

County*i*ssues

Volume 20, Issue 9 \ Sept. 24, 2010

Published by the Texas Association of Counties

High-Ranking State Officials Speak at TAC Conference



By Elna Christopher,
Director of Media Relations

TAC's 41st Annual Conference in early September drew high-ranking state officials

and policy experts, including the lieutenant governor, speaker of the House and chairman of House Appropriations, with the state's budget deficit and unfunded mandates topping the subject list.

Lt. Gov. David Dewhurst discussed unfunded mandates and used as an example the fact that counties paid \$174 million of state-mandated indigent defense costs while the state only paid \$11 million last year. He told the audience: "That's not right...I can't promise you today that we can undo all of them (unfunded mandates) in 2011, but I promise you that we'll start to work."

Dewhurst — along with other speakers — complimented county officials for their dedication to public service. "Serving in public office is a sacrifice," he said. "We appreciate your

dedication and service."

House Speaker Joe Straus (R-San Antonio) said the upcoming session with its budget shortfall will be a "challenge" and added, "We know we can't do it alone. We need you to bring your best ideas, your energy to the Capitol, showing us the things that you have done well and the lessons that you have learned in the process."

House Appropriations Committee Chairman Jim Pitts (R-Waxahachie) spoke about the state's budget deficit of \$18 to \$21 billion, saying, "I will give you a preview; it's going to look awful."

The conference included round-table discussions on health care, digital transparency, criminal justice and managing for population growth. The discussions allowed county officials to share their experiences and ideas with each other. The discussions were moderated by such state policy experts as Albert Hawkins, former commissioner of Health and Human Services; Victor Gonzalez, chief technology officer for the Comptroller of Public Accounts; and Jim Bethke, director of the Texas Task Force

on Indigent Defense.

Fred Hill, former House Local Government Ways and Means chairman, led conversations with county officials on maintaining local control regarding property taxes, rather than the state's dictating to local officials from Austin.

The House Transportation Committee held a public hearing at the conference, listening to county officials on a range of transportation issues and concerns.

Chris Holley, executive director of the Florida Association of Counties, talked about coping with the Gulf oil spill and how his association had to push for decisions from the state and federal governments so that local governments could move on containment and clean-up.

TAC and the Texas Municipal League presented the 2010 City-County Cooperation award to Angelina County and the City of Lufkin for their successful collaboration for a facility to house evacuees from natural disasters — mostly coastal hurricanes — who seek shelter in East Texas. Likewise, county

Annual Conference

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Commission issues report on undocumented immigrant health care costs. **See page 4.**

High Cost of Transportation

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KEY COUNTY DATES

October 2010

Oct. 1. (or as soon thereafter as practicable.)

Tax assessor-collector's deadline for mailing tax bills. TEX. Tax Code §31.01(a).

Oct. 4, 5 p.m. Deadline for opposed candidates in general election to file pre-election report of political contributions and expenditures. TEX. ELEC. CODE §254.064. *Actual receipt by deadline required.*

Oct. 4-7. 88th Annual County Judges & Commissioners Association of Texas, Waco. Hilton Waco, 113 S. University Parks Drive. For more information, contact McLennan County Judge Ray Meadows at (254) 757-5064.

Oct. 3-25. Period during which county judge to give notice of general election by publication. TEX. ELEC. CODE § 4.003 (a)

Oct. 12. County judge to post notice of general election. TEX. ELEC. CODE § 4.003(b).

Oct. 10-16. TAC County Investment Officer Training, Level I. For more information, contact the TAC Education Staff at (800) 456-5974.

Oct. 12-15. 65th Texas County Auditor's Annual Conference, Lubbock. Overton Hotel and Conference Center, 2322 Mac Davis Lane, (806) 776-7000. For more information, contact Jackie Latham at (806) 775-1098.

Oct. 13-15. 2010 The Texas Association of Domestic Relations Offices (TADRO) Annual Training & Exposition Conference. The Westin Riverwalk, San Antonio.

Before Oct. 15. Nominations for appraisal district directors due. TEX. Tax Code §6.03(g).

Oct. 15. Deadline for providing written notice of the fees of sheriff and constable (or changes) to the comptroller of public accounts. TEX. LOC. GOV'T. Code §118.131(f).

Oct. 18. First day of early voting by personal appearance for the general election. TEX. ELEC. CODE § 85.001.

Deadline for county judge to deliver written notice of election to presiding election judges. TEX. ELEC. CODE § 4.007.

Oct. 25, 5 p.m. Deadline for opposed

candidates in general election to file pre-election report of political contributions and expenditures. TEX. ELEC. CODE §254.064. *Actual receipt by deadline required.*

Oct. 29. Last day of early voting by personal appearance for the general election. TEX. ELEC. CODE §85.001.

Before Oct. 30. Ballots for directors of appraisal district due to county judge. TEX. TAX CODE §6.03(j).

November 2010

Nov. 2. General election day. TEX. ELEC. CODE, §41.002.

Nov. 10-15. Period during which commissioners court must meet to canvass election returns. TEX. ELEC. CODE, §67.003. [deadline extended]. After the canvass the County Judge shall promptly deliver a certificate of election to each candidate elected in the election, unless a recount petition has been filed for that office. TEX. ELEC. CODE §67.016 and §212.0331.

Not later than 24 hours after the commissioners court canvasses the election, the county clerk must deliver county returns for statewide and district offices and statewide measures to the Secretary of State. TEX. ELEC. CODE, § 67.007.

Nov. 16. Complete jury wheel due to secretary of state. TEX. Gov. Code §62.001(c).

Nov. 18-19. 2010 Texas Public Funds Investment Conference, Houston. Renaissance Houston Hotel, 6 Greenway Plaza East, (713) 629-1200. For more information, contact the TAC Education Department at (800) 456-5974.

Nov. 16. Fall Administrative Workshop, Austin. Doubletree Hotel, 6505 Interstate Highway I-35 North. (512) 454-3737. For more information contact the TAC Education Department, Joyce Francis or Michele Ewerz at (800) 456-5974.

Nov. 17-19. Fall Judicial Education Session, Austin. Doubletree Hotel, 6505 Interstate Highway I-35 North. (512) 454-3737. For more information contact the TAC Education Department, Joyce Francis or Michele Ewerz at (800) 456-5974.



Credit: Maria Sprow

Lt. Gov. David Dewhurst speaks at the TAC Annual Conference.

Annual Conference

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winners of Best Practices awards from the TAC Leadership Foundation were honored at a reception during the conference. Winners were Bee, Bexar, Houston, Madison, Smith, Tarrant (two awards), Taylor, Webb and Williamson counties.

Two representatives of the Capitol press corps — KUT Radio and *Texas Tribune* reporter Ben Philpott and *Quorum Report* Editor Harvey Kronberg — gave their takes on the state budget, redistricting and politics during separate sessions. ★

CSCDs Could Lose \$51.9 Million in State Budget Cuts



By Laura Nicholes,
TAC Legislative Staff

The Texas Department of Criminal Justice (TDCJ) submitted its Legislative

Appropriations Request (LAR) for review and consideration by the Legislative Budget Board (LBB) and the Governor's Office of Budget and Planning. In accordance with mandates from legislative leaders, TDCJ submitted proposals for cutting its budget an additional 10 percent for the 2012-2013 biennium, and under these proposals, TDCJ's Community Justice Assistance Division (CJAD) stands to lose \$51.9 million in probation and community treatment services funding.

CJAD oversees the 122 community supervision departments in Texas and will administer the funding.

According to the TDCJ Legislative Appropriations Request, the impact to adult probation would be as follows. Missing from the probation budget statement below is the indirect local impact — precisely, to county jail populations, the court system managing increased dockets and indigent defense requirements.

"The state funding for probation supervision is distributed through formula and discretionary allocations to all 122 community corrections and supervision departments (CSCDs) in order to maintain the statewide operations of probation supervision and provide treatment diversions and

For More Information:

For the full text of the TDCJ Legislative Appropriations Request, visit www.tdcj.state.tx.us/announcements/announcement-lar-introtext_aug16_2010.html.

other alternatives to incarceration, programs that are crucial to maintaining a balanced criminal justice system. The first 5 percent reduction in funding would result in the elimination of approximately 154 probation officer positions and require an increase in the regular direct supervision caseload ratio to 119, as these additional cases will be assumed by the remaining probation officers. With reduced probation staffing, there will also be 3,780 fewer offenders being monitored on specialized caseloads (sex offender, special needs, substance abuse). Additionally, 1,780 fewer probationers

will be served in community-based residential beds and 460 fewer offenders will receive substance abuse counseling through Treatment Alternatives to Incarceration funding. Without adequate probation supervision or the resources for diversionary alternatives to incarceration, diversions will likely decrease and probation revocation rates will likely increase, causing a corresponding increase to the agency's prison population. The second 5 percent reduction in funding would result in the elimination of 154

TDCJ Budget Cuts

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Credit: istockphoto.com

Resources, Naturally

House Transportation Committee Meets at TAC Annual Conference



Credit: Maria Sprow

County officials spoke during a hearing of the House Transportation Committee at the TAC Annual Conference.



By Paul J. Sugg
TAC Legislative Staff

On Sept. 2, those of us at the TAC Annual Conference witnessed something even the graybeards said they can't recall seeing: a committee of the Texas Legislature holding an official hearing in conjunction with our annual conference. In his opening remarks, House Transportation Chairman Joe Pickett underscored his committee's commitment to reaching out to local officials, and he expressed his appreciation for TAC allowing the committee to meet "off campus" as part of this outreach effort. He also reminded the audience he was a former city councilman and clearly remembers the challenges of dealing with higher levels of government

handing down additional responsibilities. He also said the committee can't wait until April or May of 2011 to come up with good ideas to address transportation issues — that's why he and the committee are reaching out now and want to hear from any and all interested county officials before the session starts next January.

TAC President and Roberts County Judge Vernon Cook welcomed Chairman Pickett and the committee, thanking them for their interest and desire to hear directly from county officials on transportation issues. Polk County Judge John Thompson asked that the Legislature give counties a range of tools to address local and regional transportation needs, underscoring the need for flexibility to allow counties to craft solutions to meet those particular needs. TAC President-elect and

Tarrant County Tax Assessor-Collector Betsy Price spoke about the recently created (2009 session) Department of Motor Vehicles and how counties and their tax offices interact with this state agency. What followed this invited testimony was an "open mic" invitation from Chairman Pickett to the county officials present. He asked for and received specifics regarding both problems and their solutions, as a number of county officials took advantage of this opportunity.

The committee subsequently heard about the Texas Department of Transportation's (TxDOT) Restructuring Council's work. TxDOT created the council to assist the agency in evaluating and implementing elements of the Grant Thornton study, as well as evaluating and implementing elements of other recommendations for improving TxDOT operations, including those from the Sunset Commission. In its 2008 review of TxDOT, the Sunset Commission noted its review "occurred against a backdrop of distrust and frustration with the Department and the demand for more transparency, accountability, and responsiveness..." and that half-measures wouldn't do; significant changes must occur if trust and confidence in TxDOT were to be restored. The agency commissioned

Transportation

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HHSC Issues Report on Benefits Provided To Undocumented Immigrants



By Rick Thompson,
TAC Legislative Staff

In a recent report to the House State Affairs Committee, Rick Allgeyer, director of research for the Texas Health and Human Services Commission (HHSC), updated members on the costs of benefits provided to undocumented immigrants in Texas.

During the 80th Legislative Session, the Texas Legislature passed Rider 59 in the General Appropriations Act which directed HHSC to report to the United States Congress the cost of services and benefits provided by HHSC to undocumented immigrants in the state. The recently released report gives a 2010 update of the figures documented in 2008.

The 2010 report estimates the cost of service and benefits provided to undocumented immigrants for State Fiscal Year (SFY) 2009 of \$96 million, up from \$81 million in 2008. Within the overall cost, HHSC breaks down the

For More Information:

To see the full text of the report, visit www.hhsc.state.tx.us/reports/2010/Rider59Report_2010.pdf.

services into the following three cost categories:

Texas Emergency Medicaid, Type Program 30 (TP 30) — This is a state and federally funded program that covers those who need immediate medical attention and meet certain eligibility requirements. Out of more than \$309 million spent on TP 30, HHSC paid \$62 million equaling 32 percent of the cost, down from the 60 percent normally required for matching due to provisions of the American Recovery and Emergency Medicaid expenditures.

Texas Family Violence Program — This is a state and federally funded program which provides emergency shelter and support services to victims of family violence. Out of \$19 million spent on the on Family Violence

Program, HHSC paid \$1.3 million. **Texas Children's Health Insurance Program (CHIP) Perinatal Coverage** — This state and federally funded program offers services to pregnant uninsured women who are not normally eligible for Medicaid. Benefits start before the child is born and continue for 12 months from the date of enrollment. Out of \$118 million in program funds, HHSC paid \$33 million.

The Texas Public Hospital Districts (99 facilities) estimated uncompensated care for undocumented immigrants at \$717 million, up from \$597 million in 2008. This report estimates that 20 percent of all uncompensated care in Texas can be attributed to undocumented immigrants

For additional information on this article, please contact TAC Legislative Staff Rick Thompson at (800) 456-5974 or rickt@county.org. ★

Transportation *continued from page 4*

a study of itself by the firm Grant Thornton, who obligingly produced a 628-page report on how the agency might improve. Given the daunting challenge of cataloging, categorizing and accomplishing all these suggested improvements, the commission has asked Austin attorney Howard Wolf to spearhead this effort. Wolf also is

advisor to Lt. Gov. David Dewhurst. Joining Wolf on the project are Jay Kimbrough, a former Bee County judge and close associate of Gov. Rick Perry, and David Laney, a Dallas attorney and former TxDOT commissioner who was recommended for this task by House Speaker Joe Straus.

To return to Chairman Pickett's

goals in reaching out to county officials, think about what other tools you need to address your local transportation challenges. Also, if you know how or where the state can be more effective and efficient in what it does, let the committee know that, too. The members are waiting to hear from you. ★

Survey Results on Autopsy Costs



By Paul Emerson,
TAC State Financial Analyst

Editor's note: This article is part two of a three part series relating to autopsy costs within the Medical Examiner's (ME's) offices

that responded to our survey. The first section of this series ran in the May 2010 County Issues and covered background information on the ME's office and how this particular survey came about. This segment of the series will give a summarization of the results of the survey. A more detailed account will be available in the final series.

In 2006, the Texas Association of Counties (TAC) was asked by a county official to investigate the cost of what ME's were charging for transporting a decedent's body outside its jurisdiction — especially for rural counties. During this period, TAC contacted the various ME's by phone. The results of that phone survey are available on TAC's website. This year's survey is quite different in terms of the number of questions and how the survey was administered. A hardcopy of this year's survey was either faxed or emailed to all 12 of the ME's offices. The survey consisted of 10 questions that were drafted after reviewing numerous ME's annual reports and budget proposals. All 12 of the ME's offices responded to the survey. They included Bexar, Collin, Dallas, Ector, El Paso, Galveston, Harris, Lubbock, Nueces, Tarrant, Travis and Webb counties.

The questions are highlighted below in gray boxes, followed by an explanation of the findings.

(1). Does your ME's office furnish a website?

- All 12 ME's responded to this question. Only two of the ME's offices indicated they did not provide a website. No further explanation was given for those ME's that did not provide a website.

(2). What was the total number of budgeted positions at the start of fiscal year 2009?

- Webb County ME's office indicated the least number of positions — only four full-time positions — while Harris County ME's had the highest number of full-time employees — 209. Tarrant and Travis indicated 58 and 34 full-time positions, respectively. The ME's office in Dallas County indicated it had 49 positions.
- Four counties (Dallas, El Paso, Galveston and Webb) also indicated they have a number of part-time positions.

(3). What are the names of the counties your ME's office serves or has jurisdiction over?

- Due to the sensitive nature of this question and the competitiveness among ME's offices, only the number of additional counties each ME's office serves in addition to its home county will be disclosed:

Collin: 2; Dallas: 40; Ector and El Paso: 1; Galveston: 3; Harris: 7; Nueces: 15; Tarrant: 3; Travis: 42; and Webb: 7.

(4). What type of autopsies (complete or partial autopsies) were performed in FY 2009?

- Out of 12 ME's, only eight indicated they performed both complete and partial autopsies. The other four provided complete autopsies only. It was noted that four of the ME's also performed external autopsies.

(5). What was the number of autopsies performed in FY 2009?

Bexar	1,326
Collin	440
Dallas	3,351
Ector	83
El Paso	469
Galveston	460
Harris	4,155
Lubbock	388
Nueces	560
Tarrant	2,152
Travis	1,498
Webb	310

The remaining five questions of this survey will appear in the next edition of *County Issues*.

For more information, contact Paul Emerson, TAC state financial analyst, at (800) 456-5974 or paule@county.org. ★

Integrating Technologies:

THE FUTURE IS NOW

TEXAS ASSOCIATION *of* COUNTIES

9th Annual Courts and Local Government Technology Conference

Jan. 25-27, 2011 • Embassy Suites Hotel and Conference Center • San Marcos, Texas

Education Co-Sponsor: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin

The 9th Annual Courts and Local Government

Technology Conference provides technology education specific to Texas courts and county and city governments.

If you are in charge of the technical strategic direction for your county or city or are involved in making technology processes work, this is the one conference you can't afford to miss. Join us for sessions on the ethics behind social media, options in cloud computing, following data trails, legislative bills affecting technology, video magistration and more.

Choose from four break-out education tracks on day one and targeted sessions for the remainder of the conference. We discuss new technologies that work, don't work, or are in the works for courts and local government.

Stop by the vendor area to see exhibitors showcasing their latest technology products and services specific to local governments and courts.

CONTINUING EDUCATION

TAC has applied for continuing-education credits for auditors, county and district clerks, commissioners, justices of the peace, purchasing agents, tax assessor-collectors and treasurers. PHP, SPHR and TCLEOSE hours will also be requested.

REGISTRATION

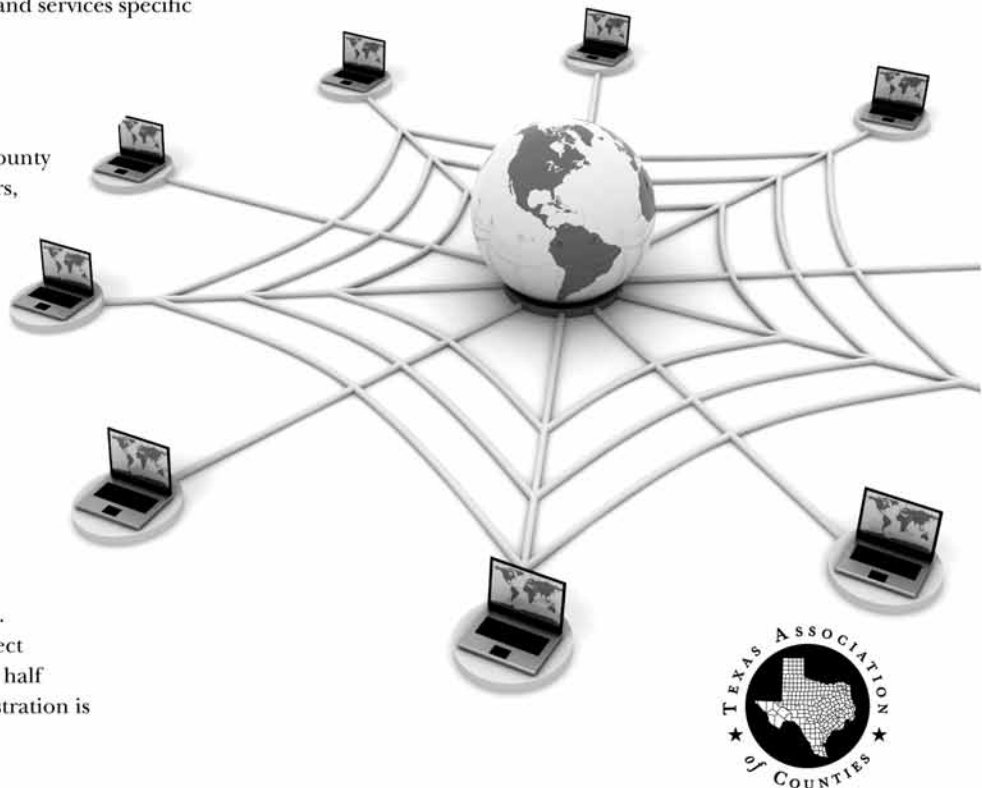
Registration for the entire conference is \$150 before Jan. 3 and \$175 after Jan. 3. Registration is transferable. Requests for refunds (minus a \$10 administration fee) should be submitted in writing by Jan. 3. After Jan. 3, refunds will be subject to an administrative fee equal to half the registration fee. Online registration is available at www.county.org.

HOTEL INFORMATION

The conference site is the Embassy Suites and Conference Center in San Marcos, 1001 E. McCarty Lane just off IH 35 at the Outlet Mall exit. To receive the conference room rate of \$109 when reserving your hotel room, please request the Texas Association of Counties room block. The hotel block reservation deadline is Jan. 7.

CO-SPONSORS

The 2011 conference is co-sponsored by the Texas Municipal Courts Education Center, the Texas Justice Court Training Center, the Judicial Committee on Information Technology, the County Information Resources Agency and the Texas Association of Counties.



County Road Damages Call for Solutions



By Aurora Flores-Ortiz,
TAC Legislative Staff

The current system and use of Texas county roads is undergoing vast

change. There are some 160,000 miles of road and more than 17,000 bridges in our state. Since the 1980s, urbanization and increased development into unincorporated areas of the state have brought residential life and increased different types of traffic to county roads. Formerly quiet gravel and caliche county roads are now paved and carry high volumes of emergency vehicles, family vehicles, delivery trucks and oil/gas and agriculture industry trucks.

Currently, county roads are made to carry and maintain up to a 42,000 pound vehicle weight capacity, but they are seeing increased use by industry's overweight trucks. Since 1987, the state of Texas has been issuing permits for overweight trucks to run up to 84,000 pounds on any county road in the state, regardless of weight capacity of the road, causing major and expensive damage.

Some of the monetary issues involved in replacing damaged roads are the cost of the base used to pave the road, the seal coating, the increased right of way and the width of the road to accommodate higher traffic usage. In the past, counties have received some funding from the gasoline tax, but the amount has not

increased since 1951. They also receive only limited amounts from vehicle registration fees and overweight truck funds. Around 60 percent of the cost of building and maintaining county roads comes from the property tax system.

As January draws nearer, the Texas Association of Counties is gathering information from counties and is working with other stakeholders to find solutions to this costly problem. Requesting that annual permits to run overweight trucks on any road in the state be stopped, more funding given to counties through an increase of the gas tax, and using technology to identify roads that need upgrading to carry the 80,000+ weight are some of the ideas that have been presented

before legislative interim committees. The Texas Association of Counties (TAC) will work to identify roads damaged from excess weight and determine which types of traffic is causing the damage. Identifying whether alternate routes from these roads to adjacent properties exist, quantifying the repair costs during the past few years and determining what it will cost to maintain repair programs will also be studied.

Though the legislative session will be tough for everyone, transportation demands continue and TAC will remain watchful for ways to fund this local issue. For more information on this article, please contact Aurora Flores Ortiz at 800 456-5974 or aurorafo@county.org. ★



Credit: istockphoto.com

TDCJ Budget Cuts *continued from page 3*

additional probation officer positions and require an increase in the regular direct supervision caseload ratio of 119 to 131, as these additional cases will be assumed by the remaining probation officers. With reduced probation staffing, there will also be an additional 3,780 fewer offenders being monitored on specialized caseloads, 1,780 fewer probationers served in community based residential beds, and 460 fewer offenders receiving substance abuse counseling."

County jail populations, the court system dockets and indigent defense are necessary components forming the roots of a balanced criminal justice system, roots which begin at the county level and are funded by state dollars in an effort to offset local taxpayer dollars. Without adequate probation supervision or the resources for diversionary alternatives to incarceration, diversions will likely decrease and probation revocation rates will likely increase, causing a corresponding increase to county jail populations and local court systems — and finally, an increase in the prison population.

Another important item to note in the LAR is CJAD's exceptional item request for \$6.8 million to replace declining funds that have historically been returned to CJAD for redistribution. At the end of each budget cycle local CSCDs return any unexpended funds and those funds are then re-appropriated to the departments for the first year of each new biennium; the second year is

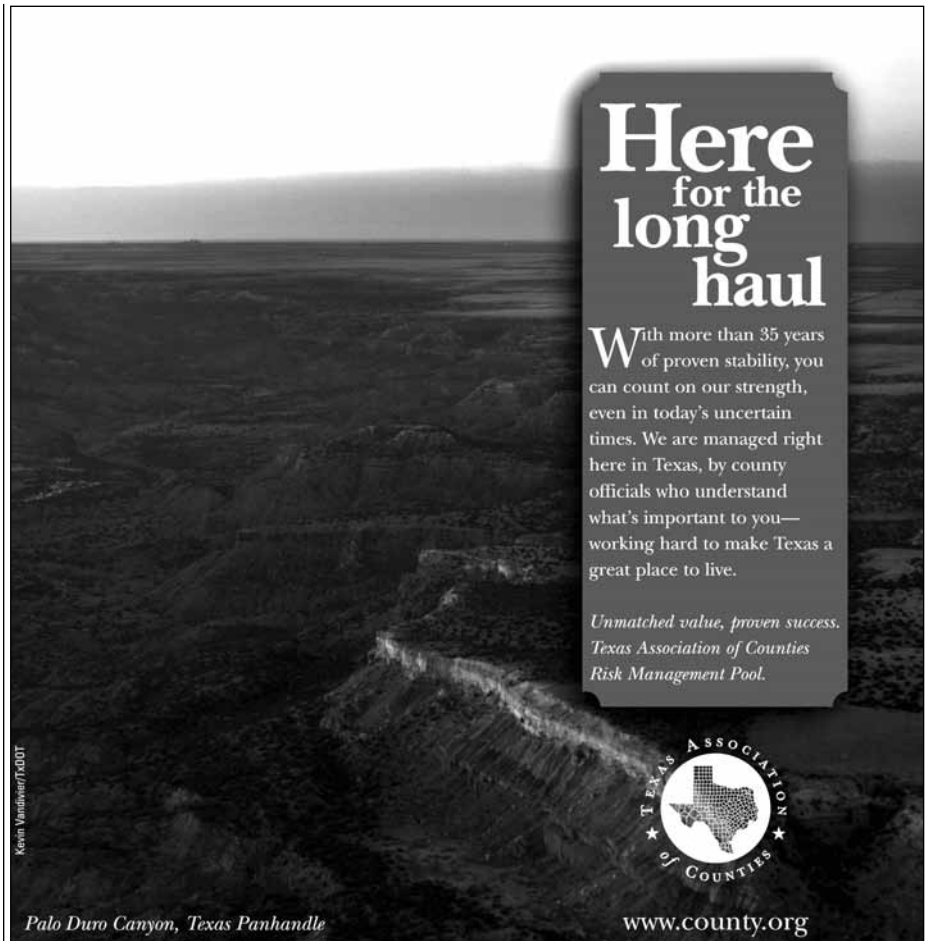
fully funded from the state general revenue account. The refunds returned from the local departments at the end of 2009 were not sufficient to fully fund the CSCDs for FY 2010, so counties took an unexpected loss and have struggled to make up the \$6.7 million difference. Since the state provides full funding for the second year of the biennium from the general revenue, FY 2011 is not impacted. However, 2012 is the first year of a new budget cycle and the exceptional item request for \$6.8 million might suggest another round of declining refunds could be forthcoming.

The Texas Department of Criminal Justice is scheduled to present its

2012-2013 Legislative Appropriations Request in a joint hearing of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy from 10 a.m. to noon, Thursday, Sept. 30 in Capitol Extension room E2.030. Public and written comments will be accepted.

Summaries of the Legislative Appropriations Request and the full text may be viewed in the Announcements section of the TDCJ home page at www.tdcj.state.tx.us.

For additional information on this article, please contact TAC Legislative Staff Laura Nicholes at (800) 456-5974 or lauran@county.org. ★




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Attorney General Opinions Issued

GA-0789: Mr. Steven C. McCraw, Director, Texas Department of Public Safety, whether a county's disclosure on its website of driver's license photographs received from the Department of Public Safety would violate the Motor Vehicle Records Disclosure Act or the federal Driver's Privacy Protection Act. **Summary** The Federal Driver's Privacy Protection Act and the Texas Motor Vehicle Records Disclosure Act do not prohibit the Department of Public Safety from disclosing driver's license photographs to the Dallas County Sheriff for use in carrying out law enforcement purposes. We cannot state as a matter of law whether the publication of such photos online would be permissible or would constitute an unauthorized redisclosure under the state or federal act.

GA-0790: Honorable Byron Cook, Chair, Committee on Environmental Regulation, Texas House of Representatives, combining real property and improvements on one parcel identification number or taxpayer account for appraisal district record purposes. **Summary** The chief appraiser of an appraisal district determines whether land and improvements are combined into a single taxpayer account or parcel. A taxpayer's separate rendition of land and improvements does not change this conclusion.

GA-0791: Honorable Richard P. Bianchi, Aransas County Attorney, use and management of a county jail commissary fund under Local Government Code section 351.0415. **Summary** Local Government Code section 351.0415 grants the sheriff exclusive control of funds generated by the operation of a jail commissary, requires the sheriff to maintain commissary accounts, and provides that commissary proceeds may be used only to benefit inmates of the county jail. Commissary proceeds are not funds "belonging to the county" under Local Government Code section 113.021(a). Texas courts follow the common-law

rule that interest follows principal unless lawfully separated from the principal. Section 113.021 separates interest from funds "belonging to the county" and allocates it to the county general fund. Because the commissary fund is not a fund "belonging to the county," interest remains with the commissary fund.

GA-0792: Honorable Troy Fraser, Chair, Committee on Natural Resources Texas State Senate, status of particular tracts of land annexed into one groundwater conservation district and subsequently included in special legislation creating a different district. **Summary** Two different political subdivisions may not exercise jurisdiction over the same territory at the same time and for the same purpose. For purposes of statutory law, the 1995 special law creating the Hemphill County Underground Water Conservation District prevails over the prior annexation of territory by the Panhandle Groundwater Conservation District pursuant to general law. A disputed tract of land claimed both by the Jeff Davis County Underground Water Conservation District and the Presidio County Underground Water Conservation District is exclusively within the territory of the Presidio District. A disputed tract of land claimed both by the Jeff Davis County Underground Water Conservation District and the Middle Pecos Groundwater Conservation District is exclusively within the territory of the Middle Pecos District. A disputed tract of land claimed both by the Jeff Davis County Underground Water Conservation District and the Brewster County Groundwater Conservation District is exclusively within the territory of the Brewster District. In any of the above referenced scenarios, there may exist constitutional considerations that would require a different result.

GA-0793: Honorable Garnet F. Coleman, Chair, Committee on County Affairs Texas House of Representatives, whether a school district may access and

use a county's right-of-way to install fiber optic cable. **Summary** Because no statute grants school districts the right to access and use county road rights-of-way to install fiber-optic cable, a school district is not entitled to use county road rights-of-way for that purpose.

GA-0795: Honorable Patrick M. Rose, Chair, Committee on Human Services Texas House of Representatives, jurisdiction over land that is annexed by two separate special districts. **Summary** Whether a water district--that adds territory pursuant to individual petitions of separate landowners, in compliance with Water Code sections 36.321 through 36.324, before annexation of the same territory by another groundwater district is ratified at an election under section 36.328--acquires jurisdiction over the subject territory depends on whether a court would apply the first-in-time rule to competing chapter 36 annexation claims. Applying the first-in-time rule, a court could find that the first district to initiate annexation procedures acquires jurisdiction. A court could also find that the first district to finalize the annexation acquires jurisdiction. This office cannot predict, in the apparent absence of judicial precedent, how a Texas court would resolve this issue. As a result, we cannot definitively answer your question.

GA-0796: Honorable Allan B. Ritter, Chair, Committee on Natural Resources Texas House of Representatives, whether the conflict of interest provisions of chapter 171, Local Government Code, required two board members of the Uvalde County Underground Water Conservation District to disclose their respective interests and abstain from voting on a District rule. **Summary** Chapter 171 of the Local Government Code generally governs a local public official's pecuniary conflicts of interest. Section 171.004 requires a local public official to file an affidavit disclosing the official's interest in a business entity or

Attorney General Opinions Requested

RQ-0910-GA: David A. Reisman, Executive Director, Texas Ethics Commission, information that must be furnished to a respondent against whom a complaint is filed with the Texas Ethics Commission.

RQ-0911-GA: Honorable Allen B. Ritter, Chair, Natural Resources, Texas House of Representatives, whether a part-time municipal court judge may simultaneously serve as a member of the board of commissioners of the Jefferson County Drainage District No.7.

RQ-0912-GA: Honorable Royce West, Chair, Intergovernmental

Relations, Texas State Senate, authority of a civil service commission to charge a fee for a promotional examination.

RQ-0913-GA: Honorable Yvonne Davis, Chair, Urban Affairs, Texas House of Representatives, authority of a municipality to contract with a water control and improvement district for the daily operation and management of the municipality.

RQ-0914-GA: Honorable Vicki Truitt, Chair, Pensions, Investments and Financial Services, Texas House of Representatives, whether section 542.2035, Transportation Code,

prohibits a municipal peace officer from using a handheld laser speed enforcement device to collect evidence before initiating a traffic stop.

RQ-0915-GA: Honorable Joe Shannon, Jr., Tarrant County Criminal District Attorney, procedures for providing emergency care of an individual under section 773.008, Health & Safety Code.

RQ-0916-GA: Honorable Lucinda A. Vickers, Atascosa County Attorney, whether a county clerk is required to permit a member of the public to copy records with a sheet feed scanner. ■

Attorney General Opinions Issued (continued)

real property and abstain from participating in a vote or decision involving that entity or real property when the vote or decision will have a special economic effect on the business entity or the value of the real property.

In March 2009, the board of directors (the "Board") of the Uvalde County Underground Water Conservation District (the "District") voted to approve a District rule permitting withdrawal of groundwater for agricultural use without certain limitations previously proposed. Based on the facts presented, a court could find that the March 2009 action had a special economic effect on an applicant for a water permit in which a Board member has a substantial interest and on the value of real property owned by another Board member, which was reasonably foreseeable. Given the inherently factual nature of the inquiry and absence of judicial precedent, this office cannot conclude that a court would find that the March 2009 action had a special economic effect, or that it was reasonably foreseeable that the action would have such an effect as to require the two Board members to file

affidavits disclosing their interests and abstain from participating in the March 2009 vote.

GA-0797: Honorable Eddie Lucio, Jr., Chair, Committee on International Relations and Trade, Texas State Senate. Calculation of impact fees for a platted subdivision. **Summary** Local Government Code chapter 245 recognizes a developer's vested rights and requires a regulatory agency to consider approval or disapproval of an application for a permit based on regulations and ordinances in effect at the time an original application is filed. A developer has no vested rights in a project under chapter 245 if the project is dormant under section 245.005.

Local Government Code chapter 395 governs the imposition of impact fees by municipalities. Impact fees are, as a general matter, charges on new development to pay for public facilities that become necessary as the result of growth in a particular area. A municipality must refund impact fees as provided in section 395.025. There is, as reflected in the express language of chapter 395 and in prior attorney general opinions, a distinction between

the assessment of an impact fee and the collection of an impact fee. Chapter 395 indicates that the act of adopting an impact fee and the act of assessing an impact fee are distinct activities. However, we cannot say as a matter of law that a single ordinance could not serve as both the means by which a municipality imposes and assesses an impact fee. By its express terms, section 395.017 prohibits the imposition of additional or increased impact fees against a tract after the fees have been assessed unless the number of service units to be developed on the tract increases.

GA-0798: Honorable Scott Brumley, Potter County Attorney, method by which a hospital district may set an ad valorem tax rate when it has not set a tax rate since 1996. **Summary** The Tax Code does not provide a special method for a tax rate to be adopted by a hospital district that has not adopted a tax rate or levied a tax since 1996. We cannot predict whether a court would uphold a tax rate adopted without following the rollback procedures mandated by chapter 26 of the Tax Code. ■



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From the Legislative Desk

By Carey "Buck" Boethel, Director of Governmental Relations

Boethel: It's Been an Honor

The pulse of the people of Texas — This article represents the personal opinion of the writer and accordingly doesn't reflect positions on the subject matter or denote official policy of county government or the Texas Association of Counties (TAC). As I leave TAC and county government to make room for others and their ideas at the end of 2010, I must say it has been an honor to work among so many, many good and honest people.

I have discovered there is as much need for diplomacy in being a successful county leader as there is for the requisite business acumen necessary to perform the particular services an elected position calls for. Over the course of the past 25 years, I have enjoyed developing the personal view, quite possibly shared by many others within the county family, that

county officials are duly entitled to be known as the true "ambassadors" of county government — the local government closest to the people of Texas.

The foregoing is not meant to diminish the significance of our good friends in our great cities in this state — they are an indispensable part of the overall local government fabric that makes Texas such a great place to live and raise our families. We have found that working hand in hand with our cities makes Texas far more resilient and helps keep more money in the pockets of the taxpayer. We must continue to maintain a wholesome working relationship with our cities and recognize their importance within the system of local governance.

I am very fortunate to have worked with so many dedicated

elected officials and people who have strived to improve and protect our way of life in Texas. As the end of the year draws near, I want to take the opportunity in the next few issues to use my space in this newsletter to mention what I consider to be some of the more significant challenges within county government that will continue to demand our attention and collective wisdom for the ensuing decades.

Thanks,

Carey Boethel

Director, Legislative Department,
Texas Association of Counties