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JOSEPH D. BROWN
GRAYSON COUNTY CRIMINAL DISTRICT ATTORNEY

November 19, 2008

FILE # ML-45920-08
I.D. # 45920

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

RQ-0766-GA

Re: Request for Opinion.

Dear Attorney General Abbott:

Pursuant to section 402.043 of the Texas Government Code, I request your written opinion regarding the following issues:

- Can Juvenile Board members who are who are paid a yearly supplemental income be provided county medical insurance by the Commissioners' Court pursuant to Local Government Code 157.002?
- If county medical insurance can be provided to these Juvenile Board members, can the Commissioners' Court prevent county funds contributed to the Juvenile Board budget from being used to purchase county medical insurance?

I have investigated these questions and hereby submit to you my opinion and supporting brief.

Factual Background

The Juvenile Board members of Grayson County include the County Judge and four District Judges. While they are not full time county employees, for at least the past 20 years the District Judges have been paid a supplemental salary for their service on the Juvenile Board. In 2007, the salary supplement received by the Juvenile Board members was \$7,200. The supplemental salaries have been paid from the Juvenile Department's budget with funds contributed to the department's budget by the County. The County issues the check and proper withholdings are made. The board members have also been covered under the County's group health policy for approximately the past 20 years. The cost of the health insurance is paid out of the Juvenile Department's budget from funds contributed to the department's budget by the County. For the District Judges, this has provided a second health insurance policy, in addition to the medical insurance provided by the State or Texas.

It is the policy of Grayson County that only full time employees are provided health insurance. However, members of the Juvenile Board have been excepted from this policy. It is unclear how this exception came to be, as it has been the practice of the county for many years.

The Juvenile Board met and approved the Juvenile Department's budget on July 9th, 2008. This budget included the cost of the members' health insurance. Once approved by the Juvenile Board, the budget was submitted to the Commissioner's Court. On September 29, 2008, the Commissioner's Court met at a regularly scheduled meeting to approve the county's general budget. At this meeting, the Commissioner's reduced the budget for the Juvenile Board from \$1.166 million to \$1.122 million, which was a reduction of \$44,000. This \$44,000 was the cost for county medical insurance for these Juvenile Board members. The Commissioner's Court did not make a determination that an expenditure for medical insurance for Juvenile Board Members constituted an abuse of discretion.

Legal Issue Presented

It is the position of the Commissioners' Court that the Juvenile Board members' second medical insurance cannot be paid out of county funds because Juvenile Board members are not included in the list of individuals for whom a County may provide medical insurance in Local Government Code 157.002. Alternatively, the Court's position is that if county funds can be used for this county medical insurance, such a benefit is discretionary, and the Commissioners' Court has the power to deny county funds being used for this purpose. See AG Opinion JC-0414.

It is the position of the Juvenile Board that Local Government Code 111.094 gives a Commissioners' Court only the authority to set the dollar amount of the county funds which it will expend on the juvenile probation department. See AG Opinion JC-0085. The Commissioners' Court power of review over the juvenile probation department is limited to a review of the amount of county funds in that department's budget on an abuse of discretion standard. *Id.*

Therefore, while the Juvenile Board recognizes that the Commissioners' Court may reduce the budget of the Juvenile Board when the Juvenile Board has abused its discretion, no such finding of an abuse of discretion was made by the Commissioners' Court. Accordingly, the Juvenile Board may choose to spend the funds provided on county insurance for board members, even against the wishes of the Commissioner's Court.

Accordingly, the legal questions presented are:

- Can Juvenile Board members who are who are paid a yearly supplemental income be provided county medical insurance by the Commissioners' Court pursuant to Local Government Code 157.002?
- If county medical insurance can be provided to these Juvenile Board members, can the Commissioners' Court prevent county funds contributed to the Juvenile Board budget from being used to purchase county medical insurance?

Legal Analysis

It must first be determined whether Juvenile Board members, who are also District Judges, are eligible to receive medical insurance from a county. If they are not, then to provide such insurance would be a per se abuse of discretion by the Juvenile Board, and the second question need not be answered.

County governments may only exercise spending authority based on powers expressly conferred upon it by statute or constitution, either explicitly or implicitly. *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948) The spending authority permitting county governments to provide medical insurance to individuals is found in Local Government Code 157.002 (a).

Local Government Code 157.002. Medical Care, Hospitalization, and Insurance in Counties

(a) The Commissioners' Court by rule may provide for medical care and hospitalization and may provide for compensation, accident, hospital, and disability insurance for the following persons if their salaries are paid from the funds of the county or funds of a flood control district located entirely in the county, or funds of a hospital district described by Section 281.0475, Health and Safety Code, located entirely in the county, or if they are employees of another governmental entity for which the county is obligated to provide benefits:

- (1) deputies, assistants, and other employees of the county, or of the flood control district, or of the hospital district, who work under the Commissioners' Court or its appointees;
- (2) county and district officers and their deputies and assistants appointed under Subchapter A, Chapter 151;
- (3) employees appointed under Section 10(a), Article 42.12, Code of Criminal Procedure;
- (4) any retired person formerly holding any status listed above and
- (5) the dependents of any person listed above.

The statute specifically requires that, in order to be eligible, the person must have a "salary" paid from the funds of the county or other specific government entities. The term "salary" seems to indicate a requirement of full time employment. In this instance, the district judges serving on the Juvenile Board receive an annual supplement which could arguably be considered a "salary", although their work as Juvenile Board members is clearly part time. In fact, supplemental salaries paid to district officers by counties have been considered by the Attorney General to be sufficient to authorize a county to provide medical coverage. See Attorney General Opinion DM-337 (1995). However, even if the county money paid to these board members can be considered a salary, another issue is dispositive.

The list of individuals eligible to receive county medical benefits in Local Government Code 157.002 does not include Juvenile Board members specifically, nor does it include any board members which may serve the county. It does, however, include "county and district officers", which would include district judges.

However, while the statute authorizes the County to provide medical insurance to district officers, this authorization is granted on the basis of the individual's status as a district officer, not based on their status as a member of the Juvenile Board. The decision to provide medical insurance to a district officer is wholly discretionary on the part of a commissioners court. *Randall County Comm. Court v. Sherrod*, 854 S.W.2d 914, 924; Attorney General Opinion JM 319 (1985). Therefore, Grayson County may rightfully decline to provide medical coverage to district officers, including district judges. *Id.*

It is the position of the Juvenile Board, however, that because of its status as a "specialized local entity" under section 140.003 of the Local Government Code, the Juvenile Board alone may determine to whom medical insurance will be provided, as long those recipients are eligible under Local Government Code 157.002. For this position, the Juvenile Board relies on Attorney General opinions which have held that "with respect to items funded by the county, the commissioners court's authority is limited to approving and funding the budget, unless the commissioners court can show that the board has abused its discretion. Attorney General Opinions DM-460 (1997); MW-587. Without such an abuse of discretion, the county may only determine the total dollar amount of county funds allocated to the Juvenile Board. *Id.* This argument provides that it is not an abuse of discretion to provide medical insurance to District Judges, because the district judges are eligible "district officers" under Local Government Code 157.002.

We do not agree. We have already determined that providing medical insurance to district officers is discretionary for a commissioners court. For a Juvenile Board to be able to take away that discretion and force a county to provide medical insurance for Juvenile Board members, the law must provide separate authorization for Juvenile Board members to be eligible for medical benefits. The authorizing statute, Local Government Code 157.002, does not include Juvenile Board Members as eligible individuals to receive county medical insurance.

Because Juvenile Board members are not eligible for county medical benefits, it was a per se abuse of discretion for the Juvenile Board members to include this expense in its budget. Accordingly, it was not necessary for the Commissioners Court to make a finding of an abuse of discretion.

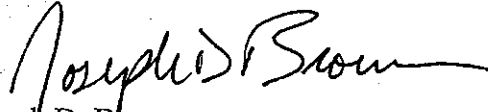
In light of the finding that Juvenile Board members are not eligible to receive county medical insurance, it is not necessary to address the second question presented.

Summary

Juvenile Board members who are provided an annual county supplemental salary are not eligible for county health benefits and for a Juvenile Board to budget funds for this expense constitutes an abuse of discretion.

Thank you for your assistance in this matter.

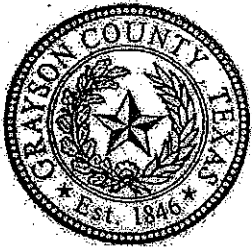
Respectfully submitted,



Joseph D. Brown
Criminal District Attorney
Grayson County, Texas

Attachment: November 9 letter from Bill C. Bristow, Director of Juvenile Services,
Grayson County

Cc: The Honorable Drue Bynum, Grayson County Judge
The Honorable Johnny Waldrip, Commissioner Pct. 1
The Honorable David Whitlock, Commissioner Pct. 2
The Honorable Jackie Crisp, Commissioner Pct. 3
The Honorable Gene Short, Commissioner Pct. 4
The Honorable Rayburn Nall, Judge, 59th District Court
The Honorable Jim Fallon, Judge, 15th District Court
The Honorable Brian Gary, Judge, 397th District Court
The Honorable Laurine J. Blake, Judge, 336th District Court
Mr. Richey Rivers, Grayson County Auditor
Mr. Bill Bristow, Director of Juvenile Services



Department of Juvenile Services

86 Dyess, Denison, Texas 75020
Telephone (903) 786-6326, FAX (903) 786-9401

November 9, 2008

Honorable Joseph D. Brown
Grayson County Criminal District Attorney
Grayson County Justice Center, Suite 116A
Sherman, Texas 75090

Dear Mr. Brown,

Thank you for allowing a bit of input, from an administrator's point of view, on the current Attorney General Opinion request last dated October 14, 2008. When I was appointed as Director of Juvenile Services in 1982, Dora Agee, County Auditor, assisted me with the preparation of the first juvenile department budget. At that time the juvenile board, three District Courts and County Judge, had their insurance provided by the County. As I recall, Mrs. Agee stated this was created under a previous Commissioner's Court instead of a juvenile board supplement increase. Ever since that time our current Auditor, Mr. Richey Rivers, has assisted me in placing the judges' insurance pay in the juvenile department general fund budget. Each year the Commissioner's Court has funded the insurance.

Many elected officials have a hard time grasping the fact that the juvenile board is its own "specialized local entity" under Local Government Code Section 140.003(a)(2) much like the District Attorney and Adult Probation Department. I do not know if your department, across the State, has received Attorney General opinions as our agency; however, we have many that have defined the juvenile boards role in hiring, contracts, policy and procedure, duties and responsibilities as well as how budgeting is to occur. I have even utilized the special local entity argument to secure from the Texas Association of Counties our own law enforcement and board liabilities insurance separate and apart from the County policy.

The current argument, to me, is not, "Can the Commissioner's Court provide county insurance to the juvenile board." It has been doing so for 27 years plus without complaint or finding of "abuse of discretion." The question is, "Can they remove it from the juvenile department's budget?" Of course, I believe not.

If you read each Attorney General's Opinion regarding the roles of the juvenile board in budgeting as well as the many lawyers interpretations of the same found in Texas Juvenile Law, 7th Edition, Robert Dawson, Texas Juvenile Probation Commission, August 2008 the method and procedure on budget review and adoption is specific. The steps are:

- (1) The juvenile board adopts all budgets (General Fund, State Aid and grant) for the local department;
- (2) The Board files, with the appropriate office, the County's portion only of the funds provided by general revenue;
- (3) The County Commissioner's review is limited only to the portion made up by County funds and for "abuse of discretion." (Attorney General Opinion No. MW-587 (1982).
- (4) The Commissioner's Court "may only determine the total dollar amount of county funds allocated to the [juvenile probation] department. It may not determine the particular purposes of amounts of any expenditure from these or any other funds the department receives." Attorney General Opinion No. DM-460 (1997).
- (5) If the Commissioner's Court finds "abuse of discretion" the appropriate mechanism for correction would be calling the "abuse of discretion" issue to the juvenile board's attention for review and re-submittal of the budget.
- (6) Lastly, the county funds are place on deposit with the County Treasurer for which the juvenile board takes control and expends as necessary for juvenile services.

As with each prior fiscal year, for FY 2009 the juvenile board ordered and submitted its budget. It was filed, as requested by the County's Budget Officer, with the Grayson County Auditor. During the FY 2009 budget hearing, Commissioner Short brought up the issue of juvenile board receipt of County insurance. No vote was taken, nor was there a discussion of this being an "abuse of discretion" by the juvenile board in the expenditure of county funds. It was not until the County budget adoption that the Commissioner's Court voted to remove such monies from the juvenile department's budget that would not fund the insurance.

In summary, the juvenile board, as a specialized local entity, submitted the FY 2009 General Fund budget that included, as it has for over 27 years, monies to fund the juvenile board's county insurance. The Commissioner's Court was allowed to review the budget for abuse of discretion. No items, including the juvenile board insurance were found to fall with an abuse of discretion standard. Therefore, it is my opinion that the Commissioners Court did not meet any criteria for the removal of county funds for payment of the juvenile board insurance.

If you have questions or I can be of further assistance, please do not hesitate to contact me at (903) 814-9883 or bristowb@co.grayson.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Bill C. Bristow". The signature is written in a cursive style with a long horizontal flourish at the end.

Bill C. Bristow, LMSW-AP
Director
Grayson County Department of Juvenile
Services