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**OPINION COMMITTEE**



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October 31, 2011

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

**VIA CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED**

Re: Request for Attorney General Opinion regarding the recent Legislative changes to Section 113.008 of the Texas Local Government Code

Dear General Abbott:

This is a request for an opinion regarding the effects of the recent legislative changes to Section 113.008 of the Texas Local Government Code (hereinafter TLGC), specifically the recently created Subsections (b-1) and (f). There is no caselaw or Attorney General Opinion construing this newly enacted statutory provision, nor any meaningful legislative history which might assist in its construction. The current situation in Webb County requires an opinion as to Section 113.008 TLGC (as amended) regarding:

1. Can the county treasurer refuse a request by an elected official with special fund accounts to reconcile the checks and orders for payments from those special fund accounts?
2. If the county treasurer can refuse the request of the elected official, can the elected official refuse to reconcile the special fund accounts by simply not preparing them?

3. Can an elected official's refusal to reconcile their special fund accounts be designated as "failure"? If so, who is obligated to determine if the elected official has failed, what remedies are available if refusal to reconcile special fund accounts is not deemed failure, and what consequences may there be for an elected official who fails to carry out their statutory obligation (e.g. is this failure tantamount to failing to carry out the officeholder's statutorily imposed duties)?

## LEGAL BACKGROUND

### Special Fund Accounts

The general rule that governs the management of County funds is that the commissioners court has the authority to determine how the county's resources will be allocated. An exception to this general rule, are funds or accounts that are created by statute and are under the direct control of an elected official. Examples of these accounts are:

1. ***Hot Check Fund*** controlled by the District Attorney pursuant to Section 102.007 of the Code of Criminal Procedure.
2. ***Forfeiture Fund*** controlled by the state attorney and by agreement the Sheriff pursuant to Chapter 59 of the Code of Criminal Procedure.
3. ***Chapter 19 Fund*** controlled by the Voter Registrar pursuant to Section 19.002 of the Elections Code.
4. ***Motor Vehicle Inventory Tax Interest Fund*** controlled by the Tax Assessor-Collector pursuant to Section 23.122 of the Tax Code.
5. ***Jail Commissary Fund*** controlled by the Sheriff pursuant to Section 351.0415 of the Local Government Code.
6. ***Elections Services Contract Fund*** controlled by the County Elections Officer pursuant to section 31.100 of the Elections Code.

### Texas Local Government Code §113.008 Pre 82<sup>nd</sup> Legislative Session

Section 113.008(a) TLGC, before it was amended by the 82<sup>nd</sup> Legislative Session, stated that the County depository "shall provide all canceled checks and warrants and supporting statements to the county treasurer." Section 113.008(b) TLGC provided that subsection (a) would not apply if the funds were under the direct control of an elected official other than the county treasurer, but this exception would not apply if the official requests the county treasurer be responsible for the reconciliation of the checks and warrants from those funds. Section 113.008(d) TLGC clearly obligated the County Treasurer to reconcile all the checks, warrants, and account records of the depository. Even though section 113.008(b) TLGC allowed the elected official with direct control of the funds to request the county treasurer to reconcile the special fund accounts, it could be deduced that the treasurer would not be able to refuse to reconcile these accounts as

section 113.008(d) stated that the county treasurer “shall reconcile the canceled checks and warrants with the account records of the depository”.

### **Texas Local Government Code §113.008 Post 82<sup>nd</sup> Legislative Session**

Section 113.008(a) TLGC was then amended by the 82<sup>nd</sup> Legislature. As to the issues presented in this request, the most significant amendments to Section 113.008 were the addition of Subsections (b-1) and (f). The creation of the Subsections is significant in that (f) clearly identifies the elected official with special fund accounts as the individual responsible for reconciling all balances and transactions as opposed to the County Treasurer. Newly created Subsection (b-1) is less clear, in that it allows an official responsible for a special funds account to request that the County Treasurer reconcile the fund balances and then states that if an official *fails* to reconcile the special accounts on a monthly basis they shall transfer the responsibility to the County Treasurer.

The Statute does not define the term fail. Section 311.011(b) of the Code Construction Act directs that “words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” The legal definition found in Black’s Law Dictionary defines fail as: “Fault, negligence, or refusal. Fall short; be unsuccessful or deficient.” Although, it could be argued that the definition of “fail” in the legal field may not be the “technical or particular meaning” that the legislature contemplated. Furthermore, the statute does not give any direction as to who’s responsibility it is to determine when and if an official with a special fund balance has failed to reconcile the account, and what remedies are available if it is determined that the official has failed.

### **FACTUAL BACKGROUND**

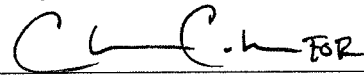
In Webb County the “special accounts” are separate bank accounts that are under the direct control of an elected official. The Webb County Treasurer does not “sign off” on these special account expenditures like she does on the other depository accounts as is the usual requisition process. The County Treasurer, at the time the amendments to Section 113.008 TLGC were posted, was only reconciling the special fund accounts for the Webb County Tax Assessor-Collector. The Tax Assessor-Collector currently has Eleven (11) such special fund accounts including the Vehicle Inventory, State Highway, and the Motor Vehicle Sales Tax fund. The other County Elected Officials with special fund balances were reconciling their own accounts. The County Treasurer notified the Tax Assessor-Collector that she would no longer be reconciling the special fund balances as of September 1, 2011. The Tax Assessor-Collector requested that the Treasurer reconcile the accounts and the Treasurer denied the request. The Tax Assessor – Collector’s special fund accounts have not been reconciled, therefore necessitating this request for an opinion.

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### REQUEST FOR DECISION

I would therefore request an opinion concerning the above stated issues. I appreciate your assistance with this matter. If you have any questions or if you require any additional information, please contact me.

Sincerely,



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Anna Laura Cavazos Ramirez  
Webb County Attorney

#### Enclosures

cc: Ms. Delia Perales  
Webb County Treasurer  
1110 Washington Street, Ste. 202  
Laredo, Texas 78040

Ms. Patricia Barrera  
Webb County Tax Assessor-Collector  
1110 Victoria Street, Ste. 107  
Laredo, Texas 78040

w/out enclosures

**VIA HAND DELIVERY**