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**OPINION COMMITTEE**

**JO ANNA JOHNSON  
COUNTY AUDITOR  
SAN AUGUSTINE COUNTY, TEXAS  
100 WEST COLUMBIA STREET  
SAN AUGUSTINE, TEXAS 75972**

FILE # ML-47216-13  
I.D. # 47216

**Email: jo.johnson@co.san-augustine.tx.us**

**Phone: 936-288-0110**

**Fax: 936-288-0128**

January 31, 2013

Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-1107-GA**

Re: Whether a county commissioners' court can enter into an agreement whereby the county receives invoices from a construction company for repairs to county roads and the invoices are forwarded to an oil company and the oil company pays the county for the repairs, after which the county pays the construction company.

Dear Mr. Abbott:

My county attorney has issued an opinion that states, in part, "...it is my opinion that XTO's funding of Attoyac Construction's work on county roads in Precinct 3 is not within the requirements of Texas laws requiring competitive bids. This is a prescriptive road that became public thru use thus the work performed on the road by Attoyac Construction at the direction of XTO is not amenable to a bidding process."

I agree that competitive bidding does not apply to this situation by virtue of the fact that the county is not spending taxpayer money for material to repair roads.

However, the county attorney goes on to advise our treasurer by saying, "Your office will simply pass on billings for work from Attoyac Construction to XTO and fund such billings only after matching funds are provided. No funding by XTO is to be diverted for any purpose other than matching the billings from Attoyac Construction. No billing is to be funded unless and until made through XTO."

I have two questions regarding this opinion from my county attorney.

- (1) Can a county commissioner enter into such an agreement with an oil company to pay for repair of roads in his precinct without first the commissioners' court as a whole voting to enter into this agreement during an open commissioners' court meeting?

- (2) Can the county attorney or commissioners' court require the treasurer to 'send a bill from a construction company to an oil company, the oil company then pay the county, and the treasurer then pay the construction company'?

Is there any statute that prohibits or allows a transaction like this? It seems to me there could be some liability for the county if the oil company decided they would not pay the construction company for all the work that they did.

Sincerely,



Jo Anna Johnson