



RECEIVED
SEP 05 2002
OPINION COMMITTEE

ED SHETTLE
First Assistant
Criminal Division

TOM MANESS
CRIMINAL DISTRICT ATTORNEY
Jefferson County Courthouse
1001 Pearl Street-3rd Floor
Beaumont, Texas 77701-3545
(409) 835-8550
FAX: (409) 835-8573

TOM RUGG
First Assistant
Civil Division

August 30, 2002

RQ-0603-JC

Honorable John Cornyn
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42777-02
I.D. # 42777

Re: Request for Opinion

Dear General Cornyn:

Jefferson County is seeking guidance from your office concerning several matters relating to the budget process, the authority of the Commissioners to amend the budget, and certain proposed policies concerning promotions, hiring and pay as those policies might impact other elected county officials. We provide the following factual background:

The Jefferson County Commissioner's Court proposes to adopt as a part of the annual budget process policies that:

- a. "Freeze" hiring for elected officials for any position that becomes vacant during the budget year (exceptions to be allowed on application by the department head by action of the commissioners court),
- b. Impose a salary reduction for any position that is filled during the year, and
- c. If an employee is promoted to a vacant position, limit any resulting salary increase to an amount not more than 3% greater than the salary of the person being promoted regardless of the salary amount budgeted for the vacant position (unless the budgeted position is paid at a rate less than a 3% increase).

As best we understand the intended application of this policy, it is the intent of the commissioners court to allow elected officials to "promote" to fill the vacated position but reduce the salary of the vacated position to a level no more than 3% greater than the salary of the

promoted person. The vacancy thus created by the promotion to be filled in a like manner until no more possibility of promotions exist and the final vacancy to be either not filled or only filled at a reduced salary with the subsequent permission of the commissioners court. (A copy of these proposed policies is attached).

1. In light of the proposed policies, may a commissioners court fund a position of employment in a department governed by an elected official for an indeterminate term (not exceeding the budget year) said funding to either cease or be reduced dependent on a subsequent decision of the commissioners court following the resignation or termination of the person holding the position at the beginning of the budget year? We believe that this can be accomplished by budgeting a position at a "not-to-exceed" value with deductions dependent on terminations of employment and the pre-promotion salary of the person receiving the promotion. However, the proposal to provide exemptions from the policy at the request of a department head or elected official might be construed as a budget amendment not in compliance with Chapter 111 of the Local Government Code.

2. May the Commissioners Court impose a "freeze" on hiring to fill positions that have been budgeted for a department under the control of an elected official and have become vacant (after the promotion process outlined above)? If so, may the commissioners court "unfreeze" that position to allow hiring by the elected official and would such action be a budget amendment that would require the declaration of an emergency under Chapter 111 of the Local Government Code? We believe that the principles applicable to the resolution of this question to be essentially the same as those under consideration in a request from Denton County nominated RQ-00570-JC.

In addressing these questions our County Judge has asked that you address the following questions:

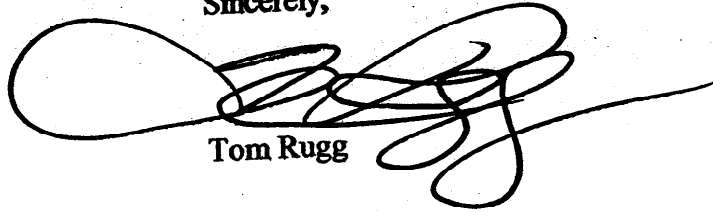
1. Having adopted a budget that includes various capital expenditures, what is the authority of the commissioners court to reallocate those funds?
2. What is the nature of the commissioners court involvement and authority in approving expenditures of county funds after the annual budget is adopted? Is the court's involvement ministerial, or would the court be acting within its authority to choose not to make a particular budgeted expenditure?
3. Does the Commissioners court have the authority to amend the budget of an elected official after a budget has been adopted (recognizing that the salary of an elected official can be changed only during the annual budget process)?

We have addressed these issues for the County Judge previously and attach a copy of that opinion for your consideration as well as our brief on the questions now presented. To summarize, it is our considered opinion that the commissioners court has discretion acting as a legislative body in setting budget priorities and funding of county departments, including those governed by independent elected officials. The performance of the court in this matter is subject to mandatory public comment prior to the adoption of the budget. Whether an adopted budget

exceeds that discretion is a matter subject to the review of the courts. However, once the budget is adopted the ability to amend the budget is limited to addressing emergency situations as defined in the Local Government Code and the transfer of funds from one item to another.

We appreciate your assistance in these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Rugg', written over a horizontal line.

Tom Rugg

Cc:
Commissioners Court