



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 21, 1996

The Honorable Delma Rios  
Kleberg County Attorney  
P.O. Box 1411  
Kingsville, Texas 78364

Letter Opinion No. 96-065

Re: Whether the district judges who appoint the county auditor or the county commissioners court may require the county auditor to document the auditor's travel expenses (ID# 38805)

Dear Ms. Rios:

Local Government Code section 152.031(a) requires the district judges who appoint the county auditor to set the "auditor's travel expenses and other allowances." This office has concluded in the past that an officer need not provide documentation prior to receiving a fixed travel allowance. You ask who may require a county auditor to provide documentation of travel expenses where the auditor receives a fixed travel allowance under section 152.031(a).

Consistent with our previous, analogous opinion, we conclude that the county auditor may not be required to provide documentation prior to receiving a fixed travel allowance. As part of the process by which the district judges set the auditor's travel allowance for the upcoming year, however, the district judges may request the auditor to provide some documentation of past travel expenses. The district judges then may extrapolate from that documentation to determine whether the proposed travel allowance for the upcoming year is reasonably tied to the auditor's official travel needs.

In response to an earlier request from you, this office issued Letter Opinion No. 95-038, which considers whether the district judges who appoint a county auditor may include a set car allowance in the auditor's salary. That letter opinion concludes that Local Government Code section 152.031(a) authorizes the district judges to include a fixed car allowance to cover official travel expenses, but the district judges must tie the amount of the allowance to the amount of travel expenses the auditor incurs while performing official county business.<sup>1</sup> Letter Opinion No. 95-038 does not consider whether the county auditor may be compelled to document his or her travel expenses.<sup>2</sup> This is the question you ask us to consider now.

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<sup>1</sup>Letter Opinion No. 95-038 (1995) at 4.

<sup>2</sup>See *id.* at 5 n.4.

Local Government Code section 152.031(a) authorizes the district judges who appoint the county auditor to set, at a hearing, the county auditor's annual salary and "travel expenses and other allowances." Upon approval by a majority of the judges, the district clerk certifies the judges' order to the county commissioners court, which must record the order in its minutes.<sup>3</sup> The county commissioners court may not debate the judges' order, nor do we find that it has any power to approve or disapprove the order.<sup>4</sup>

We believe we may draw our answer from Attorney General Opinion H-992, in which this office considered a statute substantially similar to Local Government Code section 152.031(a). There, this office determined that the commissioners court may not, under the statutory predecessor to Local Government Code section 152.011, require a county officer (other than auditor) to produce, prior to receiving a lump-sum travel allowance, documents proving "every mile traveled."<sup>5</sup> The statute at issue authorized the county commissioners court to set the amount of travel expenses and other allowances for certain county officers (other than a county auditor).<sup>6</sup> Because the statute did not specify how the commissioners court must calculate travel expenses, the opinion reasons, the legislature "apparently did not intend that [county officers] would be required to show that" they had actually incurred the traveling expenses allowed them before they could receive payment.<sup>7</sup> The opinion cautions, however, that the expense allowance must correspond to the expenses the county officials actually incurred while performing official business.<sup>8</sup> Thus, "[w]hile county officials may receive a monthly travel allowance without the need to account for every mile traveled . . . , the sum set as a travel allowance must be premised upon some basis of fact and reasonable calculation."<sup>9</sup>

Because the language of Local Government Code section 152.031(a) is so similar to the statute at issue in Attorney General Opinion H-992, we believe the logic of Attorney General Opinion H-992 applies here. We accordingly conclude that, under section 152.031(a), a county auditor may not be required to provide documentation of his or her official travel expenses to receive a fixed travel allowance. On the other hand, the district

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<sup>3</sup>Local Gov't Code § 152.031(a), (b).

<sup>4</sup>*See id.* § 152.031(b). A county commissioners court may exercise only those powers that the state constitution and statutes confer upon it, either explicitly or implicitly. Attorney General Opinion V-1162 (1951) at 2 (and sources cited therein); *see* Attorney General Opinion MW-473 (1982) at 1 (and sources cited therein).

<sup>5</sup>Attorney General Opinion H-992 (1977) at 2.

<sup>6</sup>*See* Local Gov't Code §§ 152.011, .017(4).

<sup>7</sup>Attorney General Opinion H-992 (1977) at 2.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

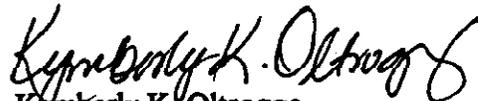
judges who appoint the county auditor and who calculate the auditor's annual salary and travel expense allowance must tie the travel expense allowance to the auditor's actual, official travel expenses. The district judges may require, therefore, that the county auditor provide some documentation of the present year's travel expenses to project the upcoming year's travel expenses. Whether the district judges believe the documentation is necessary is a matter left to their discretion.

We further conclude that the county commissioners court has no authority to require the auditor to provide documentation supporting the travel expense allowance the auditor receives under Local Government Code section 152.031(a). The commissioners court has no power to approve or disapprove the district judges' order approved under that section, and we find no other authority granting them the right to require the county auditor to justify his or her travel expense allowance. If, however, the commissioners court reimburses the county auditor for travel expenses under Local Government Code section 152.035(a), which permits the commissioners court to reimburse the county auditor for actual travel expenses, the court may require the auditor to provide documentation before receiving reimbursement.<sup>10</sup>

### S U M M A R Y

Under Local Government Code section 152.031(a), a county auditor may not be required to provide documentation of his or her official travel expenses to receive a fixed travel allowance. On the other hand, the district judges who appoint the county auditor and who calculate the auditor's annual salary and travel expense allowance may require the county auditor to provide some documentation of the present year's travel expenses to project the upcoming year's travel expenses. In addition, the county commissioners court has no authority to require the auditor to provide documentation justifying the auditor's travel expense allowance received under Local Government Code section 152.031(a).

Yours very truly,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

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<sup>10</sup>*Cf.* Attorney General Opinion JM-148 (1984) at 2. As we pointed out in Letter Opinion No. 95-38, if the county auditor is provided a travel allowance under Local Government Code section 152.031(a) and receives reimbursement from the county commissioners court, "the total amount of travel allowance . . . [and reimbursement] may not exceed his or her actual travel expenses." Letter Opinion No. 95-38 (1995) at 5; *cf.* Letter Opinion No. 96-28 (1996) at 3-4.