplies by the County Welfare authorities.

Dear Mr. Gray:

You have requested an opinion on the following questions which arise as a result of the recent appointment of a County Purchasing Agent for Ector County pursuant to the permissive language of Article 1580, Vernon's Civil Statutes as amended by Acts, 56th Legislature, Regular Session, 1959, Chapter 418, Page 913.

What is the effect of such appointment:

1. As to the continued necessity of having the County Judge approve purchases;

2. As to the purchasing duties of the County Sheriff pursuant to the provisions of Articles 1040, 1046, and 1047, Code of Criminal Procedure; and,

3. As to the purchases of food, clothing and medical supplies heretofore made by the County Welfare Department?

1. The language of Section 1 (b), Article 1580, states in part, as you pointed out, ". . . All purchases made by such Agent shall be paid for by warrants drawn by the County Auditor on the County Treasurer of such county as in the manner now provided by law."

Article 1661, Vernon's Civil Statutes, sets forth the requisites of approval for claims, bills and accounts against the county which are submitted to the County Auditor. It states:

"He shall not audit or approve any such claim unless it has been contracted as provided by law, nor any account for the purchase of supplies or materials for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge." (Emphasis ours)

Neither the language of Article 1580 above quoted, nor any other provision of Article 1580 indicates that the Legislature intended, by the passage of the 1959 Amendment, to eliminate the requirement, set forth in Article 1661, that claims, bills and accounts be approved by the County Judge. As there is no ascertainable conflict between the provisions, it is our opinion that the County Judge must continue to approve all claims, bills and accounts presented to the County Auditor for payment by warrant drawn on the County Treasurer. Indeed, from a fair reading of the statutes in point, it is apparent that the Legislature intended that the two statutes work in conjunction with one another.

It is, therefore, the opinion of this office that the County Judge must continue to approve claims, bills and accounts including those arising from purchases made by the County Purchasing Agent. Articles 1580, 1661, Vernon's Civil Statutes.

2. The answer to your second question may be found in Opinion No. V-1188 rendered June 13, 1951, by this office. This opinion, in turn, was grounded on a 1933 opinion to Honorable J. L. Crosthwait, County Auditor of Dallas County. The substance of these two opinions reflects the well-established rule that where a general statute is enacted which is in apparent conflict with a specific statute speaking on the same subject matter, the specific statute will control and will not be overruled by implication. Perez v. Perez, 59 Tex. 322; San Antonio & A. P. Ry. Co. v. State, 95 S.W. 2d 680; Sam Bassett Lumber Co. v. City of Houston, 198 S.W. 2d 879.

We quote from the 1933 Opinion:

"It has been the longstanding policy of the Legislature of this State to commit the care and maintenance of prisoners to the sheriff. I do not believe that it was the intention of the Legislature to alter this policy by the provisions of Chapter 236, Acts of the Forty-third Legislature. If such an intention did exist it would have been a relatively easy thing to have made express provision therefor, both in the caption of the bill and in its text."

As the language of Chapter 236, Acts of the Forty-third Legislature, above mentioned, closely parallels the provisions of Article 1580, we find no inconsistency in the determination that it is not the duty of the Purchasing Agent of Ector County to perform the purchasing duties hitherto expressly assigned to the sheriff of said county pursuant to the provisions of Articles 1040, 1046, and 1047, Code of Criminal Procedure, as amended.

3. As regards purchases made by the County Welfare Department you are advised that there is no statutory authority for said purchases being made by the Welfare Department itself. Accordingly, there is no conflict between statutes which would lead to the conclusion that said purchases should be made by anyone other than the County Purchasing Agent. Purchases by the County Welfare Department would, therefore, not fall within the rule set forth above in paragraph 2. Absent a statute specifically designating the purchasing duties of the Welfare Department, it would appear that the provisions of Article 1580, Vernon's Civil Statutes, will control and said purchases should be made by the County Purchasing Agent. Article 1580, Vernon's Civil Statutes.

#### S U M M A R Y

Where a County Purchasing Agent is appointed pursuant to the provisions of Article 1580, Vernon's Civil

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Statutes, such appointment does not eliminate the requirement of Article 1661, Vernon's Civil Statutes, that the County Judge must approve the payment of all claims, bills and accounts.

It is not the duty of the County Purchasing Agent of Ector County to make purchases which are specifically designated to be the duty of the sheriff under Articles 1040, 1046, and 1047, Code of Criminal Procedure. Attorney General's Opinion V-1188.

Pursuant to the provisions of Article 1580, Vernon's Civil Statutes, it is the duty of the County Purchasing Agent to make purchases for the County Welfare Department.

Yours very truly,

WILL WILSON  
Attorney General of Texas

  
By  
Robert L. Armstrong  
Assistant

RLA:hmc/mm

APPROVED:

OPINION COMMITTEE  
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REVIEWED FOR THE ATTORNEY GENERAL

BY: Morgan Nesbitt