

WINKLER COUNTY, TEXAS

Office of the County Auditor

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SEP 23 2011

OPINION COMMITTEE

September 19, 2011

RQ-0998-GA

FILE # M1-46828-11

I.D. # 46828

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

RE: Request for definition of "disburse" and "endorse" in regard to County Treasurer's duties

Dear General Abbott:

Background Facts:

In past years, the Winkler County Commissioners' Court approved reassigning the Human Resources duties from the County Treasurer and created a Human Resources position to be supervised by the County Auditor. The duties reassigned included payroll preparation, FICA deposits, quarterly payroll reports & W-2's. After payroll is calculated by the Human Resources office, it is audited by the auditor's office and returned to Human Resources to print the checks. The checks are then signed by the County Auditor's office and given to the County Treasurer for approval. Once checks are signed, the County Treasurer gives them to Human Resources to prepare for mailing or distribution to employees.

Accounts Payable is prepared by the County Auditor's office and signed by the County Auditor to declare it as a budgeted item. The accounts payable checks are then printed and signed by the auditor and given to the County Treasurer for signature. Checks are then returned to the County Auditor's office to prepare for mailing or distribution to vendors.

The Issues:

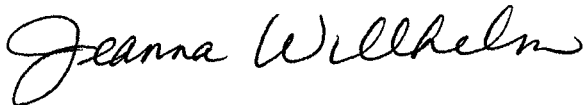
- A. Does the definition of "disburse" in LGC 113.041¹ mean that the County Treasurer must personally and physically stuff, mail or distribute all accounts payable and payroll checks or can the Human Resources office or the County Auditor's office continue to perform these duties after the County Treasurer signs the check? Does this apply also to a County Hospital's accounts payable and payroll checks?

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- B. Does the definition of "endorse" in LGC 113.042² mean that the County Treasurer must personally and physically input the data, send direct deposit file, and print the checks for accounts payable and payroll or can the Human Resources office or the County Auditor's office continue to perform these duties? Does this apply also to a County Hospital's accounts payable and payroll checks?
- C. If County Treasurer signs the signature card for an account in the County Treasury, does that account have to be reconciled by County Treasurer? (LGC 113.008)³ Does this apply to the County Hospital account that is currently being reconciled by County Auditor?
- D. In regard to deposits made in the County Treasury does the County Treasurer have to physically receipt the funds deposited by other County Officers the same day they are taken to the bank or can she receipt them later using the date the deposit was made? (SB 373 Section 2)⁴

We appreciate your assistance in this matter. I have contacted several counties in regards to these matters and each county has different views on the subject.

Sincerely,



Jeanna Willhelm
Winkler County Auditor

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FOOTNOTES:

¹LOCAL GOVERNMENT CODE, Sec. 113.041. DISBURSEMENT OF MONEY BY COUNTY TREASURER; PAYMENT BY CHECK OR WARRANT; LOST OR DESTROYED INSTRUMENT. (a) The county treasurer shall disburse the money belonging to the county and shall pay and apply the money as required by law and as the commissioners court may require or direct, not inconsistent with law.

(b) Except as provided by Chapter 156, a person may not spend or withdraw money from the county treasury except by a check or warrant drawn on the county treasury, whether or not the money is in a county depository as required by law.

(c) The county treasurer may not pay money out of the county treasury without a certificate or warrant from an officer who is authorized by law to issue the certificate or warrant.

(d) If the treasurer doubts the legality or propriety of an order, decree, certificate, or warrant presented to the treasurer for payment, the treasurer may not make the payment. The treasurer shall report the matter to the commissioners court for the court's consideration and direction.

(e) If the treasurer is satisfied that an original check or other order drawn on the county treasury by a proper authority is lost or destroyed, the treasurer may issue a duplicate instrument in place of the original. The treasurer may not issue a duplicate until an applicant has filed an affidavit with the treasurer that states that the applicant is the true owner of the original instrument and that the original is lost or destroyed.

(f) The treasurer may require an applicant for a duplicate instrument to execute a bond with two or more good and sufficient sureties in an amount that is double the amount of the claim. The bond must be:

- (1) notarized;
- (2) made payable to the county judge;
- (3) conditioned that the applicant will hold the county harmless;
- (4) conditioned that the applicant will return to the treasurer on demand by the treasurer the duplicate instrument or the amount of money named in the duplicate, including any costs that accrue against the county in collecting the amount; and
- (5) approved by the treasurer.

(g) If, after issuance of the duplicate instrument, the treasurer determines that the duplicate was issued improperly or that the applicant or person to whom the duplicate was issued is not the owner of the original instrument, the treasurer shall immediately demand the return of the duplicate, if it is unpaid, or the return of the amount paid by the county, if the duplicate is paid. If the person fails to return the duplicate instrument or the amount of the instrument, the treasurer shall institute a suit on the bond through the office of the county or district attorney. Venue for the suit lies in the county in which the treasurer serves.

(h) A county treasurer may not honor a check or warrant on the interest and sinking fund provided for a bond of the county or pay out or divert money in that fund except to pay the principal of or interest on the bond or invest money in securities as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 343, Sec. 1, eff. May 29, 1993; Acts 1999, 76th Leg., ch. 227, Sec. 8, eff. Sept. 1, 1999.

²LOCAL GOVERNMENT CODE, Sec. 113.042. ENDORSEMENT BY COUNTY TREASURER; OTHER WARRANT REQUIREMENTS. (a) On the presentation of a warrant, check, voucher, or order drawn by a proper authority, and if there are sufficient funds for payment on deposit in the account against which the instrument is drawn, the county treasurer shall endorse on the face of the instrument the order to pay the named payee and shall charge the amount in the treasurer's records to the fund on which it is drawn.

(b) The county treasurer may not issue and the county depository may not pay a check drawn on the county depository to take up a warrant drawn by a proper authority, but the county treasurer shall, on the presentation of the warrant, endorse the warrant and deliver it to the payee, who may present it to the county depository for payment.

(c) The treasurer may not endorse an instrument designated as a time deposit until after the notice and time requirements in the depository contract that designates the funds as time deposits are met.

(d) If a bond, coupon, or other instrument is payable on its own terms at any place other than the county treasury, this section does not prevent the commissioners court from ordering the treasurer to place a sufficient sum at the location where the instrument is payable

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at the time and place of its maturity, as long as the payment is made in the manner prescribed by law.

(e) Each check or warrant issued or drawn by an officer under the provisions of this section is subject to all laws and rules relating to auditing and countersigning.

(f) Each warrant or scrip issued against the county treasurer by a judge or court must be signed and attested by the clerk or judge of the court under that officer's official seal.

(g) A justice of the peace may not issue warrants against the county treasury for any purpose except as may be provided by the Code of Criminal Procedure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

³LOCAL GOVERNMENT CODE, Sec. 113.008. RECONCILIATION OF COUNTY CHECKS AND WARRANTS.

(a) The county depository shall provide all canceled checks and warrants and supporting statements to the county treasurer.

(b) Subsection (a) does not apply if the checks and warrants are payable from funds under the direct authority of an official other than the county treasurer as provided by statute. The exemption provided by this subsection does not apply if the official requests the county treasurer to be responsible for the reconciliation of the checks and warrants payable from the funds that are under the direct authority of the official.

(c) In fulfilling the requirements of Subsection (a), the county depository shall provide, at the direction of the county treasurer:

(1) original canceled checks and warrants; or

(2) optical images of the front and back of canceled checks and warrants if the optical images are retained in accordance with the rules adopted by the Texas State Library and Archives Commission.

(d) The county treasurer shall:

(1) reconcile the canceled checks and warrants with the account records of the depository; and

(2) ensure all financial adjustments are made regarding the depository account as required.

(e) In this section, a reference to the county treasurer includes a person performing the duties of the county treasurer.

Added by Acts 1997, 75th Leg., ch. 140, Sec. 1, eff. Sept. 1, 1997.

⁴SENATE BILL 373, Effective September 1, 2011: SECTION 2. Subsections (a) and (c), Article 103.004, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection [~~Subsections (b) and~~] (c), an officer who collects recognizances, bail bonds, fines, forfeitures, judgments, jury fees, and other obligations recovered in the name of the state under any provision of this title shall deposit the money in the county treasury not later than the next regular business day after the date that the money is collected. If it is not possible for the officer to deposit the money in the county treasury by that date, the officer shall deposit the money in the county treasury as soon as possible, but not later than the fifth [~~third~~] regular business day after the date that the money is collected.

(c) The commissioners court of a county with a population of less than 50,000 may authorize an officer who is required to deposit money under Subsection (a) to deposit the money in the county treasury not later than the 15th [~~30th~~] day after the date that the money is collected.