

RECEIVED

By Opinion Committee at 4:49 pm, Aug 12, 2022



Office of

MICHEAL E. JIMERSON

COUNTY & DISTRICT ATTORNEY

Rusk County Courthouse

115 N. Main • Suite 302

Henderson, Texas 75652

TELEPHONE: 903-657-2265

FAX: 903-657-0329

RQ-0471-KP

FILE# **ML-49160-22**

I.D.# **49160**

August 12, 2022

Office of the Attorney General

Attention Opinion Committee

P.O. Box 12548

Austin, Texas 78711-2548

Honorable Texas Attorney General Ken Paxton,

I am the County Attorney of Rusk County serving by operation of Art. 2.02 of the Code of Criminal Procedure as the District Attorney for the 4th Judicial District. I am therefore authorized to seek an opinion. I thank you for your consideration of the foregoing request in advance.

An officer, employee, or official of a county government who refuses to comply with this subchapter commits an offense. Local Government Code 111.012

What culpable mental state does the word, "REFUSES" as used in Local Government Code 111.012 require in terms of *mens rea* for a criminal prosecution, that is to say what evidence of such *mens rea* would be legally sufficient?

There is no penal code definition of "refuses". The dictionary definitions, such as the ones set forth in exhibit A, denote a "refusal" occurs after a request has been tendered. For example, he refused to answer the question implies a question was asked. Texas Penal Code 6.02 mandates use of the *mens rea* proscribed in the statute. Such implies a timely request for compliance must be proven to support a legal finding of "refuses". However, such is inconsistent with a basic maxim of

Partnering with citizens to protect our children, lives and property


western jurisprudence: *A person may be ignorant of the law, but the rule is, that such ignorance does not excuse him....* Blackstone's Commentaries.

1. On July 30, 2021, the Proposed 2022 budget for Rusk County is filed reciting, "Final Hearing and action on the proposed budget is scheduled for 10:00 o'clock a.m. on September 13, 2021 in the County Courtroom, First Floor, Rusk County Courthouse, Henderson, Texas Signed July 30, 2021 Joel Hale County Judge" See exhibit B
2. Posted on Courthouse doors by 10:00 a.m. on the 16th day of August, 2021 is a public notice for an August 19, 2021 at 10:00 a.m. regular meeting agenda inter alia setting forth Item #2 "Discuss and possibly approve the adoption of the Rusk County Budget for the year 2022...." And Item #3 Vote for or against the adoption of the 2022 Rusk County budget. See exhibit C
3. On August 24, 2021, a budget certificate is file marked reciting, "... the attached budget is a true and correct copy of the budget of Rusk County as passed and approved by the Commissioners Court of said County on the 19th day of August, 2021" Subscribed and sworn to by the county judge and auditor before the county clerk. See exhibit D
4. Local Government Code 111.007 (c) recites in pertinent part the commissioners court shall give notice of public hearing on the proposed budget not later than the 10th day before the hearing on the proposed budget. See exhibit E
5. Local Government Code 111.012 An officer, employee, or official of a county government who refuses to comply with this subchapter commits an offense. Subsection b sets out a punishment of up to a thousand dollar fine and one year in county jail.
6. The forgoing facts and exhibits support a prima facie violation of 111.007 (c) because 3 days' notice was provided instead of the required 10

even if one assumes the meeting agenda amends and supersedes the previously noticed meeting of September 13.

My concern is the possible criminal enforcement, not the civil ramifications of a void or voidable budget. I do not undertake to advise the Court in such regard because it might conflict with my criminal enforcement obligations.

Sincerely,



MICHEAL E. JIMERSON, County and District Attorney
~~County and District Attorney~~
Rusk County, Texas

refuse verb

Save Word

re-fuse | \ ri-'fyüz \

refused; refusing

Definition of refuse (Entry 1 of 3)

transitive verb

- 1 : to express oneself as unwilling to accept
// refuse a gift
// refuse a promotion
- 2 a : to show or express unwillingness to do or comply with
// refused to answer the question
- b : to not allow someone to have or do (something) : DENY
// they were refused admittance to the game
- 3 *obsolete* : GIVE UP, RENOUNCE
// deny thy father and refuse thy name
— William Shakespeare
- 4 *of a horse* : to decline to jump or leap over

intransitive verb

: to withhold acceptance, compliance, or permission

refuse noun

ref-use | \ 're-,fyūs \

Definition of refuse (Entry 2 of 3)


- 1 : the worthless or useless part of something : LEAVINGS
- 2 : TRASH, GARBAGE


refuse adjective


ref-use | \ 're-,fyūs \

Definition of refuse (Entry 3 of 3)

: thrown aside or left as worthless


 Earn a \$200 cash rewards bonus
 Plus, earn unlimited 2% cash rewards on purchases


 Active C


 App

NOTICE TO PUBLIC

Notice is hereby given that the proposed 2022 Rusk County Budget was filed with the County Clerk of Rusk County, Texas on July 30, 2021 and same is available for public inspection during office hours to any member of the public.

Final hearing and action on the proposed budget is scheduled for 10:00 o'clock a.m. on September 13, 2021 in the County Courtroom, First Floor, Rusk County Courthouse, Henderson, Texas.

Signed this the 30th day of July 2021.

JOEL HALE
COUNTY JUDGE

A handwritten signature in cursive script that reads "Joel Hale". The signature is written in black ink and is positioned to the left of the printed name and title.

Exhibit C

TO: ALL PERSONS INTERESTED IN A MEETING OF THE COMMISSIONERS
COURT OF RUSK COUNTY, TEXAS

You are hereby notified that a regular session of the Rusk County Commissioners Court will be held on Thursday, August 19, 2021 at 10:00 a.m. in the County Courtroom, First Floor, Rusk County Courthouse, Henderson, Texas at which time the following subjects will be discussed, considered, passed or adopted, to-wit;

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. PLEDGE TO THE TEXAS FLAG

FILED FOR RECORD
RUSK COUNTY, TEXAS
9:08 A.M.
AUG 16 2021
TRUDY MCQUILL
RUSK COUNTY CLERK
BY *[Signature]* DEPUTY

- (1) To Conduct Public Hearing on the Rusk County Budget for Fiscal Year 2022 pursuant to notice and publication thereof as required by law. The Public is invited to attend and participate.
- (2) Discuss and possibly approve the adoption of the Rusk County Budget for year 2022 that will raise more revenue from property taxes than the previous year.
- (3) Vote for or against adoption of the 2022 Rusk County Budget
- (4) Discuss and possibly approve the budget amendments and/or transfers
- (5) Pre-approve the August 20, 2021 employee payroll
- (6) Discuss and possibly approve Unclaimed Property to Justice of the Peace Pct. 3 in the amount of \$135.00
- (7) Discuss and possibly approve declaring old hog pens as surplus and putting up for sale or bid
- (8) Presentation from Stephanie Osteen on the Gaston Museum
- (9) Discuss and possibly approve a resolution to proclaim October 3rd as Dad Joiner Day in Rusk County every year
- (10) Discuss and possibly approve final plat of Hill Top Acres subdivision located off CR 418 D in Pct. 4
- (11) Discuss and possibly approve amending the Rusk County Subdivision Regulations to state a final plat with signatures to be submitted for review before requesting Commissioners Court approval
- (12) Discuss and possibly approve the Interlocal Cooperation contract with the City of New London, Texas and Pct. 1 to mow areas as designated by the City of New London.
- (13) Discuss and possibly approve the Interlocal Cooperation contract with Leverett's Chapel ISD and Pct. 1 to repair driveways around bus barn and parking areas as designated by the Leverett's Chapel ISD.
- (14) Discuss and possibly approve the following items from Pct. 1 as surplus and to be sold at online auction:
 - a. Red Port A John
 - b. Misc. tires and rims
 - c. Two trailer axles
 - d. 2010 F150 Ford Truck 4x4 Vin#1FTFW1EVXAKA73918
- (15) Discuss and possibly approve the following reports for July 2021:
 - a. Justice of the Peace Pct. 4
- (16) Discuss and possibly approve the following pipeline/utility requests:
 - a. Eastex Telephone proposes to place a fiber optic cable along/within the right-of-way of CR 314, in Pct. 3
- (17) Public Comment-no action to be taken
- (18) Approve the payment of bills
- (19) Adjournment

Signed this 16th day of August 2021 at 10:00 a.m.

[Signature]
Presiding Judge

Posted on Courthouse doors by 10:00 a.m. on 16th day of August, 2021

Exhibit D

BUDGET CERTIFICATE

**BUDGET OF RUSK COUNTY, HENDERSON, TEXAS
BUDGET YEAR FROM JANUARY 1, 2022 TO DECEMBER 31, 2022**


STATE OF TEXAS

COUNTY OF RUSK:

WE, **JOEL HALE**, COUNTY JUDGE AND **REBEKAH ACRES**, COUNTY AUDITOR, OF RUSK COUNTY, TEXAS DO HEREBY CERTIFY THAT THE ATTACHED BUDGET IS A TRUE AND CORRECT COPY OF THE BUDGET OF RUSK COUNTY, TEXAS AS PASSED AND APPROVED BY THE COMMISSIONERS COURT OF SAID COUNTY ON THE 19th DAY OF AUGUST 2021, AS THE SAME APPEARS ON FILE THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY.



JOEL HALE, COUNTY JUDGE



REBEKAH ACRES, COUNTY AUDITOR

**SUBSCRIBED AND SWORN TO BEFORE ME, THE UNDERSIGNED
AUTHORITY THIS THE 24 DAY OF AUGUST 2021.**



TRUDY MCGILL, COUNTY CLERK

Exhibit E

(b) The copy of the proposed budget shall be available for inspection by any person. If the county maintains an internet website, the county clerk shall take action to ensure that the proposed budget is posted on the website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 8, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 612 (S.B. 1357), Sec. 2, eff. June 14, 2021.

Sec. 111.007. PUBLIC HEARING ON PROPOSED BUDGET. (a) The commissioners court shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.

(b) The commissioners court shall hold the hearing not later than the 25th day after the day the budget is filed under Section 111.006 but before the commissioners court adopts the county's ad valorem tax rate for the current tax year.

(c) The commissioners court shall give public notice that it will consider the proposed budget on the date of the hearing. The notice must state the date, time, and location of the hearing. The notice must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 111.003(b). The commissioners court shall give notice under this subsection:

(1) not earlier than the 30th day before the date of the hearing; and

(2) not later than the 10th day before the date of the hearing.

Exhibit F

Sec. 111.011. CHANGES IN BUDGET FOR COUNTY PURPOSES.
This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.012. PENALTY. (a) An officer, employee, or official of a county government who refuses to comply with this subchapter commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$1,000, confinement in the county jail for not less than one month or more than one year, or by both fine and confinement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.013. LIMITATION ON BUDGET OF COUNTY AUDITOR.
An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

Added by Acts 1991, 72nd Leg., ch. 600, Sec. 3, eff. June 15, 1991; Acts 1991, 72nd Leg., ch. 739, Sec. 1, eff. Aug. 26, 1991.

Sec. 111.014. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.004(a) in the same manner as a project for which an appropriation is established in the budget.