

RECEIVED

NOV 07 2008
OPINION COMMITTEE



FILE # ML-45898-08
ID. # 45898

KERR COUNTY ATTORNEY

REX EMERSON

COUNTY COURTHOUSE, SUITE BA-103 • 700 MAIN STREET • KERRVILLE, TEXAS 78028

November 1, 2008

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

RQ-0759-GA

Dear General Abbott:

The Kerr County Emergency Services District Number 2 has requested a clarification of Health and Safety Code Section 775.082. Specifically what is the definition of "audit"?

Section 775.082(b) states:

A district shall prepare and file with the commissioners court of each county that contains any part of the district on or before June 1 of each year an audit report of the district's fiscal accounts and records. The audit shall be performed and the report shall be prepared at the expense of the district. The county auditor, with the approval of the commissioners court, shall adopt rules relating to the format of the audit and report. If a district is located in more than one county, the county auditors, with the approval of the commissioners court of each county in which the district is located, shall adopt uniform rules relating to the format of the audit and report.

Section 775.082(c) states:

The person who performs the audit and issues the report must be an independent certified public accountant or firm of certified public accountants licensed in this state, unless the commissioners court by order requires the audit to be performed by the county auditor at least 120 days before the end of the district's fiscal year.

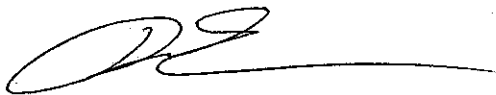
The issue arises from the seemingly inherent conflict between what type of "audit" is contemplated by the statute as applied through the professional rules of conduct under which certified public accountants are licensed.

As cited in GA-0360 a county auditor is not subject to Occupations Code chapter 901, which regulates the practice of public accountancy. *See* Tex. Occ. Code Section 901.004(a) In contrast, Occ. Code Chapter 901 authorizes the Texas State Board of Accountancy to regulate the practice of public accountancy and adopt rules of professional conduct.

The issue that arises is one of whether the County Auditor who is a CPA can ethically perform an audit as directed under Texas Health and Safety Code Chapter 775. After talking to the Texas State Board of Accountancy(TSBA) and the American Institute of CPAs(AICPA) it is apparent that there are numerous types of financial reports, and that while the TSBA has stated that the auditor can perform the audit as "county auditor" so long as the proper disclosures are used, the AICPA states in part that the answer depends on the definition of "audit" to establish the type of report required. It is my understanding that the TSBA adopted the AICPA rules.

The two local one-county ESDs and Kerr County would appreciate your guidance in defining "audit" for purposes of the Texas Health and Safety Code Chapter 775.

Thank you for your assistance,

A handwritten signature in black ink, appearing to read 'RE', with a long horizontal flourish extending to the right.

Rex Emerson