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OPINION COMMITTEE



RD-0150-KP

FILE # ML-48128-17

ID # 48128

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February 21, 2017

The Honorable Ken Paxton, Attorney General
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin Texas 78711-2548

Dear Sir,

We are writing on behalf of the Walker County Treasurer and the Walker County Auditor seeking your opinion regarding the manner in which payment of certain claims, including payroll, are approved. We are asking whether it is proper for the Walker County Commissioners' Court to enter an order authorizing the Treasurer to pay certain types of claims and bills prior to presenting the actual claims or bills to the Court.

By way of background information, the population of Walker County is approximately 67,861. The County has an Auditor as required by Section 84.002 of the Texas Local Government Code. The Treasurer's Office handles payroll for all officials and departments of the County. Currently, officials and their employees are paid every two weeks.

The Auditor has proposed an order which would authorize expedited payment of certain claims. (See Exhibit "A".) The reasons suggested for the order are, for example, to maintain continuity of services, meet payroll, and to avoid late fees for such things as credit card accounts. The order places requirements which must be satisfied before qualifying for payment. After a claim has been paid under the order, it is presented in the Treasurer's bill paying report at the subsequent meeting of the Court. This means the first time the Court becomes aware of the actual amount involved is after the claim has been paid. The report details all claims which have been paid by the Treasurer since the last meeting of the Court, including both those paid under the order and those paid after being presented to the Court for prior approval of payment.

The Auditor and Treasurer have included payroll and its related deductions, benefits, and taxes in the expedited order. As mentioned, the county officials and employees are paid every two weeks which results in twenty-six (26) pay periods each year. Currently, the Commissioners' Court meets on the

second and fourth Mondays of each month, except December when it meets only on the second Monday, for a total of twenty-three (23) sessions. Because the cycle of the payroll schedule is seldom in sync with the Court's schedule, the Auditor and Treasurer have indicated they will be requesting twenty-five (25) special sessions. Additionally, they have indicated that these special sessions would need to be on Wednesdays rather than Mondays. They have stated the additional sessions are necessary in order to issue paychecks at the customary time if the expedited order is not allowed. By way of additional information, the Court has routinely scheduled between ten and fifteen special sessions in recent years, almost all of which were held on Mondays.

The Auditor and Treasurer have not indicated any additional sessions will be required for the approval of the remaining claims and bills. They have indicated they will likely be able to adjust their procedures to present the claims to the Court, though some may be late and result in additional fees and charges. Presumably, the anticipated additional sessions will provide them with opportunities to obtain the Court's approval for payment in a timely manner as well.

It has been suggested to us that the order serves as prior approval of payment of the claims even though the specific amount of each claim is not known until the time of payment. Further, it has been asserted that claims such as payroll, debt obligations, and utility-related were previously "approved" during the annual budget process. After reviewing many opinions issued by your office (including for example, Tex. Atty. Gen. Op. JM-192 (Tex.A.G.), 1984, and Tex. Atty. Gen. Op. LO-95-002 (Tex.A.G.), 1995), we are not persuaded that the order would satisfy either the Treasurer's or the Court's statutory responsibilities.

Therefore, we ask whether this proposed order complies with the Treasurer's statutory responsibilities described by Section 113.041(c), Texas Local Government Code, which states, "[t]he county treasurer may not disburse money out of the county treasury without an order for payment from an officer who is authorized by law to issue the order." Additionally, would this proposed order satisfy the statutory duty of the Commissioners' Court as described in Texas Local Government Code, Sections 115-021-022? As a collateral question, we ask if the Court may approve payment of the claims and bills described in the proposed order in a special session held on a day other than when the Court usually meets for its regular sessions.

Respectfully submitted,
David P. Weeks, Criminal District Attorney

/s/ Quentin Russell
Quentin Russell, Assistant District Attorney
Walker County Criminal District Attorney's Office
1036 11th Street
Huntsville, Texas 77340
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AMENDED ORDER NO. 2017-26

Authorization for Payment of Claims and Certain Invoices Submitted for Payment

WHEREAS, Commissioners' Court has revised and is in the process of revising the purchasing policies of Walker County and has adopted Order 2017-25 waiving the requirement of approval by the County Judge on requisitions and requiring that all claims be approved in open court; and

WHEREAS, claims are approved for payment contingent on appropriate documentation and authorizations being received and approved thru the audit process and approval of Commissioners Court; and

WHEREAS, the Commissioners' Court desires to expedite payment of certain claims in order to maintain continuity of services, utilities and telecommunication services, meet payroll, statutory, and required payments to the State and Federal Government and their agencies; and

THEREFORE, it is ordered, adjudged and decreed to remain in effect until further orders are issued by this Court, that claims listed below are approved for payment by Commissioners Court after the invoice/claim has been presented with appropriate documentation and authorizations by department heads and elected officials and following approval thru the audit process. Payment is to be followed by presentation to Commissioners' Court at a subsequent meeting as part of the County Treasurer bill paying report. All other claims shall be approved in open court by the Commissioners of Walker County.

- Payroll, related employee deductions and benefits and payroll taxes
- Debt Service Payments
- Payments to the State and Federal Government and their agencies
- Orders of District Courts and County Court at Law
- Grant related payments to meet grant timing deadlines
- Utility and telecommunications services to assure continuation of service
- Fuel cards to assure continuation of service
- Credit card bills that are paid by drafts initiated by the Credit Card Company

PASSED AND APPROVED on this the 9th day of January, 2017.

WALKER COUNTY TEXAS

Danny Pierce
County Judge

Danny Kuykendall
Commissioner, Precinct 1

Ronnie White
Commissioner, Precinct 2

Bill Dauge
Commissioner, Precinct 3

Jimmy D. Henry
Commissioner, Precinct 4

Approved as to form:

Walker County District Attorney Office