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OPINION COMMITTEEFILE # M1-46550-10
I.D. # 46550SMITH COUNTY COURTHOUSE
100 N. BROADWAY 4th Floor
TYLER, TEXAS 75702**D. Matt Bingham**
Criminal District Attorney
Smith CountyTELEPHONE: (903) 590-1720
TELECOPIER: (903) 590-1719

April Allison Sikes, First Assistant

Deloris Johnson, Office Director

August 4, 2010

*Via certified mail & facsimile***RQ-0908-GA**Honorable Greg Abbott
Attn: Intergovernmental Relations
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548*In re: Request for Attorney General Opinion Pursuant to Texas Government
Code § 402.043*

Dear Attorney General Abbott:

The Smith County District Attorney's Office is filing a request for an opinion from the Texas Attorney General at the request of JoAnn Hampton, Smith County Commissioner, Precinct 4. In the interest of justice, this office kindly requests an opinion from the Texas Attorney General to address an issue of importance with regard to the proper legal parameters that a county judge may take in formulating a county's budget.¹ Specifically, it has come to our attention that a question has been recently raised surrounding the scope of authority for Texas county judges who act as the budget officer

¹ Tex. Gov't Code § 402.43 (Stating that "The attorney general shall advise a district or county attorney of this state, on the attorney's request, in the prosecution or defense of an action in which the state is interested before a district or inferior court if the requesting attorney has investigated the question involved and submitted a brief to the attorney general.").

in their respective county.² The “jurisdiction over all county business” lies with the “County Commissioners Court.”³ In the capacity of budget officer, a “county judge may require any county officer to furnish existing information necessary for the judge to properly prepare the budget.”⁴ If, however, “a county officer fails to provide the information as required by the county judge, the county judge may request the commissioners court to issue an order (1) directing the county officer to produce the required information; and (2) prescribing the form”⁵ Therefore, we ask that your office issue a legal opinion regarding the following specific questions:

1. **Whether or not a county judge may use his or her position as a budget officer to unilaterally grant access to the county’s financial records to a volunteer financial consultant without obtaining permission from the full commissioners court?**
2. **If so, whether or not the volunteer financial consultant must submit “public information requests” in order to obtain access to public records from both department heads and elected officials?**

Background & Facts:

In preparing the fiscal year 2011 working budget, the Smith County Judge notified all department heads and elected officials that a financial consultant with extensive experience had volunteered to assist with assessment of financial information and budget recommendations. **See Exhibit “A,” Copy of Letter from Smith County Judge, dated July 12, 2010.** Smith County officials received notification that the volunteer financial consultant would “seek to understand the operation and financial requirements of each department since we want to make the best use of his time and experience.” *Id.* The types of information asked for by the financial consultant include salary amounts, positions, job descriptions, etc., and the financial consultant has indicated that any “confidential” information should be redacted (e.g., social security numbers and other personal identifiers).

Exhibit “A” is attached hereto and incorporated herein as if copied in full.

² Tex. Loc. Gov’t Code § 111.002 (County Judge as Budget Officer).

³ Tex. Const. Art. V, § 18(b).

⁴ Tex. Loc. Gov’t Code § 111.005(a).

⁵ *Id.* at § 111.005(b) (emphasis added).

Authorities:

Tex. Const. Art. V. § 18(b) states in pertinent part:

The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

Tex. Loc. Gov't Code § 111.002 states in pertinent part:

The County Judge serves as the budget officer of the commissioners court of the county.

Tex. Loc. Gov't Code § 111.005(a) states in pertinent part:

In preparing the budget, the county judge may require any county officer to furnish existing information necessary for the judge to properly prepare the budget.

Tex. Loc. Gov't Code § 111.005(b) states in pertinent part:

If a county officer fails to provide the information as required by the county judge, the county judge may request the commissioners court to issue an order: (1) directing the county officer to produce the required information; and (2) prescribing the form in which the county officer must produce the information.

Discussion:

It should be noted that the powers of the commissioners court include legislative, executive, administrative, and judicial functions.⁶ The powers of the full commissioners court may conflict with the scope of powers claimed by Texas county judges seeking to use "budget officer" powers to unilaterally make the decision of granting access to third parties as part of the "budget process."⁷ Furthermore, under the clear terms of the statutory scheme addressing budget preparation, a county judge should request *the commissioners court* to issue an order compelling compliance when county officials fail

⁶ *Ector County v. Stringer*, 843 S.W.2d 477, 478 (Tex. 1992).

⁷ Here, the County Judge has simply "ask[ed]" for assistance but has nevertheless sought to grant access to a third party who is not affiliated with the county as an official or employee.

to provide requested information.⁸ Absent a commissioners court order, may the budget officer mandate compliance through a third party without that third party having submitted public information act requests⁹ to both department heads and elected officials?

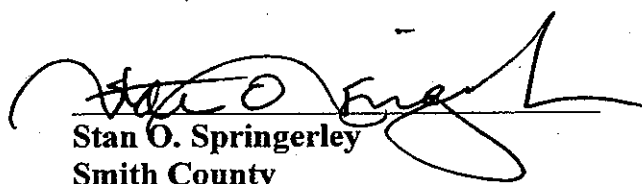
Request for Legal Opinion:

The language of the statutory provisions addressing budget preparation give a county judge express authority to seek “existing information ... necessary for the judge to properly prepare the budget,”¹⁰ from public officers; however, the statute is not clear whether or not the county judge must obtain permission from the full commissioners court to grant access to information to a third party financial consultant who is acting as a volunteer. Additionally, if the third party does have access to financial data, is there a need for that party to submit a public information request¹¹ where the full commissioners court has not granted access?

Based on the foregoing, the Smith County Criminal District Attorney’s Office is requesting that the Texas Attorney General issue a legal opinion with regard to the express authority of Texas county judges to grant access to the county’s financial records to a volunteer financial consultant without obtaining permission from the full commissioners court. Additionally, in the situation where a county judge seeks to grant access to the county’s financial information to a third-party, is it necessary for that third party to submit a public information request (in order to bypass the commissioners court)? Without a legal opinion clarifying this important issue, many counties around the State of Texas will lack clarity in the budget preparation process and governance of county business.

Thank you for your time and attention to this matter.

Sincerely,


Stan O. Springerley
Smith County
Civil Assistant District Attorney

⁸ *Supra*, FN5.

⁹ Tex. Gov’t Code § 552.021.

¹⁰ *Supra*, FN4.

¹¹ *Supra*, FN9.

**Cc: Hon. Jo Ann Hampton, Pct. 4 Commissioner
Hon. Judge Joel P. Baker, Smith County Judge**

Encl.

EXHIBIT A

Stanley Springerley

From: Judy Carnes
Sent: Tuesday, July 13, 2010 9:22 AM
To: Stanley Springerley
Subject: FW: Letter from Judge Baker to All Elected Officials and Department Heads

From: Carmen Gardner
Sent: Monday, July 12, 2010 5:45 PM
To: Andy Dunklin; Ann Wilson; Arvilla Banks; Bill McGinnis; Dennis Taylor; Doug Nicholson; Dustin Rust; Gary Barber; Harvy Tanner; Henry Jackson; James Cowart; James Meredith; JB Smith; Jeff Warr; Jim Seaton; JoAnn Hampton; John G. Smith; Judge Carole Clark; Judge Christi Kennedy; Judge Floyd Getz; Judge Jack Skeen; Judge Kerry Russell; Judge Quincy Beavers; Judge Randall Rogers; Judge Thomas Dunn; Judy Carnes; Karen Nelson; Kelli Davis; Kelli White; Leonardo Brown; Lois Rogers; Mitch Shamburger; Paul Fisher; Scott Cothran; Steve Christian; Terry Phillips; Toby Cross; Jennifer Barfield; Christy Keul (lawlibrarysmith@sbcglobal.net); Danny Kee; ndowning@smithcojs.com
Subject: Letter from Judge Baker to All Elected Officials and Department Heads



COUNTY OF SMITH

The Office of the County Judge
200 E. Ferguson, Suite 100
Tyler, TX 75702

July 12, 2010

TO: Smith County Elected Officials and Department Heads
FROM: Judge Joel Baker

The purpose of this letter is to introduce Mr. Mike Canant, who has graciously volunteered to assist with the county's financial and budget issues. Mr. Canant brings more than 30 years of financial experience in the corporate world. His previous positions as vice-president of finance and internal auditing for several billion dollar corporations have positioned him to understand the needs of our current environment where cost reduction, revenue shortfalls, and operational enhancements are critical pieces to our current financial picture.

Because Mr. Canant will be reviewing all aspects of our budget process, I anticipate that he will need to contact each elected official and department head directly. I ask that you assist him as he seeks to understand the operational and financial requirements of each department since we

want to make the best use of his time and experience. Our goals are to finalize a 2011 budget that balances declining revenue with ongoing county needs and provide adequate emergency reserve funds.

Thank you in advance for your help and support as we meet these challenges head-on.

