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RQ-0165-KP

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

Honorable Attorney General Paxton:

Please accept this request from the Webb County Auditor for your opinion with respect to the following:

The 2010 Census listed Webb County's population at 250,340 and commissioners court has elected to operate under the budget preparation rules and method of Subchapter C of the Texas Local Government Code ("LGC").

LGC Section 111.062(a) says "The commissioners court of the county may appoint a county budget officer to prepare a county budget for the fiscal year" and (b) "A county that establishes the office of county budget officer may abolish that office only by a formal action of commissioners court. The court must take the action after the first day of the second month of the fiscal year and before the first day of the sixth month of the fiscal year. If the office is abolished, the duties of budget officer shall be performed by: (1) the county judge if the county has a population of 225,000 or less; or (2) the county auditor, if the county has a population of more than 225,000."

AG Opinion GA-0580 footnote 2 says "... section 111.062 was apparently adopted to allow the larger counties to have a full-time, separate county budget officer." It further states that the provisions providing for the appointment of a county budget officer were originally adopted to allow certain counties "to appoint a full-time budget officer."

Question #1 – Commissioners Court did not appoint a full-time, separate county budget officer nor did they establish the office of county budget officer. Commissioners court instead appointed two part-time budget officers. Does the appointment of two part-time budget officers rather than one full time separate budget officer and the failure to establish a county budget office violate the intent and the provisions of the budget preparation rules and methods of LGC Section 111.062?

Question #2 – One appointed part-time budget officer serves as the full-time executive administrator for the county judge and his salary is part of the county judge’s expenditure budget. Is appointing the full-time county judge’s executive administrator as a part-time budget officer the equivalent of appointing the county judge as the budget officer for all intents and purposes? AG Opinion GA-0580 says ... “a county that chooses to operate under Subchapter C is not authorized to appoint its county judge to serve as its county budget officer.”

AG Opinion GA-0580 says “all officers who have the appointing power are disqualified for appointment to the office to which they may appoint because of the inherent incompatibility of a person being both a member of the body making the appointment and an appointee of that body.” It is also fact that Commissioners Courts are never authorized to be budget officers.

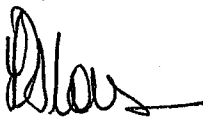
Question #3 – The second appointed part-time budget officer serves as the full-time executive administrator for the commissioners court and his salary is part of the commissioners court expenditure budget. Is appointing the commissioners court full-time executive administrator as a part-time budget officer the equivalent of appointing themselves (commissioners) as budget officers for all intents and purposes?

Question #4 – Is it correct for the county judge and/or a county commissioner or both to meet with the budget officers while they are in departmental budget meetings or in separate meetings with the intent of making budget decisions prior to the filing of the official proposed budget?

Question #5 – If you find that the appointed budget officers cannot serve as budget officers because of their part-time rather than full-time status and/or because of the full-time positions they hold as executive administrators to the county judge and to commissioners court, will the provisions of Section 111.062 prohibit them from preparing the county’s proposed budget and default the budget preparation to the county auditor as per Section 111.062(b)(2)?

Due to the fact that the process for preparing the FY17-18 budget is beginning, your expedited response, if possible, will be greatly appreciated.

Respectfully,



Leo Flores  
Webb County Auditor