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OPINION COMMITTEE

Jack Skeen, Jr.
Criminal District Attorney
Smith County

SMITH COUNTY COURTHOUSE
100 N. BROADWAY, 4TH FLOOR
TYLER, TEXAS 75702

FACSIMILE: (903)535-0410
TELEPHONE: (903)535-0520

RQ-0100-GA

August 18, 2003

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43242-03
I.D. # 43242

re: Request for Opinion regarding Commissioner Court Delegation of Authority to Approve Intra-Departmental Budget Transfers under Local Government Code § 111.070

To the Honorable Attorney General Abbott:

This is to request an opinion concerning the authority of a commissioners court to delegate approval authority of certain budget transfers between line items within a departmental budget.

FACTS

The Smith County Auditor and Budget Officer proposed a policy for Smith County in which the commissioners court authorized the Smith County Budget Officer to approve intra-departmental budget transfers such as office supplies, postage, etc. In support of this proposal, they submitted several policies from other counties which purport to delegate such authority. On June 23, 2003, the Smith County Commissioners Court consented to grant authority for the approval of intra-departmental budget transfers to the Smith County Budget Director. The commissioners court has since rescinded such authority pending a response to this request.

Smith County has a population of approximately 174,700 people as of the 2000 census. In March of 2003, Smith County appointed a budget director under Subchapter C of Chapter 111 of the Texas Local Government Code. Prior to 2003, the Smith County Judge was the chief budget officer, preparing and monitoring the budget with the assistance of the Smith County Auditor. The Smith County budget as of FY2002/2003 includes 41 departmental budgets itemized to reflect specific

spending items. *A sample page of the Smith County Budget is attached as exhibit A.* Each of these itemized spending lines are assigned an account number out of which funds are withdrawn as approved expenditures occur. Under the proposed order, the commissioners court would delegate its authority to authorize transfers between any line item of the department except salaries.

ANALYSIS

Section 111.070 of the Texas Local Government Code regulates budgetary expenditures and transfers in counties which have appointed budget officers to prepare the county's budget. Under subsection (a) of this statute, there is a requirement that expenditures of county funds occur only in strict compliance with the itemized budget adopted by the commissioners court. However, subsections (b) and (c) establish methods by which counties may adjust their budget to meet needs that may arise during a budget year. Under subsection (b), the commissioners court may amend its original budget to meet an emergency of "grave public necessity" which could not be included in the original budget through diligent thought and attention. This subsection does not directly impact the present discussion, but tends to show the gravity which the legislature placed upon the budgetary process for Texas counties. Section 111.070(c) addresses transfers of funds between budgeted items within a county budget and states:

The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.

The language of this statute appears to be straight forward and unambiguous. Clearly, the legislature intended for commissioners courts to have the authority, so long as funds are allocated from within the original budget, to meet needs that may arise during a fiscal year without meeting the exacting standards of an emergency expenditure. But, in order to accomplish this transfer of funds between line items, the commissioners court must issue an "order" approving of the transfer. By requiring the issuance of an order, the legislature sought to ensure that commissioners courts maintain fiscal responsibility for the expenditure of public funds. Nothing in the language of the statute authorizes the commissioners court to delegate its budgetary authority, including oversight of its budget. Indeed, such delegation would be an allowance for those designated individuals to supercede the original authority of the commissioners court by changing itemized amounts in the adopted budget.

The Smith County Auditor has presented the interpretation that the court may "by order" delegate its budget transfer authority to another person including the budget officer, thereby satisfying the statutory language. However, this misinterprets the plain language of Section 111.070(c) in that the statute states that the commissioners court may transfer "an amount", which contemplates a decision

on each individual transfer. To read Section 111.070 (c) as a grant of authority to the commissioners court to order the delegation of such a fundamental duty would be to construe ever statute granting the commissioners court authority to act as including an implied authority to delegate such action.

However, as stated earlier, there are other counties which have delegated such authority, including Travis, Denton, and Gregg counties. (*Copies of these policies are attached for review*). These counties have delegated various levels of budget transfer authority to one or more individuals within their respective county. As an example, Travis County has implemented a very detailed list of funds and activities which define the authority given to their budget officer for "automatic budget adjustments". The Travis County Auditor's Office explained these "adjustments" are considered ministerial in nature. In other words, the Travis County Commissioners Court defines which transfers or accounts that would qualify for automatic transfer status and classifies them as "ministerial". And while there is some logic to this approach, Local Government Code, §111.070(c) does not distinguish transfers in such a manner. In fact, the Travis County definition of ministerial transfers appears to change from year to year at the discretion of the commissioners court. In theory, a commissioners court could define all transfers as ministerial and relinquish all transfer authority under such a policy. Therefore, allowing a commissioners court to define those transfers which would not require commissioners court approval undermines the intent of the legislature to vest financial responsibility solely in the elected commissioners of a county.

Another example of delegation of authority is from Denton County. In Denton County, "Intra-Departmental Operating Transfers" may be approved by the county auditor, county budget officer, and the director of purchasing, *or their designees*. The Denton Commissioners Court has capped these transfers at \$2,000 for fiscal 2002/2003. Any transfers of more than \$2,000, even those of the same general nature as the intra-departmental operating transfers, must be approved by the commissioners court. The question becomes, could a Commissioners Court, if they so chose, set this limit at \$10,000 and remain compliant with Local Government Code §111.070(c)? \$100,000? \$1,000,000? If the answer is no, then by implication, since the statute has no definition for the amount of a transfer, the authority would not exist for any transfer amount.

The Smith County Auditor has also stated that it is a matter of efficiency and common sense to define intra-departmental transfers as ministerial in nature. However, county governments may do only that which it is specifically authorized to do by statute or implied in order to carry out the responsibilities conferred by statute. This is the first fundamental rule of county legal construction. Efficiency, although regrettably so, is irrelevant in construction of a county's legal authority. Therefore, in order to properly construe a statute's breadth, actions which are specifically authorized by the plain

language of the statute must first be determined. In this case, Local Government Code Section 111.070(c) specifically authorizes a commissioners court to transfer an amount budgeted for one budgeted item to another budgeted item. And, it requires that this be done by court order. It does not specifically authorize the delegation of this authority. The legislature could have granted the commissioners courts the authority to delegate budget transfers. An example of such specific authority is found in Section 262.001 of the Local Government Code. Under this statute, a commissioners court is authorized to appoint an agent for contracting on behalf of the county. By enacting Section 262.001, the legislature chose to specifically authorize the delegation of a duty generally reserved for county commissioners courts. However, the legislature chose to not provide such specific delegation authority in the budget statutes under Chapter 111.

Therefore, it must be determined if such authority is implied to carry out the responsibility conferred by statute. The legislature made it very clear that the commissioners court must specifically determine the purpose for which public funds may be used and the amounts. *see Local Government Code Chapter 111, §§ 111.063 and 111.068*. Section 111.070(a) requires spending of public funds to be in "strict compliance" with the itemized budget adopted by the commissioners court. However, the legislature recognized that from time to time counties face circumstances which require some flexibility in their budgets. This is reflected in subsections (b) and (c) of section 111.070. But these subsections vests the power to invoke this flexibility solely in the commissioners courts themselves, not a designee.

Another possible source of authority to delegate budgetary duties is found in Local Government Code Section 111.071. Section 111.071 authorizes the budget officer to "assist the commissioners court in the performance of the court's duties relating to the efficiency and effectiveness of county operations." This is where our auditor's efficiency argument finds a home. The legislature certainly intended that a budget officer be given the ability to act outside of the very limited function of preparing the county budget. Otherwise, a budget officer would only be needed six to seven months of a year. However, the extent of this ability to act is a question of interpretation. The plain language of the statute states that the budget officer may "assist" the commissioners court. This does not imply the authority to "assume" the court's statutory duties. It does imply the authority to prepare documents, research issues on behalf of the court, and make recommendations in regards to budgetary matters. In other words, it allows the budget officer to assist the commissioners court in making "its" decision, not making the decision for it. Therefore, the legislature does not imply that any budgetary authority may be delegated away from the commissioners court in either Section 111.070 or section 111.071.

SUMMARY

A commissioners court is not authorized to delegate budget transfer authority to another officer or individual, including a budget officer. The duty and responsibility for the use of public funds within a county is vested solely in the commissioners court of that county. When statutorily authorized, a county may employ a budget officer to prepare its budget for consideration by the commissioners court. Once the commissioners court has adopted a budget for the county, the budget officer may assist the commissioners court in the efficient and effective operation of the county by performing activities which will aid the commissioners court in assessing needs and appropriateness of fiscal activity. However, the budget officer is not authorized to perform final decision making functions which are statutorily assigned to the commissioners court including budget transfers.

Sincerely,

Jack Skeen Jr.
Smith County Criminal District Attorney

BY: _____


Keith Downs

Assistant Criminal District Attorney
Smith County, Texas