



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1997

The Honorable John W. Smith
Ector County District Attorney
300 North Grant, Room 305
Odessa, Texas 79761

Letter Opinion No. 97-051

Re: Whether a county commissioners court is authorized to create a new position in the middle of a fiscal year (ID# 39410)

Dear Mr. Smith:

You ask whether a county commissioners court is authorized to create a new position in the middle of a fiscal year. We gather that the crux of your concern is whether a commissioners court is authorized to expend county funds to pay the salary for a position created in mid-year given that the expenditure is not included as an item in the fiscal-year budget. We conclude that a commissioners court may do so, but only pursuant to the requirements of Local Government Code section 111.010(c), (d).

The county budget process in counties with a population of 225,000 or less is governed by subchapter A of chapter 111 of the Local Government Code.¹ Section 111.010, subsection (b) provides that after final approval of the budget, the commissioners court may spend county funds only in strict compliance with the budget, except in an emergency. Subsection (c) sets forth the circumstances under which an emergency exists:

The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk, and the clerk shall attach the copy to the original budget.

Clearly, if an emergency exists, section 111.010, subsection (c) permits a commissioners court to amend the budget to provide funds for the salary of a position created in mid-year. Whether an emergency exists justifying a budget amendment is a question of fact that is beyond the purview of this office and is generally left to the discretion of the commissioners court subject to judicial review

¹A county with a population of 225,000 or less may choose to operate under subchapter C of chapter 111 of the Local Government Code if its population exceeds 125,000. See Local Gov't Code §§ 111.001, .061. Ector County has a population of 118,934. See Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Characteristics: Texas 2 (1992).

for abuse of discretion. *See* Attorney General Opinion DM-87 (1992) at 3. Because courts have rendered budget amendments invalid in cases where commissioners courts failed to state the facts justifying an emergency amendment,² the commissioners court would be wise to make findings regarding the emergency.

We also note that subsection (d) of section 111.010 provides that the commissioners court “may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.” This provision was enacted by the Seventy-first Legislature to allow counties subject to subchapter A to amend a budget by transferring funds from one line item to another without authorizing an emergency expenditure.³ Subsection (d) permits transfers only between existing budgeted items; it does not permit a transfer from a budgeted item to an unbudgeted item.⁴ The ultimate resolution of whether the subsection (d) exception applies in the situation you describe depends upon the facts and is beyond the purview of this office.⁵

Finally, Local Government Code section 111.011 states that “[t]his subchapter does not prevent the commissioners court from making changes to the budget for county purposes.” This provision does not permit a commissioners court to change or amend a budget without complying with section 111.010. *See* Attorney General Opinion JM-784 (1987) (addressing relationship between statutory predecessors to Local Gov’t Code §§ 111.010, .011).

²*See, e.g., Guerra v. McClellan*, 243 S.W.2d 715, 717 (Tex. Civ. App.—San Antonio 1952, no writ) (concluding that commissioners court order that did not set forth emergency conditions justifying emergency budget amendment failed to amend budget) (construing statutory predecessor to Local Gov’t Code § 111.010(d)); *Dancy v. Davidson*, 183 S.W.2d 195, 201 (Tex. Civ. App.—San Antonio 1944, writ ref’d) (same).

³*See* House Comm. on County Affairs, Bill Analysis, H.B. 1077, 71st Leg., R.S. (1971); *see also* Attorney General Opinions DM-158 (1992) at 5 (Gov’t Code § 111.010(d) authorizes transfer of funds originally allotted from one budget item to the allotment of another line item without a finding that an emergency necessitates the transfer); JM-1268 (1990) at 2 (with passage of Gov’t Code § 111.010(d), “it is no longer necessary for the commissioners court to find that an emergency exists to justify a transfer from one budgeted item to another”); JM-1138 (1990) at 3-4 (Gov’t Code § 111.010(d) “grants the commissioners court the authority to transfer money from an amount budgeted for one item to another budgeted item without finding that an emergency exists”).

⁴*See* sources cited *supra* note 3. To the extent Attorney General Opinion DM-87 suggests that a commissioners court is authorized under subsection (d) to transfer funds from a budgeted item to an unbudgeted item, it is inconsistent with the authorities cited above in note 3.

⁵It is not clear from your request whether the county budget has a separate line item for each salary and whether creation of the position would require a new line item. If a new line item is required, then subsection (d) will not apply. If the creation of the new position does not require a new line item, however, then subsection (d) may apply. In Attorney General Opinion JM-1268, for example, this office concluded that subsection (d) permitted a commissioners court to use funds allocated to vacant positions to increase the salaries of other positions in the middle of a fiscal year, provided that the commissioners court amended the budget to reflect the transfer of funds between the budgeted items. In that situation, the budget at issue contained line items for both the vacant positions and the positions to which the funds were transferred for salary increases. *See* Attorney General Opinion JM-1268 (1990) at 2. No new line items were needed to achieve the salary increase.

S U M M A R Y

If an emergency exists, Local Government Code section 111.010, subsection (c) permits a commissioners court to amend the budget to provide funds for the salary of a position created in the middle of the fiscal year. Subsection (d) of section 111.010 authorizes budget amendments to transfer funds between existing budgeted items on a nonemergency basis; it does not permit a commissioners court to amend the budget to transfer funds from an existing budgeted item to an unbudgeted item. Local Government Code section 111.011 does not authorize a commissioners court to change or amend a budget without complying with section 111.010.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee