



KINNEY COUNTY ATTORNEY
LEGAL OPINION

March 13, 2025

The Honorable John Paul Schuster
Kinney County Judge

Kinney County Attorney Opinion
BS – 031325

The Honorable Kinney County Commissioners Court

Re: Relating to the statutory authority of the Court's Order of Disbursement; the duties of the county auditor pursuant to the order; and available remedies to ensure compliance.

Dear Judge Schuster and members of the Court,

This legal opinion is issued in accordance with § 41.007, Texas Government Code, and is in response to a request received from this Court regarding the "Order for Disbursement of Salaries and Routine Office Expenses" that was adopted by this Court on January 27, 2025. Specifically, the duties to which a county auditor has for the payment of invoices and salary that fall within the scope of the order, and remedies to ensure compliance.

I. Statutory Authority of the Order for Disbursement

The statutory authority for Kinney County passing such an Order of Disbursement derives from the passage of Senate Bill (S.B.) 354, 86th Legislative Session, which became effective state law on May 31, 2019. The passage of this legislation was in response to Office of the Attorney General (OAG) Opinion (KP-0160) issued in 2017 which found that counties with a population of 190,000 or less lacked the necessary statutory authorization to adopt procedures for pre-approval of payroll and office expenses.¹ The OAG had found under the prior law, that a commissioners court could not delegate or waive its discretion of approval for payment of salaries or expenses prior to considering them in open court.

According to the legislative author of S.B. 354, the findings in KP-0160 disrupted the customary procedure for making timely payments of expenses and created a necessity for special meetings of commissioners court in those counties for the sole purpose of approval of payroll and routine office expenses. See *supra* note 1. The issue therefore required a legislative remedy.

¹ Senate Comm. on Intergovernmental Relations, Bill Analysis, Tex. S.B. 354, 86th Leg., R.S. (2019) (author's statement of intent, committee report by Sen. Lucio).

The legislature therefore enacted S.B. 354, rendering KP-0160 obsolete by providing smaller counties statutory authority to pre-approve the payment of county funds for certain expenses consistent with the procedure in larger counties. Specifically, S.B. 354 removed the population restriction within the Local Government Code that only allowed those counties of 190,000 or more to preapprove the disbursement of certain funds for salaries and routine expenses.

II. Purpose of the Order for Disbursement

Since the enactment of S.B. 354 in 2019, other similarly situated counties like Uvalde County have utilized an Order of Disbursement. Counties routinely utilize such an order to maintain continuity of services, meet payroll, and to avoid late fees for such things as credit card accounts.

As this Court is aware, the adoption of Kinney County's Order of Disbursement was precipitated by the continued disruption of many essential services relied upon by the County and its employees due to the delay by the Auditor in presenting past due invoices and claims for approval in Commissioners Court, including over 227 past due invoices, salaries, and bills pertaining to emergency alert services. The delinquency of such payments has caused not only a disruption in county business but has also imposed financial penalties on the county. In one incident, a county employee had to use her personal credit card to pay an overdue electric bill to avoid a disruption in service.

III. Analysis of the Order for Disbursement and Procedure for Compliance

The Order of Disbursement cites the statutory authority allowing the commissioners court to issue a standing order for the current fiscal year authorizing the treasurer to pay certain routine claims and bills prior to presenting the actual claims or bills to the commissioners court. Specifically, under § 113.041(a), Local Government Code, the county treasurer shall disburse county funds "as required by law and as the commissioners court may require or direct."

While S.B. 354 authorizes the Court to issue such an order, it does not negate the other legal requirements that still apply under § 113.901, Local Government Code. To ensure the Treasurer issues a lawful payment authorized within the scope of the Order of Disbursement, the following steps must occur:

1. A signed Purchase Order must be submitted by the department head or elected official to the County Judge requesting the purchase of a specific item that falls within an approved budget line item together with an invoiced cost estimate.
2. The Purchase Order must then be approved by the County Judge's signature as a justified expense to be paid out of the designated budgeted line item.
3. The approved Purchase Order must then be audited by the county auditor, ensuring there are sufficient funds available in the budget line item and that the cost estimate does not invoke any procurement requirements for public bidding.

4. After the Purchase Order is approved and audited, it is returned to the requesting department for the item to be purchased.
5. Once the purchased item is accepted by the department head or elected official, a signed invoice for the item is provided to the county auditor to review. Upon the auditor determining that the submitted invoice has completed steps 1-4 and falls within the scope of those approved expenses within the Order of Disbursement, the auditor then approves the invoice for prompt payment by the Treasurer. If, however, the invoice pertains to a claim or expense outside the scope of the Order of Disbursement, approval for payment will be delayed until it is approved in open court at the next Commissioners Court meeting.
6. After a claim has been paid under the Order of Disbursement, it is then reported in the subsequent Commissioners Court meeting by the Treasurer's report. The report details all claims which have been paid by the Treasurer since the last meeting of the Court, distinguishing those claims paid under the Order of Disbursement and those paid after being presented to the court for prior approval of payment.

IV. Prompt Payment of Claims Under the Order of Disbursement

Governing law sets forth the legal requirements to approve lawful claims against the county and to promptly disburse funds to satisfy them. Under § 113.041(a), Local Government Code, the county treasurer must disburse county funds “as required by law and as the commissioners court may require or direct.” The legal requirements for making a lawful claim against the county are satisfied when those steps set forth above are followed.

Texas courts have held that the county auditor may not arbitrarily withhold the payment of funds pursuant to a lawful order of disbursement.² In such circumstances, the Texas Association of County Auditors has advised that where an auditor is unable to demonstrate a legal justification for refusing to approve a lawful disbursement, such an act would likely constitute an abuse of their discretionary power.³ Furthermore, the failure of an auditor to timely approve the payment of a claim may subject the county to civil liability from the claimant. See *supra* note 3.

V. Available Remedies

Ensuring that the financial obligations of Kinney County are promptly satisfied to avoid any disruption in essential governmental services is a fundamental requirement for any governing body. Where a county auditor fails to perform the duties of the office, or abuses the discretionary powers they act under, Texas law provides several remedies to ensure both compliance with the law, and the protection of the county's obligations.

² Smith v. McCoy, 533 S.W.2d 457 (Tex. Civ. App. 1976)

³ Letter from Tex. Ass'n of Cnty. Auditors to Tex. S. Comm. on Intergovernmental Relations (Oct. 23, 2014) (testimony).

First, the county auditor is appointed by the district judge, who is charged with supervising the performance and accountability of the auditor. Texas law provides that the district judge may investigate and remove the auditor from office based upon a finding of misconduct in office. The auditor may also be removed based upon incompetence in discharging the duties of the office.⁴

Second, the county attorney may institute legal proceedings, including mandamus action, to compel the performance of the auditor in the execution of their duties and to preserve and protect the public interest.⁵

Last, this office may also be authorized to institute an action seeking the removal from office of the county auditor on grounds of incompetency. For the purpose of a removal action, “incompetency” is defined to include both the gross ignorance of official duties, or the gross carelessness in the discharge of those duties.⁶

Conclusion

The Texas Legislature has empowered the commissioners court with authority by law to issue an Order of Disbursement authorizing the prompt payment of salaries and basic expenses without the need of a special meeting to approve the claims. In such cases, all procedural laws governing such claims must be followed.

Where a county auditor refuses to countersign a valid claim, without legal justification, such action may subject the county to liability, and may constitute an abuse by the auditor. In such circumstances, Texas law provides multiple remedies to compel compliance or seek the auditor’s removal from office.

Very Truly Yours,



Brent Smith
Kinney County Attorney

⁴ Tex. Loc. Gov’t Code § 84.009

⁵ Tex. Gov’t Code Ann. § 41.009

⁶ Tex. Loc. Gov’t Code Ann. § 87.012