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“Someone Knew What They Were Doing”

By Tommy J. Tompkins, Bexar County Auditor

Prior to the late nineteenth century, judicial courts did not have the authority to review political acts, which made the determinations of Commissioners Court absolute and final. Exceptions to this would be in cases where the result of the determination was clearly outside of Commissioners Court jurisdiction, or found to be a capricious act, and therefore void. An amendment to the Constitution of 1876, however, granted supervisory powers to the District Courts to review acts of the Commissioners Court.

The County Auditor was introduced into the District Court supervisory role in 1905. The office was created by statute rather than Constitutional amendment and thus appears to be a legislative act intended as an adjunct to the District Courts' exercise of supervisory jurisdiction over Commissioners Court.

Initially, the County Judge and the District Judges having jurisdiction in the county appointed the County Auditor jointly. The legislature subsequently amended the statute to provide for the appointment of the County Auditor by only the District Judges.

The powers and responsibilities of the County Auditor reach into every corner of the courthouse, including district officers, and virtually every other officer, including the Commissioners Court. The County Auditor has financial oversight for all county offices and officers, and may prescribe the accounting procedures for all county officers, including the District Clerk and District Attorney. The County Auditor has responsibility to establish internal controls and may disapprove the payment of claims against the county. Commissioners Court may not pay a claim without the County Auditor's approval and the County Auditor must countersign all checks, other than checks to jurors.

Unlike the County Judge or Commissioners, the County Auditor may request an Attorney General's opinion, and utilize that opinion to encourage other county officials to comply with the determinations of the Attorney General.

Another major difference, which sets the Auditor apart from elected officials, is Commissioners Court has little authority over the budget of the County Auditor. In a 1979 court case, the court held that only if the County Auditor's budget request was found to be clearly unreasonable could the Commissioners Court deny the request, again subject

to review by the District Judges. This case treats the County Auditor in an entirely different manner than any other county officer making a budget request. In regard to all other county officers, the budget authority of the Commissioners Court is paramount, absent an abuse of discretion by the Commissioners Court in denying the requested budget.

In view of these powers and responsibilities, and most notably the oversight authority granted the County Auditor, it is not surprising that numerous situations of “ill will” toward the County Auditor have surfaced over the years and will likely continue into the future. It is also not surprising that quite often the County Auditor finds that they are not the most popular officials in the courthouse. A quote by a District Judge from a recent newspaper article summarizes this point well. “Being a County Auditor is a thankless position, because the very nature of the job makes it, in some ways, antagonistic to what department heads want to do.” Another quote from the same newspaper article by a twelve-year County Commissioner states, “When there is no controversy, it means everything is being rubber-stamped. But when there is (controversy), it means... department heads don’t agree with the Auditor and all that... because she is doing a good job, and she is not rubber-stamping everything that they request.”

In addition to the numerous responsibilities cited above, the Local Government Code dictates, “the County Auditor shall see to the strict enforcement of the law governing county finances.” County Auditors find themselves in a very unpopular situation when they are forced to “step-up” and make the difficult call that a given action is not in compliance with the law. With the responsibilities and oversight authority vested in the County Auditor mixed with the highly charged political environment of Counties, it is no wonder that the job of a Texas County Auditor is one of the most difficult positions in the state.

SO... HOW DOES A COUNTY AUDITOR FUNCTION IN AN EFFECTIVE MANNER IN THIS ENVIRONMENT?

BECAUSE... “SOMEONE KNEW WHAT THEY WERE DOING!”

If the statutes had not been adopted to allow for the level of independence the County Auditor has today, the County Auditor would not be able to carry out these duties and responsibilities in a proper manner. The underlying concept, present in the minds of those who framed the original legislation which created the County Auditor’s office, was that the County Auditor is not appointed by, or responsible to, any elected officer or elected body charged with administration and policy determination for the County. Instead, the selection of the County Auditor is vested upon the District Judge(s) whose district(s) include the county. District Judges are not primarily chosen with a view to their interest in, their knowledge of, or their policies toward local government. There can be no doubt that the method of creating, determining and controlling the salary of the County Auditor is a creature of the Texas Legislature, who in turn delegated those powers to the judiciary. A quote from a 1997 U.S. Court of Appeals, 5th Circuit court case states, “In other words, Texas gives County Auditors responsibility for guarding the public purse and using the authority of the Auditor’s office to ensure that local governments comply with the law.”

The Texas Association of County Auditors encourages the public, State Representatives, State Senators, and County officials to take the time to understand the difficult but critical role County Auditors play in this state. Although no one enjoys oversight and on occasion questioning of their actions/decisions, in today's environment the County Auditor may be the best friend and safety net the county has. There are those who will argue that other county officials may assume the duties of a County Auditor in a county with no Auditor, however, the statutes establishing the County Auditor set forth specific qualifications in order to hold this office and there is no other office in the county which possesses the level of independence to properly execute and enforce the duties and responsibilities of a Texas County Auditor. We live in a society, which is becoming more knowledgeable about and dependent on access to public data through technology and taxpayers today are demanding greater fiscal accountability from their state and local government. Additionally, the Governmental Accounting Standards Board is now requiring new accounting and financial reporting requirements which will focus more attention than ever before on the accountability and effectiveness of county programs. Texas counties can ill afford to expose themselves by failing to meet these requirements.

A County Auditor not only provides oversight for the public but will also assist in ensuring that Texas counties are able to meet the increasing demands of fiscal accountability in the future.