

OVERVIEW OF THE AUTHORITY, DUTIES AND RESPONSIBILITIES OF THE COUNTY AUDITOR

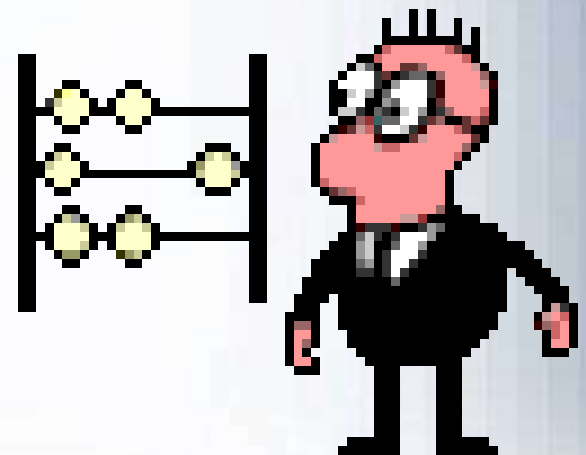
Training for New County Auditors

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INTRODUCTION

The County Auditor has been described as

⇒ ...one of the most important officers in the county organization.

W. C. Murphy, *County Government and Administration in Texas* (University of Texas Bulletin 1933)

⇒ ... the lynch-pin around which the county government turns.

Holman & Gough, *A Study of County Government in Texas* (1956)

Since the Auditor has the authority to impose a budget upon the county because of his power to stop payment on all warrants not drawn strictly according to the law, he has been in a position to dominate county finances.

**W. C. Murphy, *County Government and Administration in Texas*
(University of Texas Bulletin 1933)**

LEGISLATIVE HISTORY



⇒ 1905 – 29th Legislature

Legislation establishing the office of County Auditor

- Appointment of a “man of unquestionably good moral character and intelligence.”
- Appointment by “special meeting” of county and district court judges.”
- Established an annual salary of \$2,400.
- Applied to counties that had a city with a population of 25,000 or more, regardless of tax base.

...chief addition to the financial organization of the county since the adoption of the present constitution...

David Brooks, *Texas Practice, County and Special District Law*

⇒ **1907 – 30th Legislature**

First amendment to original legislation

- Added “any competent accountant” regardless of whether he had “two years actual experience in practical book-keeping” as required by the original enactment.
- Added any county with a population of 40,000 or more in addition to the city with a population of 25,000 or more.

⇒ **1915 – 34th Legislature**

- City population requirement reduced to 20,000.

David Brooks, *Texas Practice, County and Special District Law*

⇒ 1917 – 35th Legislature

- Added authority of Commissioners Court to certify to district judges the need to appoint a county auditor in counties not required to have one.
- Designated only the district court judges as the appointing authority.
- Added a two-year county residency requirement.
(Repealed in 1989)

⇒ 1923 – 38th Legislature

- Increased county auditor's salary to \$3,600.
- Lowered population requirement for appointment to 35,000.

David Brooks, *Texas Practice, County and Special District Law*

⇒ 1941 – 47th Legislature

- District judges were first granted authority to set the county auditor's salary. Any increase above 1940 salary level required commissioners court approval.
- Salary could not be higher than county tax collector.

⇒ 1955 – 54th Legislature

- Removed authority of commissioners court to approve the county auditor's salary set by the district judges.
- Made the auditor's bond payable to the district judges rather than the county judge.

David Brooks, *Texas Practice, County and Special District Law*

⇒ 1987 – 70th Legislature

- The amount of the compensation and allowances of a county auditor may not exceed the amount of the compensation and allowances received from all sources by the highest paid elected county officer, other than a judge of a statutory county court, whose salary and allowances are set by the commissioners court.
- A county auditor who was in office on August 31, 1987, is entitled to be paid an annual salary not less than the annual salary the auditor was being paid on that date.

§ 152.032 *Texas Local Government Code*



HISTORY IN CASE LAW



Commissioners Court of Navarro County v. Tullos (1922)

The commissioners court of Navarro County, sued for mandamus action to compel the county auditor to turn his financial records over to a special accountant hired by the commissioners court.

Commissioners court alleged that :

- “The records of the auditor’s office do not correctly show the true facts with relation to the County Clerk’s office.”
- Misappropriation of funds by former elected officials, (county judge, a commissioner, tax collector and treasurer), were not reported to the commissioners court by the previous county auditor.

Commissioners Court of Navarro County v. Tullos (1922)

Commissioners court further stated:

- “That in order to ascertain the true facts it is necessary that the commissioners court should be permitted, with the aid of its expert accountant, to examine and inspect the books and other records of the auditor’s office.”
- “...because the large details and complications involved in keeping correct accounts of the various funds... a proper examination of the auditor’s office and the books, papers and accounts kept therein renders it necessary that an expert accountant having the necessary qualifications and experience do said work.”

Commissioners Court of Navarro County v. Tullos (Findings)

- The Court of Appeals held that the auditor could not be mandamus'd to turn his records over to a special auditor.
- The Court held that the duties of the county auditor cannot be delegated by the commissioners court to a special auditor.
- In other words, the commissioners court cannot hire its own auditor to do the job of the county auditor.

Commissioners Court of Harris County v. Fullerton (1980)

- Fullerton, the Harris County Auditor, sued to compel the Commissioners Court to approved his request for office equipment, supplies and other property and services which he considered necessary to operate his office.
- Commissioners Court had transferred the Auditor's computer to another office under their control and had refused the auditor's request for certain office equipment.

Commissioners Court of Harris County v. Fullerton (Findings)

- Commissioners court is under ministerial duty to approve office equipment requested by the auditor absent an abuse of discretion in the request.
- The commissioners court may reject the auditor's request for equipment and supplies only if the request is excessive or unreasonable.
- The court stated that the auditor's office was "clothed with an impressive array of independent administrative duties and discretionary powers long recognized by our courts."

Commissioners Court of Harris County v. Fullerton (Findings)

- Did not specifically determine whether the auditor's budget requires approval of the district judges.
- Commissioners court cannot dictate what equipment would be used in the auditor's office.
- In rejecting the auditor's budget request, the commissioners court had not considered its necessity or reasonableness; this was found to be an abuse of discretion by the commissioners court and an "illegal intrusion" upon the auditor's office.

Agan v. Commissioners Court of Titus County (1996)

- Commissioners Court relieved the County Treasurer of payroll function (receiving time sheets, entering payroll data into the computer system and printing payroll checks) and transferred the employee who performed these duties to the Auditor's Office.
- Agan argued that the proper computation of the county payroll and deductions was inherent in the statutory duties which require the treasurer to disburse funds.
- "To reduce the duties of a constitutionally created office to the mere duty of signing a check reduces the job of county treasurer to a mere ministerial function."

Agan v. Commissioners

Court of Titus County (Findings)

- Commissioners Court has the authority to delegate the payroll function to whatever county official it desired.
- Contains the most authoritative listing of the constitutional and statutory duties of the County Treasurer
- Reinforced the principle that any county functions that are not assigned to an officer by the constitution may be delegated to an officer by the legislature.
- Those duties that have been specifically assigned by the constitution or the legislature cannot be removed from an officer by the Commissioners Court.

HOW DID WE GET HERE?

Or

I must have lost my mind...

Or

show me the money !!!

APPOINTMENT

§ 84.002. Appointment of County Auditor

- There shall be appointed a county auditor every two years in each county having a population of 10,200 or more according to the last federal census.
- In a county with a population of less than 10,200 the district judges may appoint a county auditor if the judges determine that the county's financial circumstances warrant the appointment.

Or...

§ 84.002. Appointment of County Auditor

- In a county with a population of less than 10,200 the district judges shall appoint a county auditor if:
 - a) the commissioners court finds that a county auditor is necessary... and enters an order in its minutes stating the reason for this finding;
 - b) the order is certified to the district judges; and
 - c) the district judges find the reason stated by the commissioners court to be good and sufficient.

§ 84.003. Procedure for Appointment

- a) The district judges shall appoint the county auditor at a special meeting held for that purpose.
- b) The clerk of the district court shall record the judges' action in the minutes of the court and certify it to the commissioners court. The commissioners court shall record in its minutes the judges' action and an order directing the payment of the auditor's salary.

§ 84.004. Term

The term of office of a county auditor is two years.

§ 84.006. Qualifications

- a) A county auditor must be:
 - 1) a competent accountant with at least two years' experience in auditing and accounting;
 - 2) thoroughly competent in public business details; and
 - 3) a person of unquestionably good moral character and intelligence.
- b) Before making an appointment the district judges shall carefully investigate and consider the person's qualifications.

§ 84.007. Bond and Oath

The Bond

- a) Before taking office and within 20 days after the date of a county auditor's appointment, the county auditor must execute a bond. The bond must be:
 - 1) A good and sufficient surety bond;
 - 2) In the amount of \$5,000 or more;
 - 3) Payable to the district judges;
 - 4) Conditioned on the faithful performance of the duties of county auditor; and
 - 5) Approved by the district judges.

§ 84.007. Bond and Oath

The Oath

- b) The county auditor must take the official oath and a written oath that lists the positions of public or private trust previously held and the length of service in each of those positions that states:
 - 1) That he has the qualifications required by this chapter; and
 - 2) That he will not be personally interested in a contract with the county.

§ 84.0085. Continuing Education

- a) During each full term of office, a county auditor must successfully complete at least 40 classroom hours of instruction in courses relating to the duties of the county auditor and accredited by the Texas State Board of Public Accountancy... On the completion of the courses and the accumulation of the continuing professional education credits, the county auditor must certify that fact to the district judges.
- b) For purposes of removal for incompetency under another law, "incompetency" in the case of a county auditor includes the failure to complete the courses in accordance with this section.

§ 84.009. Removal

- a) A county auditor may be removed from office and a successor appointed if, after due investigation by the district judges who appointed the auditor, it is proven that the auditor:
 - 1) has committed official misconduct; or
 - 2) is incompetent to faithfully discharge the duties of the office of county auditor.

§ 84.021. Assistants

From time to time the **county auditor may certify to the district judges a list stating the number of assistants to be appointed**, the name, duties, qualifications, and experience of each appointee, and the salary to be paid each appointee. The district judges, after careful consideration of the application for the appointment of the assistants and after inquiry concerning the appointees' qualifications, the positions sought to be filled, and the reasonableness of the requested salaries, shall prepare a list of the appointees that the judges approve and the salary to be paid each. **The judges shall certify this list to the commissioners court, which shall order the salaries to be paid on the performance of services and shall appropriate an adequate amount of money for this purpose.**

§ 84.021. Assistants

- If an emergency exists, the county auditor shall recommend the appointment of temporary assistants, and after a hearing held in accordance with Section 152.905, the district judges shall determine the number, salaries, and duration of employment of the assistants.
- An assistant must take the usual oath of office for faithful performance of duty. The county auditor may require an assistant to give a bond and may determine the terms of the bond. The bond must run in favor of the county and the county auditor as their interests indicate. The county shall pay for the bond.

§ 84.021. Assistants

- If only one assistant is appointed, the assistant, during the absence or unavoidable detention of the county auditor, may perform the duties required by law of the county auditor. If more than one assistant, the county auditor may designate the assistant to perform those duties during the absence of the county auditor.
- The county auditor may discharge an assistant.
- The district judges approving an appointment have the right annually to withdraw the approval and change the number of assistants permitted.

§ 152.905. Procedures for Setting Compensation by District Judges

- This section applies only to the compensation of the county auditor, assistant auditors, and court reporters.
- Before setting the amount of annual compensation... the district judge or judges shall hold a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard.

§ 152.905. Procedures for Setting Compensation by District Judges (cont'd)

- On or before the 10th day before the date of the hearing, notice of the time, place, and subject of the hearing must be published in a newspaper of general circulation in the county.
- At the hearing, the district judge or judges shall set the amount of compensation... considered at the hearing. The vote must be recorded, transcribed, and maintained as a public record.

§ 152.031. County Auditor's Salary

- At a hearing held in accordance with Section 152.905, the district judges appointing the county auditor shall set, by a majority vote, the auditor's annual salary as compensation for services and the auditor's travel expenses and other allowances. The action of the district judges must be taken by order and must be recorded as prescribed by Section 152.905 and in the minutes of the district court.
- The district clerk shall certify the order to the commissioners court of the county for its observance.

§ 152.031. County Auditor's Salary (cont'd)

- The commissioners court shall cause the order to be recorded in its minutes.
- The salary shall be paid to the county auditor by monthly payments or by any other distribution at the option of the county.

§ 152.032. Limitations on County Auditor's Compensation and Allowances

Except as provided by Subsection (b), the amount of the compensation and allowances of a county auditor may not exceed the amount of the compensation and allowances received from all sources by the highest paid elected county officer, other than a judge of a statutory county court, whose salary and allowances are set by the commissioners court.

§ 152.034. Salaries of Assistants to the County Auditor

The salaries of assistants to the county auditor are set in the manner prescribed by Section 84.021.

§ 111.074. 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.

Opinion No. DM-118 May 13, 1992

Auditor's salary increases are not included in "the amount budgeted for expenses of the county auditor's office..."

AUTHORITY AND RESPONSIBILITY OF THE COUNTY AUDITOR

OR...

If not me – then who???

If not now – when???

Identifying the major authority and responsibility of the county auditor as set forth in the statutes varies from county to county as a result of necessity and interpretation.

- General lack of qualifications for most elected officials leads to operational difficulties and “turf wars.”
 - **“It’s not my job, and I don’t know.”**
 - **“That’s the way we’ve always done it!”**
 - **“If you want the job done right...**

do it yourself!”

AUTHORITY OF THE COUNTY AUDITOR



- It is often difficult to determine where “authority” gives way to “responsibility”.
- Statutory authority establishes legal rights that make it possible for the County Auditor to fulfill his statutory responsibility.
- There are four types of statutory authority, all of which overlap throughout the statutes:

Oversight Authority

Access Authority

Prescriptive Authority

Verification Authority

OVERSIGHT AUTHORITY

- According to the *Texas Local Government Code* the county auditor has general oversight of county books and records. **Local Government Code § 112.006 (a)**
- Oversight generally means watchful and responsible care including, but not limited to:
 - Access to books and records; and
 - The authority to help ensure that those books and records are properly maintained.

OVERSIGHT AUTHORITY

- The county auditor shall see to the strict enforcement of the law governing county finances.

LGC § 112.006 (b)

- In Smith v. McCoy (Civ. App. 1976) S.W. 2d 457, it was determined that the county auditor has the responsibility, before approving a claim against the county, to determine whether the claim strictly complies with the laws governing county finances.

ACCESS AUTHORITY

- According to the *Texas Local Government Code* the county auditor has continuous access to county books and records. **LGC § 115.001**
- Access generally means the right or authority to enter, inspect or review.
- Generally speaking, the county auditor may look at anything that pertains to county finances. (ref. **AG Op. M-756, 1970; H-1185, 1987; H-1212, 1978**).

PRESCRIPTIVE AUTHORITY

- County population of less than 190,000

The county auditor may adopt and enforce regulations, not inconsistent with law... that the auditor considers necessary for the speedy and proper collecting, checking, and accounting of the revenues and other funds and fees that belong to the county. **LGC § 112.001**

- County population of 190,000 or more

The county auditor shall prescribe the system of accounting for the county in addition to the adoption and enforcement of regulations as above. **LGC § 112.002**

PRESCRIPTIVE AUTHORITY

- The county auditor shall determine:
 - 1) the time and manner for making reports to the auditor; and
 - 2) the manner for making an annual report of
 - A. office fees collected and disbursed; and
 - B. the amount of office fees refunded to the county in excess of those that the officer is permitted by law to keep. **LGC § 114.002**

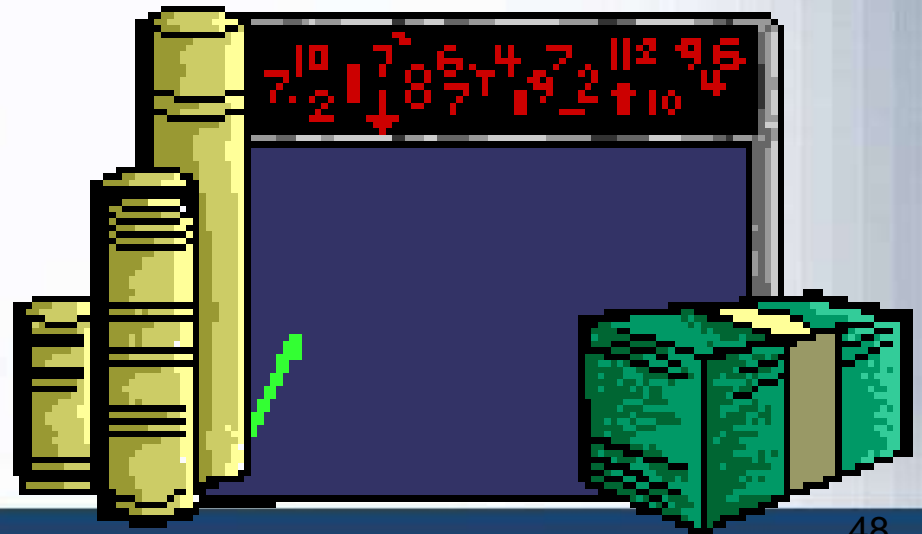
PRESCRIPTIVE AUTHORITY

- Prescriptive authority allows, and in some cases requires, county auditors to prescribe accounting and/or bookkeeping systems, and to prescribe frequency, format and content of reports.
- Attorney General opinions have extended this authority to the County Attorney's "hot check fund" and to the County Sheriff's "commissary fund".

VERIFICATION AUTHORITY

- A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor.
LGC § 113.064
- The county auditor may require an affidavit from a county official indicating that the claim or bill is correct and valid.
LGC § 113.064
- The county auditor may not audit or approve a claim unless the claim was incurred as provided by law.
LGC § 113.065
- In counties over 125,000 in population, the county auditor is to verify the revenues available to the county in the budgeting process. **LGC § 111.034**

RESPONSIBILITY OF THE COUNTY AUDITOR



The basic responsibility of the county auditor falls into not less than five broad categories.

Accounting and Financial Reporting

Accounts Payable and Payroll

Budgeting

Auditing

Purchasing and Approval of Claims

ACCOUNTING & FINANCIAL REPORTING

- Specify the system of accounting for the county as a whole and for individual fee offices.
- Responsibility for the chart of accounts and the design of the accounting system.
- Maintain the general ledger of the county throughout the year.
- Preparation of the annual financial report.
- Grant accounting and reporting.

ACCOUNTS PAYABLE AND PAYROLL

- Optional duties by law.
- If processed by the county auditor these duties meet the auditor's duty for verification of financial transactions.
- These duties directly relate to the responsibility to manage the county budget and to verify the correctness and legality of claims against the county before they are processed.

BUDGETING

- County auditor is the budget officer in some counties.
- In smaller counties, the county auditor assists the county judge in preparing the budget.
- Estimate revenues from all sources in counties over 125,000 population.
- Exercise oversight authority to see that only properly budget expenditures are approved for payment by the county.

AUDITING

- Internal auditing is a specific statutory duty of the county auditor.
- Examine all reports about the collection of money for the county.
- Examine books of county officials for correctness.
- Examine the county treasurer's books and reports.
- Examine the books and dockets of court clerks and justices of the peace for accuracy.

PURCHASING & APPROVAL OF CLAIMS

- The auditor may not pay for supplies or materials that have not been properly requisitioned and approved.
LGC § 113.901
- The county auditor must co-sign disbursement checks to validate them as proper and budgeted expenditures.
LGC § 113.043

CHALLENGES FACING THE COUNTY AUDITOR

OR...

Lack of a plan on your part
does not create a crisis
for me!!!

The nature of the position requires the county auditor to regularly face many challenges in the performance of his duties.

MAINTAINING INDEPENDENCE

- The office of county auditor was created to provide independent oversight of the financial transactions of the county.
- Independence in appointment, budget and staffing is necessary to insure that the functions of the office are handled in a professional manner.

MASTERING DIVERSE FUNCTIONS INCLUDING, but not limited to:

- Governmental accounting and financial reporting
- Internal auditing
- Grants management
- Debt issuance
- Management
- Budgeting and budgetary control
- Compliance with laws governing county finance
- Personnel and employment law
- Risk management

POLITICS

- Working with the personalities of many different elected officials.
- Co-existing while exercising oversight and prescriptive authority.
- Staff recruitment, development and retention in the county government environment.
- “Inherent” conflicts due to the unique nature of the position of county auditor and county government as a whole.

JUST A FEW WORDS OF WISDOM

Or...

BEEN THERE... DONE THAT!!!



While our function of county government is under the administration of the district courts, we are still a function of county government as a whole.

The following are some County Auditor Do's & Don't to assist you with your day to day responsibilities.



DO

- Keep the district judges informed.
- Communicate frequently with all officials.
- Know your statutory duties and authority and keep current on all legislative changes.
- Use technical assistance of state offices (i.e., State Comptroller, Attorney General, State Auditor).
- Use local resources, especially the District Attorney and County Attorney.
- Use the media often and facilitate information.

DO

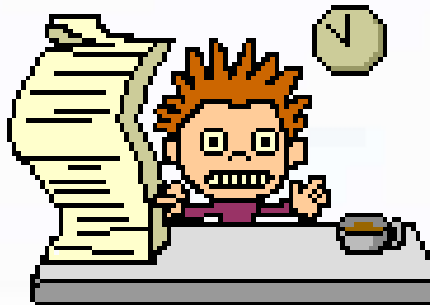
- Discuss critical issues in advance with the County Judge and individual Commissioners prior to public agenda presentation.
- Attend all Commissioners Court meetings for first-hand knowledge of all actions taken.
- Participate in continuing education programs and include your assistants.
- Be available at all times.
- Create and protect a positive image for your office and yourself.
- Use plain old Common Sense!!!

DON'T

- Embarrass your district judges.
- Embarrass yourself or anyone else in public or private.
- Argue with any public official in any public meeting.
- Refuse assistance to any reasonable request.
- Bad-mouth any official, employee or department at any time.
- Encourage gossip.
- Abuse your authority.

DON'T

- Ignore staff recommendations and ideas.
- Overlook any details related to the public business of the county.
- Compromise your principles or ethics.
- Procrastinate on or ignore any issue placed before you.
- Lose your composure under any circumstance.



CREDITS

Many thanks to those who played such an important part in developing the information contained in this presentation.

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- Marilyn Greer, Navarro County District Clerk

A special thanks to you as class participants.

Thanks so much for your attention.

Good luck as you experience

**The Wonderful World of County
Government!!!**

