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OPINION COMMITTEE

JOHNSON COUNTY
BILL MOORE
COUNTY ATTORNEY

FILE # 11-45201-07

I.D. # 045201

April 19, 2007

Hon. Greg Abbott
Attorney General of Texas
Opinions Section
P.O. Box 12548
Austin, Texas 78711-2548

Certified Mail # 7003 3110 0003 5201 8428
Return Receipt Requested

RQ-0583-GA

Re: Request for Opinion

Dear Attorney General Abbott:

On behalf of the Commissioners Court of Johnson County, I am seeking an opinion from your office on the following questions:

1. If the County Auditor decides that the financial software currently being used is unsatisfactory and creating problems and issues in the performance of his duties, does the County Auditor have the authority under Sections 112.001 or 84.901 of the Local Government Code to choose the computer software for use by the county auditor's office?
2. If the financial software offered by two or more vendors meet the specifications as requested by the County Auditor, does the County Auditor have the authority under Sections 112.001 or 84.901 of the Local Government Code to determine which computer software to purchase assuming that there is not a substantial difference in the costs of purchasing one or the other?
3. If the Commissioners Court votes to discontinue the use of the financial software being used by the County Auditor's Office and to replace that financial software with another financial software, does the County Auditor have the authority under Sections 112.001 or 84.901 of the Local Government Code to continue usage of the current financial software over objections of the Commissioners Court?

Statement of Facts

Johnson County has a population of less than 190,000 and has a centralized computer system

which provides a computer network for use by all of the elected officials' offices and county departments of the county. One vendor has been supplying most of the software for the county's computer network. In 2003, the County Auditor concluded that the financial software was unsatisfactory and creating various problems and issues in the performance of the Auditor's job. A review committee was formed by the Auditor that included his first assistant, the Data Processing Director, the Purchasing Agent, the County Treasurer, an assistant of the Personnel Department, and two County Commissioners. This committee prepared a list of specifications for a new financial software for the county's general ledger and payroll functions for use by the county auditor's office, the county treasurer's office, the purchasing department, and the personnel department. The Commissioners Court, at the recommendation of the committee issued requests for proposals. The proposals submitted by the vendors to the county were reviewed by the committee. At the recommendation of the Auditor and the committee, a new financial software package for the County's general ledger and payroll functions was purchased by the county. After a few months, the personnel department and the treasurer's office complained about the new software as being more cumbersome and less efficient than the previous software. The purchasing agent expressed some problems with the new software, but stated the new software was effective for the purchasing department. The County Auditor recognized the problems of the other offices and departments, but was satisfied with the software's functions for use by the auditor's office. The Commissioners Court appointed a committee consisting of the County Auditor, a County Commissioner, the Purchasing Agent, an assistant of the Personnel Department, the Director of Juvenile Probation, and the chief deputy of the Sheriff's Office to review the problems associated with the new financial software and submit a report to the Commissioners Court. The committee's report expressed problems such as lack of training provided by the vendor, lack of responsiveness to problems by the vendor, additional data entries being required to perform the equivalent functions as compared to the previous software, data being "lost" after entry, and problems in printing data at certain printers. After meetings between the committee and the vendor, and after the Commissioners Court discussing the issue, the Commissioners Court decided to discontinue use of the financial software and evaluate the possibility of converting back to the previous software, over the objections of the county auditor. The County Auditor had requested that the Commissioners Court table any decision to replace the currently used software for further study and consideration. In addition, the County Auditor had stated that to the extent the Commissioners Court and other users of the software were committed to finding a better software, he was agreeable and suggested that the Purchasing Agent draft a Request for Proposal for a new software and that he be given an opportunity to review the responses received in order to ensure that any change to the financial software not impair his ability to carry out his obligations as County Auditor.

Upon the decision by the Commissioners Court to change the financial software, the county auditor filed suit in district court against the Commissioners, the County Judge, and the Commissioners Court requesting a writ of mandamus, a declaratory judgment, temporary restraining order and injunctive relief. Subsequently, to avoid the time and expense of litigation, the

Commissioners Court rescinded its decision to change software and further entered into a settlement agreement with the County Auditor agreeing that the Commissioners Court would not take any action that purports to direct or dictate what computer software is necessary for the proper discharge of the County Auditor's Office or that the County Auditor discontinue use of the current financial software. The Commissioners Court also agreed that in the event the County Auditor discontinues the use of the current financial software, the Commissioners would not dictate what software should be utilized or purchased by the Auditor and his office. Even though the lawsuit has been dismissed as a result of a settlement agreement reached between the County Auditor and the Commissioners Court, this issue is subject to repetition. The Commissioners Court is seeking a clarification as to the authority of the County Auditor to determine computer software for use by the County Auditor's Office. If the County Auditor decides that the software currently being used is unsatisfactory and creating problems and issues in the performance of his duties, does the County Auditor have the authority under Sections 112.001 or 84.901 of the Local Government Code to choose the computer software for use by the County Auditor's office? If computer software from two or more vendors meet the specifications as requested by the County Auditor, does the County Auditor have the authority under Sections 112.001 or 84.901 of the Local Government Code to determine which computer software to purchase? Lastly, if the Commissioners Court votes to discontinue the use of the financial software being used by the County Auditor's Office and to replace that financial software with another financial software, does the County Auditor have the authority under Sections 112.001 or 84.901 of the Local Government Code to continue usage of the financial software over objections of the Commissioners Court?

Argument

The County Auditor is appointed by a majority of the District Judges in the County. TEX. LOC. GOV'T CODE § 84.001. The County Auditor has general oversight of the books and records of the county and is charged with ensuring the strict enforcement of the law governing county finances. TEX. LOC. GOV'T CODE § 112.006. According, the County Auditor must be allowed continued access to all records of the county officers relating to the finances of the county. TEX. LOC. GOV'T CODE § 115.001. The County Auditor is also charged with establishing the accounting procedures for the county and such regulations as he deems necessary for the effecting the proper oversight of county finances. TEX. LOC. GOV'T CODE § 112.001. Pursuant to TEX. LOC. GOV'T CODE § 84.901, the County Auditor may purchase, at the county's expense, equipment or services necessary for the discharge of his office.

In *Commissioners Court of Harris County v. Fullerton*, 506 S.W. 2d 572, (Tex. Civ. App.-Houston [1st Dist.] 1980, writ ref'd n.r.e.), the County Auditor had requested equipment and office supplies necessary for the proper functioning of his office and duties. The commissioners court subsequently denied certain equipment and office supplies from the auditor's budget. The court in *Fullerton* stated, "we think the question before this court is whether the county auditor submitted a

budget to the commissioners court which was within the statutory guidelines prescribed by the Legislature, and whether the commissioners court abused its discretion in failing to approve such budget and in ordering other procedures by which the county auditor is to operate his office.” *Fullerton* at 575. The court held that the Legislature vested the commissioners court with the power to determine the reasonableness of the county auditor’s budget. Once the county auditor, acting within the scope of his equipment budget, determines that an item or items of equipment or of associated services is necessary for the proper functioning of his office, the commissioners court must ministerially take the proper legal steps to procure such item or items unless it finds that the county auditor abused his discretion. *Id.* at 576. When the county auditor presents his budget to commissioners court enumerating equipment which he deems necessary for the operation of his office, the commissioners court has the power and authority to review and reject his budget only to the extent that the specific cost of an enumerated item is excessive or unreasonable in its monetary demands upon county funds, available or to become available, subject to any abuse of discretion. *Id.* at 577.

In 1990, Attorney General Jim Mattox was asked to provide an opinion regarding the authority of a county auditor to prescribe a computerized accounting system for elected county officials. The Attorney General in JM-1275 (1990) opined that if the auditor has determined that information regarding county finances can best be transmitted and processed through the use of particular computer programming, the other county offices that have compatible computer equipment are under a duty to comply with that determination by installing compatible programming in their departments. A county auditor of a county with a population of less than 190,000 may adopt and enforce regulations pursuant to Section 112.001 of the Local Government Code that incidentally require the use of specified computer programming, so long as such rules are not inconsistent with law or a rule of form adopted by the comptroller under Section 112.003 of the Local Government Code. The auditor may not dictate which equipment county officers shall use. Such a determination is appropriately reserved for the commissioners court in the exercise of its discretion in approving budgets and making contracts for the purchase of equipment and supplies for the county.

Attorney General Dan Morales issued Letter Opinion No. 92-50 in 1992 which dealt with the authority of a county auditor to prescribe accounting procedures and computerized accounting systems for elected or appointed officials. His opinion held that the question was resolved by Attorney General Opinion JM-1275 (1990). Attorney General Dan Morales summarized the law by stating that a county auditor in a county with a population of less than 190,000 may prescribe accounting procedures for elected or appointed county officials and may prescribe a computerized accounting system, provided such requirements are not inconsistent with law or a rule adopted by the Comptroller of Public Accounts pursuant to section 112.003 of the Local Government Code, and the auditor does not dictate which equipment shall be used by county officials.

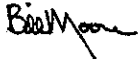
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Summary

Section 112.001 authorizes a county auditor in a county with a population of less than 190,000 to adopt and enforce regulations that the auditor considers necessary for the speedy and proper collecting, checking and accounting of the revenues and fees that belong to the county and Section 84.901 provides that a county auditor may purchase, at the county's expense and in the manner provided by law, necessary ledgers, books, records, blank forms, stationary, equipment, telephone service, and postage. The court in *Commissioners Court of Harris County v. Fullerton*, held that the commissioners court had a ministerial duty to take the proper legal steps to procure the equipment or services that the auditor determines is necessary for the proper functioning of his office. Attorney General Opinion No. JM-1275 and Letter Opinion No. 92-50 opined that the auditor may prescribe accounting procedures for elected or appointed county officials and may prescribe a computerized accounting system, provided such requirements are not inconsistent with law or a rule adopted by the Comptroller of Public Accounts pursuant to section 112.003 of the Local Government Code. The Commissioners Court is seeking clarification as to the authority of a county auditor to determine specific computer software for use by the county auditor's office as set forth in the three questions above.

Thank you for your time and consideration with regard to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,



Bill Moore
Johnson County Attorney

cc: Honorable Roger Harmon
Johnson County Judge