



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2022

The Honorable Todd Dillon
San Jacinto County District Attorney
1 State Highway 150, Room 21
Coldspring, Texas 77331-0403

Opinion No. KP-0416

Re: A commissioners court's authority to increase salaries of employees in a sheriff's department in the middle of the budget year (RQ-0451-KP)

Dear Mr. Dillon:

Your predecessor asked about the authority of a commissioners court to increase the salaries of employees in a sheriff's department in the middle of the budget year.¹ He told us that earlier this year the commissioners court of San Jacinto County ("County") considered a proposal to give a pay raise to all members of the sheriff's office, but the current county budget does not allocate funds for that purpose. Request Letter at 1. Your predecessor stated that the commissioners court was concerned whether it could use "a fund balance or other special designated funds" to provide such a raise without declaring an emergency. *Id.* He asked first whether the "Commissioners Court could grant a blanket raise to every Sheriff's Office employee in the middle of a budget year in the absence of an emergency."² *Id.*

Budget Amendments and Transfers Between Budgeted Items

As the county governing body, a commissioners court sets the amount of compensation of county officers and employees as part of the county budget approval process. *See* TEX. LOC. GOV'T CODE §§ 152.011, .013. Chapter 111, subchapter A of the Local Government Code governs county

¹See Letter from Honorable Robert H. Trapp, San Jacinto Cnty. Dist. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (rec'd Mar. 24, 2022), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2022/RQ0451KP.pdf> ("Request Letter").

²By asking only about employees, your predecessor's question does not appear to include the sheriff, an elected official. Request Letter at 1. Each year, the commissioners court must set the salary of elected officials such as the sheriff only "at a regular meeting of the court during the regular budget hearing and adoption proceedings." TEX. LOC. GOV'T CODE § 152.013(a). Thus, a sheriff's salary may not be adjusted in the middle of the budget year. *See* Tex. Att'y Gen. Op. No. KP-0012 (2015) at 2–3 (explaining the procedure required to set elected officials' salaries does not permit changes at other times).

spending for counties the size of San Jacinto County (the “County”).³ Section 111.010 of the Local Government Code generally requires a county to adhere to its final budget when it spends county money: “After final approval of the budget, the commissioners court may spend county funds only in strict compliance with the budget, except in an emergency.” TEX. LOC. GOV’T CODE § 111.010(b). The statute also allows a midyear amendment without an emergency to transfer funds from one budgeted item to another, subject to other applicable law. *See id.* § 111.010(d); *see also Gattis v. Duty*, 349 S.W.3d 193, 207 (Tex. App.—Austin 2011, no pet.) (discussing analogous transfer authority under subchapter C); Tex. Att’y Gen. Op. No. KP-0052 (2015) at 3 (noting that transfer authority may be subject to other law). But outside of a valid transfer between budgeted items, a commissioners court may not amend the regular budget midyear to raise salaries of employees of the sheriff’s office without finding the existence of an emergency. *See Guerra v. McClellan*, 243 S.W.2d 715, 717 (Tex. Civ. App.—San Antonio 1951, no writ) (holding that order raising salaries without “recitations or findings as to the existence of an emergency” was not a valid budget amendment).

Emergency Amendment

Your predecessor’s second question asked whether “high turnover and subsequent low staffing levels at the Sheriff’s Office due to low wages constitute an emergency.” Request Letter at 1. Subsection 111.010(c) authorizes an “emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention.” TEX. LOC. GOV’T CODE § 111.010(c). Whether particular circumstances constitute a “grave public necessity” under the statute requires resolution of fact questions outside the scope of the attorney general opinion process. *See Tex. Att’y Gen. Op. No. GA-0620* (2008) at 5. Rather, the statute requires a commissioners court to determine in the first instance whether the facts satisfy the statutory requirements that warrant an emergency expenditure, subject to judicial review for abuse of discretion. *See id.*; *see also Bexar Cnty. v. Hatley*, 150 S.W.2d 980, 987 (Tex. 1941) (discussing the commissioners court’s budgetary discretion with respect to “grave public necessity”).

Special Budget for Grant or Aid Money

Finally, your predecessor asked whether the County can use federal grant funds to provide a raise in the middle of a budget year. *See Request Letter* at 1. Separate from the regular budget process, section 111.0106 of the Local Government Code requires a county subject to chapter 111, subchapter A to “adopt a special budget for the limited purpose of spending” public or private grant or aid money for its intended purpose “that is available for disbursement in a fiscal year but not included in the budget for that fiscal year.”⁴ TEX. LOC. GOV’T CODE § 111.0106. The county

³*See* TEX. LOC. GOV’T CODE § 111.001 (stating chapter 111, subchapter A applies to counties with a population of 225,000 or less); *see also* UNITED STATES CENSUS BUREAU, *Quick Facts*, <https://www.census.gov/quickfacts/fact/table/sanjacintocountytexas/PST045221> (last visited June 9, 2022) (stating 2020 census population of San Jacinto County as 27,402).

⁴*See* TEX. LOC. GOV’T CODE §§ 111.001–.014 (providing for budget preparation in counties with a population of 225,000 or less that do not operate under subchapter C).

auditor, or county judge in a county without a county auditor, must first “certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year.” *Id.* The purpose of this provision is to prevent grant or aid money received after adoption of the current year’s annual budget from remaining frozen until the following fiscal year. *See* House Comm. on Cnty. Affairs, Bill Analysis, Tex. H.B. 1481, 68th Leg., R.S. (1983) (explaining the purpose of an identical provision for larger counties). Thus, section 111.0106 does not apply unless the grant or aid money was not included in the regular budget. TEX. LOC. GOV’T CODE § 111.0106. Moreover, a county may adopt a special budget only “for the limited purpose of spending the grant or aid money for its intended purpose.” *Id.*

Because your predecessor did not provide any information about a specific grant, we assume his reference to the CARES Act to mean the Coronavirus Aid, Relief, and Economic Security Act of 2020, known as the “CARES Act,” a multifaceted program providing different grants for myriad purposes. *See* Request Letter at 1; 42 U.S.C. § 801. Whether funds from a particular grant may be used to give a prospective raise to employees of the sheriff’s office will depend on the “intended purpose” of the grant itself, as well as its terms and conditions. *See* TEX. LOC. GOV’T CODE § 111.0106. Thus, you should direct questions about the permissible uses of specific grant funds to the agency administering the grant.

S U M M A R Y

A county commissioners court generally may not amend its budget to grant a salary increase to the employees in the sheriff's office in the middle of a budget year in the absence of a finding of an emergency. But a commissioners court may amend the budget without an emergency to transfer funds from one budget item to another, subject to limitations in other law.

To adopt a midyear budget amendment due to an emergency, the commissioners court must make a finding of fact about the existence of a "grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention."

Section 111.0106 of the Local Government Code authorizes a commissioners court to adopt a special budget for grant or aid money that is available for disbursement in the fiscal year but was not included in the budget for that fiscal year, for the limited purpose of spending the grant or aid money for its intended purpose. Whether funds from a particular grant may be used to give a prospective raise to employees of the sheriff's office will depend on the "intended purpose" of the grant itself, as well as its terms and conditions.

Very truly yours,



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