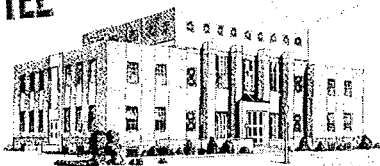


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JUN 11 2012

OPINION COMMITTEE



FILE # ML-47072-12

I.D. # 47072

Cherokee County

RUSK, TEXAS

75785

CRAIG D. CALDWELL

COUNTY ATTORNEY

Date: 07 Jun 12

KELLEY D. PEACOCK

ASSISTANT COUNTY ATTORNEY

To: L. H. Crockett
Cherokee County Auditor
Hand Delivered

RQ-1069-GA

From: Craig D. Caldwell

Re: Request for Attorney General's Opinion

Mr. Crockett:

Please forward this letter and attachments by certified mail, return receipt requested to the following individual:


Ms. Nancy S. Fuller
Chief, Opinions Committee Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

The question I would like the Attorney General to answer is as follows:

If the Cherokee County District Judges and the Cherokee County Court at Law Judge, pursuant to Texas Government Code, Section 76.004, have appointed a local Certified Public Accounting firm to become the "Fiscal Officer" for the Cherokee County Community Supervision and Corrections Department (hereinafter "CSCD"), can that "Fiscal Officer", pursuant to Section 76.004 (c) (3), proscribe a procedure (See Attachment 1) for the payment of bills of the CSCD that calls for the signature of the Cherokee County Treasurer and for the counter signature to be that of the Director of the CSCD, instead of the County Auditor?

Please see my short brief contained in Attachment 2.

Respectfully yours,


Craig D. Caldwell

cc: L.H. Crockett, County Auditor; Patsy Lassiter, County Treasurer; Tommy Kerzee, Director CSCD; Anita Woodlee, Fiscal Officer
encl.

Brief Concerning Fiscal Officers Authority To Prescribe Accounting Procedures for the CSCD

1.01 Section 113.043 of the Local Government provides as follows:

“In a county with a county auditor, the county treasurer and the county depository may not pay a check or order for payment unless it is countersigned by the county auditor to validate it as a proper and budgeted item of expenditure....”

This is the general rule for all expenditures made by a county that has a county auditor. Cherokee County has a county auditor.

2.01 Section 140.003 of the Local Government Code provides in part as follows:

“(a) In this section, “specialized local entity” means:

(3) an adult probation office or department established for a judicial district.

“(f) Each specialized local entity shall deposit in the county treasury of the county in which the entity has jurisdiction the funds the entity receives. *The county shall hold, deposit, disburse, invest, and otherwise care for the funds on behalf of the specialized local entity as the entity directs.*”

2.02 In the Attorney General’s Opinion No. DM-460, the question was whether the El Paso County Juvenile Probation Board could authorize expenditures for the El Paso Juvenile Department without approval of the Commissioners Court of El Paso County.

2.03 The Opinion came to the following conclusion:

“... The board may authorize expenditures of state aid and county funds independent of the commissioners court’s review and approval.”

It therefore appears to me that if a “specialized local entity” directs payment of its bills the county treasurer and the county auditor are required to sign the checks and pay the bills as directed by Cherokee County Community Supervision and Corrections Department. (hereinafter, “CSCD”)

3.01 If that is so, what role does the county auditor have concerning the expenditures of the CSCD?

3.02 Under Section 140.003 (g) Local Government the role of the county auditor is as follows:

“The county auditor, if any, of the county that manages a specialized local entity’s funds has the same authority to audit the funds of the entity that the auditor has with regard to county funds.”

3.03 We also find similar wording in Section 70.004 (g) of the Government Code which is:

“(g) Subsections (c) - (f.) do not diminish the rights of the following officers or entities to examine and audit accounts, records, receipts, and expenditures of a department:

(1) the county auditor of a county served by the department; “

3.04 Attorney General Abbott, in Opinion No. GA-0872 came to conclusion as follows:

“Only the county auditor and her qualified assistants may countersign a check.”

However, when Section 70.004 Government Code provides in (c) (3) that the Fiscal Officer can prescribe accounting procedures for the department and only leaves the auditor the authority to examine and audit accounts, etc, then the Fiscal Officer has the authority to determine whose signatures are required to pay the CSCD bills.

Therefore, the procedures set out in Attachment 1, paragraph 10 and 11 by the Fiscal Officer requiring the County Treasurer’s signature and the CSCD Director’s signature is the proper procedure and is an exception to the requirements of Section 113.043 Local Government Code.