

Q: Where can I find the rules for appointing the County Auditor and Assistant Auditors?

A: The statutes relating to appointing the County Auditor; Assistant Auditors; oaths; bonds; and equipping the office are found in Chapter 84 of the Local Government Code.

Q: What are the rules for paying visiting judges and temporary court reporters?

A: Per repeated rulings by the IRS, visiting judges are considered employees and they should be paid through payroll with withholding for Social Security and Medicare. Temporary court reporters who are self-employed and submit a social security number on their W-9 form should also be paid as employees. Court reporters who work as employees of private firms can be paid through Accounts Payable as contractors.

Q: Are newly elected officials allowed to attend training and continuing education at County expense before they actually take office?

A: Per Chapter 109.907 of the Local Govt Code, the Commissioners Court may authorize payment of reasonable education expenses for elected officials if the expenses are related to the officer's official duties, including expenses incurred by the officers between the general election at which the officer is elected and the beginning of the officer's term of office.

Q: Is it legal for an elected official to set a policy for their office where overpayments of fees are only refunded if they exceed a specific amount, such as \$5?

A: Since the Governor vetoed House Bill 2830, which would have authorized counties to refuse to refund overpayments in amounts under \$2 following the 2015 legislative session, the strictly legal answer is "no". The Governor's reasoning in his veto proclamation was "citizens are legally entitled to any money owed them by the government, no matter how small the amount".

Q: Are counties subject to late payment fees on purchases or are counties exempt?

A: Counties are not exempt from late payment fees. The "Prompt Payment Act", Chapter 2251.021 of the Government Code, specifies that payments are overdue after 31 days past the invoice date or the delivery of goods and services. It also states that counties will automatically include a late payment fee calculated at 12% per year on all overdue payments. The Act does make allowances for disputed payments where the goods or services are not satisfactory or they are damaged.

Q: What are a county's responsibilities for "pauper" burials?

A: Under Chapters 694.002 and 711.002 of the Texas Health and Safety Code, a county must provide for the burial or cremation of a decedent if neither the person's estate nor relatives have the funds to do so. A county may develop its own rules and procedures for this responsibility as long as the requirements of the statutes are met.

Q: What are the county's responsibilities for the costs of autopsies ordered by coroners?

A: Per Chapter 49 of the Code of Criminal Procedure, a county is liable for all the costs of an autopsy ordered by a coroner (either the Justice of the Peace or the Medical Examiner) for any person who dies within the geographical limits of the county. The decedent does not have to be a resident of the county. Per the Code, the JP or Medical Examiner has full authority to order an autopsy as they see fit in order to determine the cause of death.

Q: Does a county have to have an appointed Bail Bond Board?

A: Per Chapter 1704.051 of the Occupations Code, only counties with populations of 110,000 or more must have a Bail Bond Board. Boards are optional for counties smaller than 110,000. The composition, powers, and duties of a Bail Bond Board are listed in the sections of Chapter 1704 following 1704.051.

Q: Does a county have to provide libraries in the unincorporated areas of the County and a law library for use by attorneys in the county?

A: Per Chapter 323 of the Local Govt Code, a county has an obligation to provide services to its citizens. That obligation can be met by providing a county library; contract with other counties or cities for jointly owned libraries, or by contracting with individual libraries to provide free services to all citizens in the county. Also, per 323.021 a county may establish a law library fund and assess a law library fee on court filings in order to provide a county law library. But, this is a permissive authority rather than a requirement.

Q: Can the Commissioners Court legally limit the spending of a "lame duck" elected official who will only be in office the first 3 months of a budget year in order to keep them from draining the office budget for the newly elected official?

A: Yes, per Chapter 130.908 of the Local Govt Code, a Commissioners Court may set a limit for spending for any elected official who was not re-elected. Any spending over the limit set by the Court must be specifically approved by the Commissioners Court before the expenditure is made.

Q: Where can I find of what types of things constitute a “governmental purpose” to make it legal for us to spend County funds on?

A: This is an Article 3, Section 53 constitutional limitation. There are literally scores of AG opinions that outline the 3 part test to ensure that funds are spent for a public purpose which in effect benefits the taxpayer. It’s important to note that in the end, it’s a decision for the Commissioners Court to make. Here’s a brief summary:

The Texas Supreme Court has enumerated a three-part test by which to determine whether a grant of money or thing of value is prohibited as gratuitous. *Id.* at 384 (stating that an entity making a public expenditure must: (1) ensure the expenditure's "predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and (3) ensure that the political subdivision receives a return benefit").

Relevant here, the three-part test requires that the expenditure must accomplish a public purpose and be reciprocated with return consideration or a clear public benefit. See *id.* The determination of whether a particular expenditure satisfies the three-part test is for the political subdivision to make in the first instance, subject to judicial review for abuse of discretion. *Tex. Att'y Gen. Op. Nos GA-0843 (2011) at 2, GA-0721 (2009) at 3, GA-0472 (2006) at 3; see also Commissioners Ct of Titus Cnty. v. Agan, KP-0007)*

COUNTY AUDITOR

The county auditor is appointed by the district judge or judges in counties with a population over 10,200 (Local Government Code, Sec. 84.002). The following duties and responsibilities of the county auditor are arranged according to several categories. The first category includes a few miscellaneous statutes related to the general description of the office. The second category covers those statutes related to the auditor's budgetary functions.

The auditor serves as a check on the financial operations of other county offices and has certain financial accounting and recordkeeping responsibilities, as well as certain duties related to the operation of improvement districts.

COUNTY AUDITOR

DUTY/RESPONSIBILITY	AUTHORITY
1. DESCRIPTION OF OFFICE	
	Local Government Code
Auditors for counties over or under 10,200;	Sec. 84.002
Joint auditors for other counties;	Sec. 84.008
Qualification of auditor includes, good moral character and intelligence, competent business ability, and two years experience as accountant;	Sec. 84.006
Must take oath and make bond within 20 days of appointment;	Sec. 84.007
May appoint assistants and organize office with consent of district judge;	Sec. 84.021
Gets mileage for use of personal car in connection with county business;	Sec. 152.035
Salary set by district judges; not to exceed salary of highest paid elected county official;	Secs. 152.031; 152.032
May have salary set by district judges following public hearing;	Sec. 152.905
Term of office is two years; term begins on January 1 of each odd numbered year (bracket legislation).	Secs. 84.004; 84.005
2. FINANCIAL OPERATION OF COUNTY OFFICES	
The county auditor serves as a check on the financial operations of other county offices.	
	Local Government Code
Serve as a check on treasurer in recordkeeping of deposit of funds and examining reports to commissioners courts on finances; count or examine money or accounts on deposit with treasurer on occasion without notice;	Sec. 115.003
Relieve county clerk of duties;	Sec. 112.009
Request and receive reports or other financial information from other county officials;	Sec. 114.003
Appointment of assistants;	Sec. 84.021
Public hearing conducted by district judge before setting salary of auditor and assistants;	Sec. 152.905
Determination of compensation and expenses;	Sec. 152.031 et seq.

COUNTY AUDITOR

DUTY/RESPONSIBILITY	AUTHORITY
2. FINANCIAL OPERATION OF COUNTY OFFICES, continued	
	Local Government Code
Have general oversight of all books and records of the county related to collection of money and responsible for strict enforcement of laws governing county finances;	Sec. 112.006
Have access to all financial accounts of other officers and the commissioners court to determine correctness of same;	Sec. 115.001
May not approve order for payment to a person owing the state or county money;	Sec. 154.045
Examine all reports on collection of money made to the commissioners court;	Sec. 115.002
May examine accounts, dockets, and records of JP's constables, sheriffs, and tax collector;	Sec. 115.901
Keep records from copies of warrants issued for deposit in county treasury;	Sec. 113.023
Examine and approve all claims, bills, and accounts against the county before submission to commissioners court;	Sec. 113.064
Adhere to statutory requisites for approval of claims;	Sec. 113.065
Keep account of all monies accruing to offices and examine such accounts of other county officials;	Sec. 114.041
May audit all accounts of county and district official including forfeitures;	Sec. 115.0035
Conduct of independent audits;	Secs. 115.031 et seq; 115.041 et seq.
Maintain current audit of all money and funds of Board of Park Commissioners;	Sec. 320.043
Shall, with approval of the commissioners court, establish a procedure for administering an electronic funds transfer system for the payment of salaries, compensation, and reimbursement to officers and employees;	Sec. 156.001
	Human Resources Code
Audit collections and disbursements of money made by certain juvenile probation officers;	Chapter 152

COUNTY AUDITOR

DUTY/RESPONSIBILITY	AUTHORITY
2. FINANCIAL OPERATION OF COUNTY OFFICES, continued	
	Tax Code
Refund erroneous overpayment of taxes.	Sec. 31.11
3. RECORDKEEPING	
The county auditor has certain recordkeeping responsibilities.	
	Local Government Code
Keep a register of all orders for payment issued by judges or clerks on county treasury;	Sec. 113.046
Keep account for officers collecting funds and in so doing relieve county clerk of keeping finance ledger;	Sec. 112.005
Maintain general set of books showing all transactions of county relating to accounts, contracts, indebtedness, receipts, and disbursements;	Sec. 112.007
Receive report of receipts and disbursements of private business operations on public property;	Sec. 291.006
Make monthly and annual report to commissioners court and to district judge;	Sec. 114.025
Prescribe system of accounting; determine time and manner for reports;	Secs. 112.002; 114.002
Keep records from copies of warrants issued for deposits in county treasury;	Sec. 113.023
Act as purchasing agent in certain counties;	Sec. 262.012 et seq.
Keep account of all monies accruing to office and examine such accounts of other county officials;	Sec. 114.041
Responsible for equipment and personnel records in counties over 500,000 (includes employees of flood control district);	Sec. 151.903
Make payroll deductions for authorized purpose on request;	Sec. 155.001 et seq
Place interest from registry funds in general fund;	Sec. 117.054
Maintain payroll records for county officers who elect not to be paid for their services;	Secs. 152.051; 152.052

COUNTY AUDITOR

DUTY/RESPONSIBILITY	AUTHORITY
3. RECORDKEEPING, continued	
	Local Government Code
May accept affidavit from county officials elected on a platform advocating abolishment of office.	Sec. 152.052
4. SUPERVISION OF IMPROVEMENT DISTRICTS	
The county auditor has certain responsibilities over the finances of various improvement districts.	
	Local Government Code
Relieve county clerk of duties;	Sec. 112.009
Responsible for equipment and personnel records in counties over 500,000 including flood control districts;	Sec. 151.903
Access to special district records whose budget is approved by commissioners court.	Sec. 115.0036
5. MISCELLANEOUS BUDGET--RELATED DUTIES	
In certain counties the auditor has budget-related responsibilities.	
	Local Government Code
Prepare estimate of revenues and expenses for commissioners court for budget purposes;	Sec. 111.033
Serve as budget officer in counties over 225,000 and certify to commissioners court receipt of all public or private grant or aid money;	Sec. 111.032 et seq.
May assist county judge in preparation of budget (counties of 225,000 or less).	Sec. 111.003