

November 17, 2021

The Honorable Rob Baiamonte
Goliad County Attorney
Post Office Box 24
Goliad, Texas 77963

Opinion No. KP-

Re: Authority of county judges to declare and terminate local disasters pursuant to section 418.108 of the Government Code (RQ-0408-KP)

Dear Mr. Baiamonte:

You ask several questions related to a county judge's authority to declare a disaster pursuant to section 418.108 of the Government Code.¹

I. Section 418.108 of the Government Code provides political subdivisions, including counties, limited authority to declare a local state of disaster.

Section 418.108 of the Government Code authorizes “the presiding officer of the governing body of a political subdivision [to] declare a local state of disaster.” TEX. GOV'T CODE § 418.108(a). A county is a political subdivision of the State, and the commissioners court serves as its governing body. TEX. CONST. arts. V, § 18(b); XI, § 1. The county judge serves as the presiding officer of the commissioners court and is thereby authorized to declare a local state of disaster under section 418.108(a). TEX. GOV'T CODE § 418.108(a); *see also* TEX. LOC. GOV'T CODE § 81.001(b). Upon declaring a local state of disaster, the county judge obtains certain additional powers, including the ability to order the evacuation of a threatened area and to control ingress to and egress from the disaster area. TEX. GOV'T CODE § 418.108(f)–(g).

The Legislature limited the county judge's disaster authority by requiring the commissioners court's consent to continue or renew any local disaster declaration for a period of more than seven days. *Id.* § 418.108(b). Local disaster powers of a county are also limited by any existing state law, including any executive orders or proclamations issued by the Governor. *See State v. El Paso Cnty.*, 618 S.W.3d 812, 822–25 (Tex. App.—El Paso 2020, no pet.) (concluding that to the extent of a conflict, an executive order of the Governor issued under chapter 418

¹*See* Letter from Honorable Rob Baiamonte, Goliad Cnty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. (May 18, 2021) at 1, <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0408KP.pdf> (“Request Letter”).

supersedes a local order); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 27–28 (Tex. 2003) (discussing limitations on commissioners courts' powers); TEX. GOV'T CODE § 418.012 (authorizing the Governor to issue executive orders having “the force and effect of law”).

II. The county judge may terminate a local disaster declaration at any time, and the commissioners court may prevent the extension of the declaration beyond seven days or revoke consent for its continuation thereafter.

You ask whether the county judge or the commissioners court possesses authority to terminate a local disaster declaration. See Request Letter at 1. We first address the authority of the county judge. Section 418.108 contemplates termination of local disaster declarations but does not expressly identify which official or entity terminates a local disaster declaration. TEX. GOV'T CODE § 418.108(c) (“An order or proclamation declaring, continuing, or *terminating* a local state of disaster shall be given prompt and general publicity” (emphasis added)). The Legislature authorized the county judge to make an initial determination that a disaster exists and declare it, and implicit in that authority is the county judge’s ability to determine a disaster no longer exists and terminate the declaration at any time so determined by the county judge. *Id.* § 418.108(a), (c); see also *Guynes v. Galveston Cnty.*, 861 S.W.2d 861, 863 (Tex. 1993) (explaining that county officers possess “broad implied powers” to accomplish their legitimate directives).

With regard to the authority of a commissioners court to terminate a local disaster declaration, section 418.108 does not expressly grant the commissioners court authority to terminate such a declaration within the initial seven-day period. Compare TEX. GOV'T CODE § 418.108, with *id.* § 418.014(c) (authorizing the Legislature to terminate a disaster declaration of the Governor at any time). But a local disaster declaration may extend beyond the seven-day period only with consent of the commissioners court. *Id.* § 418.108(b) (“A declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision[.]”). After seven days, the commissioners court may effectively terminate the disaster declaration by denying consent to continue or renew the disaster declaration. And the commissioners court could place conditions in its order consenting to the disaster declaration, including a limitation on the time period of consent. Furthermore, it could revoke its consent by subsequent order if it determined the disaster no longer existed, effectively terminating the disaster declaration. Thus, the county judge may terminate a local disaster declaration at any time, and a commissioners court may deny its consent to continue or renew the declaration after seven days, effectively authorizing the commissioners court to terminate the declaration at any point thereafter.

III. A county judge lacks authority to declare a new disaster for the same underlying circumstances without the consent of the commissioners court following the first seven-day period.

You also ask whether a county judge may “declare a disaster every seven days.” Request Letter at 1. Section 418.108(b) establishes that if a commissioners court withholds consent, effectively terminating a declaration of a local state of disaster after seven days, a county judge may not renew or continue a declaration of a local state of disaster following that initial seven-day period. TEX. GOV'T CODE § 418.108(b). Section 311.021 of the Government Code provides that

“[i]n enacting a statute, it is presumed that . . . the entire statute is intended to be effective.” *Id.* § 311.021(2); *see also Sneed v. Webre*, 465 S.W.3d 169, 191–92 (Tex. 2015) (stating that courts construing the statute attempt to give effect to legislative intent and generally reject a narrow interpretation that would allow a party to circumvent that intent). If a county judge were permitted to declare a disaster every seven days for the same disaster, he would circumvent the authority of the commissioners court and remove all effect from section 418.108(b). Such an interpretation could not have been the intent of the Legislature and is not a permissible reading of section 418.108. Thus, a county judge may not declare successive disasters for the same underlying circumstances without the consent of the commissioners court following the first seven-day period. Whether a second disaster declaration is for the same underlying circumstances or a new disaster may involve fact questions and is a matter for the county judge to determine in the first instance, subject to judicial review. *See Tex. Att’y Gen. Op. No. GA-0051* (2003) at 3 (explaining that the existence of an emergency is a fact question).

IV. A surge of individuals unlawfully crossing the border into the county could create circumstances warranting emergency action and a local disaster declaration.

In your third question, you ask whether “an influx of illegal aliens” could qualify as a disaster under section 418.108, authorizing the county judge to declare a disaster on that basis. Request Letter at 1. Section 418.004 defines “disaster” for purposes of chapter 418:

“Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency.

TEX. GOV’T CODE § 418.004(1). The Legislature has advised that the term “including” is a term “of enlargement and not of limitation or exclusive enumeration.” *Id.* § 311.005(13). Thus, while the definition of disaster identifies specific examples that could create widespread or severe damage, injury, or loss of life or property, those examples are not an exhaustive list. *Id.* (explaining that use of the term including “does not create a presumption that components not expressed are excluded”). Whether the events occurring within a county are sufficient to warrant a local disaster declaration under section 418.108 is a determination for the county judge in the first instance. That determination will require evaluating the factual circumstances that exist within the county, something beyond the scope of an Attorney General opinion. But under certain facts, a surge of individuals crossing the border into the county could create circumstances warranting emergency action and a local disaster declaration under section 418.108.

We note that the Governor issued a disaster proclamation under section 418.014 that “the ongoing surge of individuals unlawfully crossing the Texas-Mexico border poses an ongoing and imminent threat” of disaster for several specified counties, including Goliad County, along the

border.² He most recently renewed that disaster proclamation on September 28, 2021.³ In addition, the Legislature has also recognized in a similar context that a sudden migration of individuals into a jurisdiction can create an emergency or urgent public necessity requiring immediate action by a governing body. *See id.* § 551.045(e) (specifying examples of circumstances that allow for an emergency meeting under the Open Meetings Act).

V. A county judge lacks authority to pay bills incurred by the county out of the contingent and uncommitted fund without the commissioners court's approval.

In your final question, you ask whether a county judge may “pay bills incurred by the county out of the contingent and uncommitted fund without the commissioners court approval.” Request Letter at 1. While a local disaster declaration activates emergency management plans and “authorizes the furnishing of aid and assistance under the declaration,” political subdivisions make appropriations for emergency management services just as they would for ordinary expenses. TEX. GOV'T CODE § 418.108(d); *see also id.* § 418.107 (providing for local finance concerning emergency management). Thus, even during a disaster declaration, the normal rules for budgeting, accounting, and management of county finances apply. While the county judge may prepare the budget, he acts only as an officer for the commissioners court in doing so, and the budget only becomes effective upon approval by the commissioners court. TEX. LOC. GOV'T CODE §§ 111.002, .003, .008.

The commissioners court has primary control over county finances. Under normal circumstances, “the commissioners court may spend county funds only in strict compliance with the budget” and may “transfer an amount budgeted for one item to another budgeted item.” *Id.* at § 111.010(b), (d). In emergencies, “[t]he commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity,” and the commissioners court has the authority to provide aid to disaster victims. *Id.* §§ 111.010(c), 130.910. A commissioners court acts as a body and generally no one member has independent authority to bind the county. *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 488–89 (Tex. 2018). Though the county judge may spend funds allotted to him under the county budget for the purposes named in that budget, the county judge lacks authority to unilaterally spend county funds without commissioners court authorization or approval. *See State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020) (“The authority vested in Texas counties—and county officials—is limited” to that which is expressly granted in statute or implied due to being “indispensable” regarding an express grant of authority.). Thus, a county judge lacks authority to pay bills incurred by the county out of the contingent and uncommitted fund without the commissioners court's authorization or approval.

²GOVERNOR OF THE STATE OF TEXAS, DISASTER PROCLAMATION (May 31, 2021), https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf. Office of the Governor, Proclamation 41-3822, 46 Tex. Reg. 3657, 3658 (2021).

³GOVERNOR OF THE STATE OF TEXAS, DISASTER DECLARATION RENEWAL (September 28, 2021), <https://gov.texas.gov/news/post/governor-abbott-renews-border-security-disaster-declaration-in-september-2021>.

S U M M A R Y

Pursuant to section 418.108 of the Government Code, a county judge may declare a local state of disaster. Local disaster powers of a county are limited by any existing state law, including any executive orders or proclamations issued by the Governor.

The county judge may terminate a local disaster declaration at any time, and the commissioners court may prevent the extension of the declaration beyond seven days or revoke consent for its continuation thereafter.

A county judge lacks authority to declare a new disaster for the same underlying circumstances without the consent of the commissioners court following the first seven-day period.

A surge of individuals crossing the border into the county could and has created circumstances warranting emergency action and a local disaster declaration.

A county judge lacks authority to pay bills incurred by the county out of the contingent and uncommitted fund without the commissioners court's approval.

Very truly yours,

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