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Opinion Committee

**JOSÉ R. RODRÍGUEZ**  
COUNTY ATTORNEY

EL PASO COUNTY, TEXAS  
COUNTY COURTHOUSE  
500 E. SAN ANTONIO, ROOM 203  
EL PASO, TEXAS 79901

(915) 548-0500

FAX: (915) 548-0501

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**RO-939**

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The Honorable Dan Morales  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

**RE: Request for Attorney General's Opinion on the Authority of the El Paso County Juvenile Probation Board to Enter Into Contracts or Authorize the Expenditure of Funds Independent of Commissioners Court Approval.**

Dear General Morales:

This is a request for an Attorney General's Opinion on several matters relating to the authority of the El Paso County Juvenile Probation Board to enter into contracts or authorize the expenditure of funds independent of Commissioners Court approval. The specific questions presented are as follows:

1. Whether the El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly enter into contracts independent of Commissioners Court approval?
2. Whether the El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly enter into contracts with school districts to provide juvenile justice alternative education programs as required by Tex. Educ. Code Ann. §37.001 (Vernon Supp. 1996), independent of Commissioners Court approval?

3. Whether the County is generally liable for contracts entered into by the Juvenile Probation Department or is such liability limited to the funds received by the juvenile probation department as a specialized local entity?
4. Whether the El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly authorize the County Auditor to expend state or county funds independent of review and approval by the Commissioners Court?
5. If Commissioners Court approval is required to authorize expenditure of state or county funds, may the Commissioners Court pre-approve payment for specifically defined claims within a set dollar limit?

### **Background**

The juvenile board of El Paso County is a statutorily created entity composed of the County Judge, each family district judge, each juvenile judge and up to five members of the El Paso Council of Judges who are elected by a majority of the council. Tex. Hum. Res. Code Ann. §152.0771 (Vernon Supp. 1996). The juvenile board is authorized to establish a juvenile probation department (hereinafter "JPD") and employ personnel to conduct probation services. Tex. Hum. Res. Code Ann. §152.0007(a) (Vernon Supp. 1996). The board is also authorized to operate or supervise juvenile services in the county and make recommendations as to the need for and the purchase of services. Tex. Hum. Res. Code Ann. §152.0007(b)(Vernon Supp. 1996). Juvenile probation services are statutorily defined as "services provided by or under the direction of a juvenile probation officer in response to an order issued by the juvenile court and under the court's direction."<sup>1</sup> The Attorney General has previously opined that a juvenile probation officer is statutorily required to transport a child to a juvenile probation proceeding if so ordered by the court. Tex. Att'y Gen. Letter Op. No. LO 94-065 (1994).

The Commissioners Court has limited authority over the budget of the juvenile probation department. Prior to January 1, 1996, the Commissioners Court had a statutory duty to fund the Department in the amount certified by the chairperson of the juvenile probation board unless such amount was arbitrary and capricious. Texas Hum. Res. Code Ann. §152.004 (Vernon 1990). Effective January 1, 1996, the legislature added Tex. Hum. Res. Code Ann. §152.0012

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<sup>1</sup> The statute specifically lists the following juvenile probation services: protective services, prevention of delinquent conduct and conduct indicating a need for supervision, diversion, informal adjustment, foster care, counseling, supervision, diagnostic, correctional, and educational services, and services provided by a juvenile probation department that is related to the operation of a juvenile detention facility. Tex. Hum. Res. Code Ann. §142.001 (Vernon 1990).

which more specifically defines the authority of the Commissioners Court with respect to the county funded portion of the JPD budget, and removes the Commissioners Court of authority over the state funded portion of the budget.

The amendment provides as follows:

**"§152.0012 Budget**

The Juvenile board shall prepare a budget for the juvenile probation department and the other facilities and programs under the jurisdiction of the juvenile board. The commissioners court shall review and consider only the amount of county funds derived from county taxes, fees, and other county sources in the budget. *The commissioners court may not review any part of the budget derived from state funds.*" Tex. Hum. Res. Code Ann. §152.0012 (Vernon Supp. 1996)(emphasis added).

As such, it appears that the Commissioners Court has authority to "review and consider" only the county funded portion of the JPD budget. The amendment expressly prohibits the commissioners court from reviewing any part of state funded portion of the budget. The implication is that JPD may exercise control over the state funded portion of the budget without interference from Commissioners Court.

The Juvenile Probation Department exercises greater control over hiring and personnel procedures than most county departments. Employees of JPD, including juvenile probation officers, secretaries and clerks, are not covered by Civil Service and Commissioners Court has no authority to hire or terminate JPD employees. On the contrary, the chief probation officer and assistant juvenile probation officers serve "at the pleasure of the juvenile board" and the chief probation officer has authority to terminate other juvenile probation department employees, subject to the approval of the juvenile board. Op. Tex. Att'y Gen. No. DM-79 (1992).

In accordance with Loc. Gov't Code Ann. §140.003(f) (Vernon 1996) all funds received by the Juvenile Probation Department are deposited in the county treasury. With the exception of state aid funds<sup>2</sup>, all contracts and expenditures from the juvenile probation department budget are submitted to the Commissioners Court of El Paso County for approval prior to payment. State aid funds are expended at the direction of the juvenile probation department without prior approval by Commissioners Court.

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<sup>2</sup> "State Aid" are funds allocated annually by the Texas Juvenile Probation Commission for financial assistance to juvenile boards to provide juvenile services according to current estimates of the number of juveniles in each county and other factors the commission determines are appropriate. Tex. Hum. Res. Code Ann. §141.081 (Vernon 1990).

While the El Paso County Juvenile Probation Board serves only El Paso County, it should be noted that the legislature has expressly authorized a juvenile board to contract with surrounding counties to form a multicounty juvenile probation department. Tex. Hum. Res. Code Ann. §142.003 (Vernon 1990). In such circumstances, the district judges having jurisdiction in those counties, by a majority vote, shall designate from among those counties the county responsible for managing the juvenile probation funds. Tex. Loc. Gov't Code Ann. §140.003(g) (Vernon 1988).

### Legal Analysis

- 1. Whether the El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly enter into contracts independent of Commissioners Court approval?**
- 2. Whether the El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly enter into contracts with school districts to provide juvenile justice alternative education programs as required by Tex. Educ. Code Ann. §37.001 (Vernon Supp. 1996), independent of Commissioners Court approval?**
- 3. Whether the County is generally liable for contracts entered into by the Juvenile Probation Department or is such liability limited to the funds received by the juvenile probation department as a specialized local entity?**

The Juvenile Probation Department is a "specialized local entity" under Local Gov't Code Ann. §140.003(a)(2) (Vernon Supp 1996). As a "specialized local entity" the Juvenile Probation Department is treated "as if it were a county" and is required to purchase items "in accordance with the same procedures and subject to the same requirements applicable to a county under Subchapter C, Chapter 262 [County Purchasing Act]." Local Gov't Code Ann. §140.003(b) (Vernon Supp. 1996). The code also provides that "A specialized local entity may make a contract with a county under which the county performs purchasing functions for the entity." Local Gov't Code Ann. §140.003(b)(Vernon Supp. 1966). The Human Resources Code provides that the juvenile board may contract with the Texas Youth Commission for juvenile probation services. Hum. Res. Code Ann. §142.003(b)(Vernon 1990).

During the last legislative session the Human Resource Code was amended to provide that the "juvenile board or local probation department may contract with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp in the same manner as the state." Tex. Hum. Res. Code Ann. §152.0011 (b)(Vernon Supp. 1996). New provisions were also added to the Education Code which mandate development of a juvenile

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justice alternative education program in El Paso County<sup>3</sup> and provide that, "A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board." Tex. Educ. Code Ann. §37.011(e) (Vernon Supp. 1996). Pursuant to such legislation, state funds were appropriated to the Texas Education Agency which has recently advised the El Paso Juvenile Probation Board of the availability of \$380,964.00 in start up funds for the juvenile justice alternative education program.

Generally, the Commissioners Court is the only governmental body authorized to execute contracts binding on the county, unless a statute specifically provides otherwise. Op. Tex. Att'y Gen. No. O-6125 (1944) at 3-4; 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW Sec. 5.13, at 157 (Texas Practice 1989). A contract made by a county is valid and binding only if made under the authority of a resolution or order duly passed at a meeting of the commissioners court and entered in the minutes. Op. Tex. Att'y Gen. No. LO 94-088. A commissioners court may delegate its contracting authority to an appointed agent, Local Gov't Code Sec. 262.001(a), but the commissioners court must provide the agent with sufficient guidelines so that the court avoids delegating any of its discretionary authority. 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW Sec. 5.13, at 158 (Texas Practice 1989).

If contracts entered into by the Juvenile Probation Department are county contracts, and binding on the county, then it would seem that the above rules would apply and that the juvenile probation department may not validly enter into contracts without Commissioners Court approval. However, if contracts entered into by the juvenile probation department are not county contracts, and not binding against the county, then it would appear that the juvenile probation department, acting through the juvenile probation board may validly enter into contracts independent of Commissioners Court approval. In at least four instances, the juvenile probation department has been expressly authorized to enter into contracts: contracts with the Texas Youth Commission for juvenile probation services, contracts with a county for performance of purchasing services, contracts for juvenile justice alternative education programs, and contracts with private vendors for the financing, construction, operation, maintenance, or management of a youth boot camp. In addition, the recent amendments prohibiting Commissioners Court review of the JPD budget derived from state funds would seem to generally permit JPD to enter into contracts independent of Commissioners Court approval where state funds are the source of payment. It would also appear that for any such contracts entered into without Commissioners Court approval, the County is not generally liable, and any claims arising from such contract may be satisfied only out of the funds received by JPD as a specialized entity.

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<sup>3</sup> "The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. Tex. Educ. Code Ann. §37.011(a) (Vernon Supp. 1996). The population of the County of El Paso exceeds 125,000.

**4. Whether the El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly authorize the County Auditor to expend state or county funds independent of review and approval by the Commissioners Court?**

In accordance with its statutory authorization to provide juvenile services, JPD is responsible for post-adjudication placement and associated travel costs as ordered by the juvenile court following the disposition stage of a juvenile proceeding. JPD pays for the costs of such placement and travel from a variety of funds including both state and county funds.<sup>4</sup> In a typical case, the juvenile is being held in the JPD detention facility until such time as he or she is transported to the placement, which may be a residential treatment facility or Texas Youth Commission. Bed space at the JPD detention facility is in great demand, and therefore there is a great need to transport the juvenile as quickly as possible following entry of the disposition order. Timely transportation accomplishes at least two things: it makes space available at the detention and relieves the County of the continuing costs for maintaining the juvenile at the detention center. On the other hand, failure to timely transport the juvenile may result in the loss of a placement slot at the intended placement facility.

Under normal procedures, a request for payment for such transportation costs would be submitted to the County Auditor who would in turn place the item on the Commissioners Court agenda for approval pursuant to Loc. Gov't Code Ann. §115.021 (Vernon 1988) which provides that, "The Commissioners Court of a county shall audit and settle all accounts against the county and shall direct payment of those accounts." The problem arises as a result of the fact that there will normally be a one to two week delay from the date of the juvenile court's placement order until the date the request for payment can be considered for approval at the Commissioners Court weekly meeting.

It has been suggested that approval by the Commissioners Court and the delay it entails are not required for the expenditure of JPD funds, whether those funds be derived from the state or the county because JPD is a "specialized local entity" with statutory authority to direct the expenditure of the funds received by the entity. Under Local Gov't Code Ann. §140.003 (Vernon Supp. 1996) a specialized local entity is to deposit the funds the entity receives into the county treasury. The code further provides that "The county shall hold, deposit, disburse, invest and otherwise care for the funds on behalf of the specialized local entity *as the entity directs.*" Local Gov't Code Ann. §140.003(f) (Vernon 1996)(emphasis added). It is suggested that this

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<sup>4</sup> For the purposes of this opinion, "county funds" are those funds derived from county taxes, fees and other county sources in the budget. "State funds" are those funds derived from the state. See, Tex. Hum. Res. Code Ann. §152.0012 (Vernon Supp. 1996).

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language allows the County Auditor to expend JPD funds solely based on direction from the juvenile probation department and without the obtaining approval from Commissioners Court which would normally be required under Loc. Gov't Code Ann. §115.021 (Vernon 1988). The question presented is whether this provision is applicable to expenditures from either the county or state funded portions of the JPD budget.

One view is that the juvenile board is a statutorily created entity, separate and distinct from the county, with the authority to employ personnel and enter into contracts without the need for approval by commissioners court. All funds appropriated to the JPD, whether derived from county or state funds, are subject only to the control and authority of the juvenile board. Under this view, JPD, by virtue of its status as a specialized local entity would appear authorized to direct payments from either state or county funded portions of its budget, and the auditor may issue such payments without the need for any additional approval by the Commissioners Court. This view is also supported with respect to state funds by the amendments to the Human Resources Code which prohibit the Commissioners Court from reviewing any portion of the JPD budget derived from state funds.

A second view is that despite JPD's status as a "specialized local entity with authority to hire and enter into contracts, the administration of its budget, whether derived from county or state funds, must be handled by the county auditor in accordance with financial and accounting safeguards mandated for county funds generally by the Local Gov't Code and other law. In this regard, the Attorney General has reached the following conclusions with respect to "specialized local entities:

1. the County Purchasing Act applies to purchases by prosecuting attorneys out of felony forfeiture funds pursuant to Chapter 59 of the Code of Criminal Procedure, Letter Op. Tex. Atty. Gen. No. LO 94-040 (1994), Op. Tex. Atty. Gen. No. DM-246 (1993);
2. all funds, from whatever source, received by an adult probation department must be deposited in the county treasury and are subject generally to county financial accounting requirements, Op. Tex. Atty. Gen. No. DM-257 (1993);
3. forfeiture funds pursuant to Chapter 59 of the Code of Criminal Procedure must be deposited with the County Treasury and are subject to the financial accounting requirements of the county with the exception that payments from such fund may be made on the sole signature of the prosecuting attorney and need not be pre-approved or otherwise subject to "front-end" review, Op. Tex. Atty. Gen. No. DM-247 (1993).

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In Op. Tex. Atty. Gen. No. DM-247 (1993), the General reasoned that the specific language and legislative intent in Chapter 59 of the Code of Criminal Procedure granted the prosecuting attorney the discretionary authority to expend such funds and that therefore spending decisions were not subject to approval or review by the county auditor. The opinion noted that the provisions of Chapter 59 were in conflict with various provisions of the Local Government Code regarding the county auditor's review of expenditures of county funds and concluded that Chapter 59 authorized an exception to these general provisions. The opinion specifically referred to Local Gov't Code Ann. §140.003(f) and noted that the language "expresses a legislative intent that the *county* rather than the specialized local entity make disbursements out of the entity's funds." (emphasis added). The opinion suggests that in the absence of the provisions of Chapter 59 specifically granting discretionary spending authority to the prosecuting attorney, expenditure of forfeiture funds would be subject to all normal county financial accounting requirements including review and approval by the county commissioners and county auditor. In Tex. Att'y Gen. Op. No. DM-257 (1993), the General concluded that the legislative history of Local Gov't Code Ann. §140.003 "indicates that the legislature intended the language to place the same accounting responsibilities on the funds of probation departments, among other entities, as applied to county finances."

Considering all the above, it appears that the provisions of Local Gov't Code Ann. §140.003(f), require Commissioners Court approval for expenditure of the county funded portions of the JPD budget. However, we are unable to reach a conclusion with respect to the state funded portions of the JPD budget. The fact that Hum. Res. Code Ann. §152.0012 expressly deprives the Commissioners Court of any authority over the state funded portion of the JPD budget, and the fact that both the Local Government Code and Human Resources Code expressly reference the authority of the juvenile board to enter into contracts both weigh in favor of a conclusion that Commissioners Court approval is not required for expenditure of the state funded portion of the JPD budget. Furthermore the code provisions with respect to state aid refer to "financial assistance to juvenile boards" and payment of state aid to the juvenile board, not the county.<sup>5</sup>

- 5. If Commissioners Court approval is required to authorize expenditure of state or county funds, may the Commissioners Court pre-approve payment for specifically defined claims within a set dollar limit?**

The general rule is that the Commissioners Court and County Auditor share responsibility for approving claims. The Commissioners Court cannot delegate to another its authority to

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<sup>5</sup> There is one exception in that with respect to state aid for construction of post-adjudication facilities, the code provides that the Texas Juvenile Probation Commission "may provide state aid to a county." Tex. Hum. Res. Code Ann. §141.086 (Vernon Supp. 1996).

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ultimately approve the payment of county claims nor may it authorize the auditor to make payment without the court's approval. Op. Tex. Att'y Gen. No. O-5049 (1943)(commissioners may not authorize auditor to pay certain routine bills without necessity of presenting the bills to commissioners court for approval); see also, Padgett v. Young County, 204 S.W. 1046 (Tex. Civ. App.-Fort Worth 1918, no writ)(duty of commissioners court to audit claims and direct claims was judicial and could not be delegated). More recently, the Court of Criminal Appeals has reiterated the rule that the auditor, as well as the commissioners court, has a duty to independently examine and review a claim prior to approval for payment. Smith v. Flack, 728 S.W.2d 784 (Tex. 1987)(county auditor may not refer claims for payment of court approved attorney fees to Board of Judges for review and adjustment; see also, Letter Op. Tex. Att'y Gen. No. LO-89-100 (1989)(bills of county hospital which have been approved by the hospital board of managers must nonetheless be submitted to the county auditor for examination and approval prior to payment). The County Auditor has the power and duty to refuse to make payment, even though approved by Commissioners Court, if the Commissioners Court approval is unlawful. Op. Tex. Att'y Gen. No. H-1237 (1978)(auditor properly refused to make payment as per order of the Commissioners Court where contract was made in violation of the Purchasing Act).

There is some authority that the Commissioners Court may ratify that which it might have authorized originally, State v. Carnes, 106 S.W.2d 397 (Tex. Civ. App.- San Antonio 1937); see also, Wilson v. County of Calhoun, 489 S.W.2d 393, 397 (Tex. Civ. App.- Corpus Christi 1972, writ ref'd n.r.e.); Angelina County v. Kent, 374 S.W.2d 313, 317 (Tex. Civ. App.- Beaumont 1963, no writ) and correct any irregularities in the manner of payment by subsequent approval of the claim and ratification of payment. Gussett v. Nueces County, 235 S. W. 857 (Tex. 1921); Boydston v. Rockwall County, 86 Tex. 234, 24 S.W. 272 (1893). The issue in Gussett was whether the county treasurer could claim credit for payments made initially without Commissioners Court approval, but subsequently ratified by the Commissioners Court. The facts in Gussett were that the Nueces County Commissioners Court had authorized the County Treasurer "to act for the court in purchasing supplies, especially for the 67 mules used in road work in the county," subject to subsequent approval of the Commissioners Court. The Court held that such payments may be counted as credits if they are thereafter approved by the Commissioners Court. Gussett at 859. However, the Court in Gussett expressly noted that the treasurer who makes payment without Commissioners Court authority "necessarily takes a great risk, for the court may not ratify his payments." Gussett at 860.

The Legislature has specifically authorized some commissioners courts to create petty cash funds for certain specified expenditures. (Sheriff's petty cash fund for investigative travel, Texas Local Government Code Section 130.904; Counties over 800,000 -- County Welfare Department petty cash fund for pauper's expenses, Section 130.905, Id.; Counties over 2,000,000 -- General departmental purchasing petty cash fund, Section 130.909, Id.) In essence, these provisions

permit some commissioners courts to delegate and pre-approve some narrowly defined expenditures. Unfortunately, except for the Sheriff's petty cash fund, none of these statutorily authorized delegations of approval of expenditures apply to El Paso County. Generally, a specific grant of legislative authority to some counties by population bracket is interpreted as a specific denial of the same authority to counties not covered by the population bracket.

Accordingly, it is my opinion that if Commissioners Court approval is required for expenditure of either the county or state funded portion of the JPD budget, such approval may not be a blanket pre-approval of certain types of claims. Rather each claim must be presented to Commissioners Court for actual review and approval prior to payment.

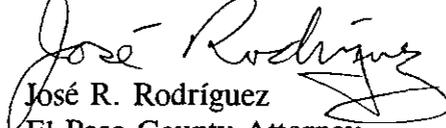
#### **Summary Conclusion**

1. The El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly enter into contracts independent of Commissioners Court approval;
2. The El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may validly enter into contracts with school districts to provide juvenile justice alternative education programs as required by Tex. Educ. Code Ann. §37.001 (Vernon Supp. 1996), independent of Commissioners Court approval;
3. The County of El Paso is not liable for contracts entered into by the Juvenile Probation Department without Commissioners Court approval and liability for such contracts is limited to the funds received by the juvenile probation department as a specialized local entity;
4. The El Paso Juvenile Probation Department, acting through the El Paso Juvenile Probation Board, may not validly authorize the County Auditor to expend county funds without review and approval by the Commissioners Court, but we are unable to reach a conclusion with respect to the state funded portion of the budget;
5. If Commissioners Court approval is required to authorize expenditure of state or county funds, the Commissioners Court may not pre-approve payment for specifically defined claims but instead must review and approve each claim prior to payment.

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An opinion on the questions presented is requested at your earliest convenience.

Very truly yours,

  
José R. Rodríguez  
El Paso County Attorney

xc: The Honorable Charles W. "Chuck" Mattox, El Paso County Judge  
The Honorable Rogelio Sanchez, El Paso County Commissioner - Precinct 3  
The Honorable Charles Hooten, El Paso County Commissioner - Precinct 1  
The Honorable Carlos Aguilar, El Paso County Commissioner - Precinct 2  
The Honorable Daniel R. Haggerty, El Paso County Commissioner - Precinct 4  
The Honorable Philip Martinez, Judge - 327th District Court  
The Honorable Alfredo Chavez, Juvenile Court Referee  
Steve Seely, El Paso County Auditor  
Sam Santana, Chief Probation Officer - Juvenile Probation Department  
Hector Zamora, Assistant Chief Probation Officer - Juvenile Probation Department