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December 6, 2019

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Attorney General
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RQ-0323-KP

FILE# ML-48668-19

I.D.# 48668

Re: Request for Opinion

Attorney General Paxton:

Ms. Karla Mazuka, County Auditor for the County of Maverick, has expressed her concerns about whether approval by her of certain invoices submitted to Maverick County would be lawful. County Auditor Mazuka does recognize that she does have authority and responsibility to approve only proper claims for payment by the County, but she does not wish to unnecessarily delay approval of these claims if her concerns are not well-founded under applicable law.

Therefore, we do feel that an opinion from the Office of the Attorney General would be instrumental in resolving these issues.

County Auditor Mazuka has provided documentation which we include herewith. These documents indicate that:

The Commissioners Court of Maverick County on May 22 and May 30, 2017, approved retaining Bracewell, LLP ("Bracewell") as bond counsel for a pending project;

On June 19, 2017, Maverick County approved the terms included in an engagement letter from Bracewell dated June 12, 2017, with provision including a fee of \$70,000 plus expenses of \$2,972 and reimbursement of filing and review fees of \$2,028 for the \$2,028,000 project funding.

The Commissioners Court on May 13, 2019 approved an Order authorizing issuance of Certificates of Obligation relating to this \$2,028,000 project;

On September 23, 2019, the Commissioners Court approved an Order amending its May 13, 2019 Order and authorizing amendment of the agreements with counsel;

On September 26, 2019, proceeds of \$695,000 representing the first installment of the funding related to the projected was transmitted to the County (as reflected in a deposit warrant dated 10/01/2019);

By invoice also dated September 26, 2019, Bracewell requested payment of \$135,000 plus \$5,000 in fees and expenses, related to the \$2,028,000 project;

A Letter of Engagement from Bracewell dated October 23, 2019 included provisions for payment of \$135,000 plus \$5,000 in fees and expenses to Bracewell for its work on the project.

Although County Auditor Mazuka does recognize that September 23, 2019 Order of Commissioners Court does authorize amendment of the agreements with counsel, she is concerned that it does appear that a great part of the work of Bracewell on the project was done before any such amendment, and thus performed pursuant to the terms of the previous agreement. County Auditor Mazuka thus is concerned that payment by the County of the amount as requested by Bracewell would be in violation of the provisions prohibiting payment of extra compensation as set out in Art. III, Section 53, Texas Constitution.

Ms. Mazuka has similar concerns about payment two invoice from Vera and Associates ("Vera") as general counsel for the County in the same project. County Auditor Mazuka has submitted documents that indicate:

The Commissioners Court of Maverick County on May 22 and May 30, 2017, approved retaining Vera as counsel on the project, and on the contract with Vera was signed, with provision including fees to be paid at hourly rates for work on the project. As noted above, on May 13, 2019 the Order authorizing issuance of Certificates of Obligation relating to this \$2,028,000 project was approved; on September 23, 2019, an Order was entered amending the May 13, 2019 Order and authorizing amendment of the agreements with counsel; and, on September 26, 2019, proceeds of \$695,000 representing the first installment of the funding related to the projected was transmitted to the County (as reflected in a deposit warrant dated 10/01/2019).

Two invoices dated September 20, 2019 were received from Vera for work on the project, each requesting payment of \$30,000.

In a meeting on September 30, 2019, Commissioners Court authorized amendment of the May of 2017 contract with its general counsel for the project, and a document amending the contract with Vera was executed for the County on October 3, 2019. The amended contract set out a flat fee of \$60,000 for the work of Vera on the project.

Once again County Auditor Mazuka is concerned that a great part (if not all) of the work of Vera on the project was done before amendment to the contract, and thus performed pursuant to the terms of the previous agreement. County Auditor Mazuka thus is concerned that payment by the County of the amount as requested by Vera would be in violation of the provisions of Art. III, Section 53, Texas Constitution.

This Office does therefore request an opinion from the Office of the Attorney General on these issues.

Please do not hesitate to contact this Office with your questions or comments.

Respectfully,

A handwritten signature in cursive script that reads "Roberto Sierra".

District Attorney
293rd Judicial District