

County *issues*

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Proposals Directly Impacting Counties

During the 78th Legislature a decision was made to move the election date for constitutional amendments from Nov. 4 to Sept. 13, 2003. The following is a partial list of proposals that will be on the September ballot that will have a direct impact on counties. For a list of all 22 constitutional amendments, go the Secretary of State's Web site at www.sos.state.tx.us and click on "Proposed Constitutional Amendments Election - September 13, 2003."

In addition, the House Research Organization has compiled a Focus Report entitled "Constitutional Amendments Proposed for September 2003 Ballot" (July 28, 2003) which can be found at www.capitol.state.tx.us/hrofr/frame9.htm. The report provides a list of pros and cons on all 22 proposed amendments.

Prop. 3/HJR 55

The proposition will appear on the ballot as follows: *"The constitutional amendment to authorize the legislature to exempt from ad valorem taxation property owned by a religious organization that is leased for use as a school or that is owned with the intent of expanding or constructing a religious facility."*

House Joint Resolution 55 (HJR 55) by Zedler seeks to amend Section 2(a) of the Texas Constitution by expanding the ad valorem exemption given to religious entities who purchase property for non-financial religious purposes.

Under current law, eligible religious entities receive a taxing exemption for up to one acre of land for property that is used strictly for the non-profit advancement of the entity. It has been common practice for religious entities to purchase property beyond one acre and receive an ad valorem tax bill for land not under active construction (current law allows a three-year tax exemption for property under construction).

If passed, HJR 55 would expand the tax exemption to property that is contiguous to the tract of land on which the religious organization's place of regular worship is located. Qualifying property would be eligible for exemption for up to six years. Land that is not contiguous to the tract of land used for the organization's regular worship would be eligible for exemption for up to three years.

The enabling legislation for HJR 55 is HB 1278 by Zedler. HB 1278 establishes that a tract of land is considered to be contiguous with another tract of land if the tracts are divided only by a road, railroad track, river or stream.

Prop. 5/SJR 25

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment to authorize the legislature to exempt from ad valorem taxation travel trailers not held or used for the production of income."*

[Please see Proposals, continued on page 6]

Counties Federally Mandated to Meet Elections Requirements

The federal Help America Vote Act (HAVA, enacted October 2002) was not fully funded by Congress and as a result some requirements may have a financial impact on county budgets. To view details of the state plan drafted by the Secretary of State's (SOS) office and the HAVA workgroup, go to www.sos.state.tx.us. The state plan illustrates how the SOS intends to implement the new requirements and also includes charts estimating how much money each of the 254 counties are eligible to receive.

The details of HAVA have been covered previously in *County Issues* so this article is intended to inform local government of HAVA requirements that may financially impact counties. First, there is a federal mandate that an accessible voting machine be in place at each precinct by Jan. 1, 2006. The Direct Recording Electronic voting machine (DRE) has been certified as such a voting machine which is accessible to the disabled voting population. There is \$25.5 million available under HAVA that will be dedicated for counties to purchase a DRE for each precinct. The available funds may not cover the actual costs for every precinct, which means the

counties would have to pay for the required machines or apply for additional grant money. It is estimated that each DRE costs approximately \$3,000. The amount of money each county can apply for is estimated to be \$3,000 multiplied by the number of precincts that were in existence in November 2000. Another \$20 million will be available for eligible counties to apply for in an amount proportional to its voting age population. The SOS will develop a list of authorized projects for which these funds can be used to meet general HAVA requirements (e.g. upgrading voting systems, voter education, etc.).

Second, there are currently 17 counties that have punch card or lever voting machines. By Jan. 1, 2006, HAVA says these counties will have to eliminate these machines. This is in addition to the requirement of purchasing one DRE per precinct. There is a pot of money of \$6.3 million available for these 17 counties to help cover replacement costs. Punch card or lever machines can be replaced with either DRE machines, or other acceptable voting system (i.e. optical scan, paper ballot).

[Please see HAVA, continued on page 3]

Assessments Needed to Qualify for Homeland Money

Counties interested in federal homeland security money to fund domestic preparedness equipment purchases have until Dec. 31 to have their county Emergency Management Plans up-to-date.

Counties that were awarded equipment funding from 2003 federal funds agreed to the updates as a part of their grant award. Counties that hope to receive funding in 2004, will find that an up-to-date emergency management plan is required.

In the last 12 months, some 750 Texas local governments have qualified for a total of \$83.4 million to pay for decontamination equipment, hazmat suits and other equipment that will increase local preparedness and help support each regional council of government's response plan, according to Jim Ray, executive director of the Texas Association of Regional Councils.

The U. S. Congress is expected to make additional funds available for distribution in the spring of 2004. To qualify, local governments must (1) have completed a detailed domestic preparedness assessment for

submission to their regional council of governments and the Texas Engineering Extension Service (TEEX) at Texas A&M University; and (2) have an up-to-date Emergency Management Plan including annexes, such as one on terrorism.

The domestic preparedness assessment involves a detailed review of the threats and vulnerabilities in the local jurisdiction, inventories of existing equipment and personnel, and a preliminary listing of needed equipment. This information will be used to help determine how much money a qualifying local government may be eligible to receive. The grant is administered for the Governor by TEEX with regional councils of governments' preparedness committees assisting local governments, determining regional priorities, and endorsing local equipment lists.

For more information, contact the emergency preparedness coordinator at your regional council of governments or the TEEX Director of Domestic Preparedness at 979-458-6815. 📍

2003 Post Legislative Conference a Success

The end of the 78th Regular legislative session flashed the green light for TAC staff to begin compiling information on new legislation in preparation for informing county officials of the anticipated changes to their offices. TAC Post Legislative Conferences traditionally enlist the assistance of state legislators, county officials, state agencies and national representatives to communicate the important aspects of legislation and answer questions about implementing the changes to county offices.

Several state legislators lent their time and knowledge to this conference, providing their perspective on legislation discussed:

- Representative Jim Keffer, chair of House Economic Development, spoke on HB 1117 regarding county road maps;
- Rep. Mike Krusee, House Transportation Chair, answered questions on HB 3588;
- Rep. Dwayne Bohac spent an evening with the Policy Analysis Group discussing HB 3223, property taxes and appraisals;
- U. S. Congressman Jim Turner gave his congressional perspective on the issue of Homeland Security; and
- last but not least, TAC Executive Director Sam Seale presented the County Watchdog award to Rep. Glenn Lewis, House County Affairs Chairman. Lewis

addressed the full conference on county issues.

County officials who were key participants in the legislative process during the 78th Regular session and were eager to share with their peers their working knowledge of the bills affecting their particular state associations were: Aurora De La Garza, Cameron County District Clerk; Tommy Tompkins, Bexar County Auditor; Janice Gray, Coryell County District Clerk and; Suzanne Henderson, Tarrant County Clerk. Also, Harris County Tax Assessor-Collector Paul Bettencourt, participated as a presenter at the Policy Analysis Group. The National Association of Counties (NACo) was represented by NACo President Karen Miller and Steve Swendiman, who both participated as speakers.

The 2003 TAC Post Legislative Conference was a success with a total attendance number of 763 registrants from 182 different counties. The breakdown numbers are as follows: 85 judges, 169 commissioners, five county attorneys, one district attorney, two county/district attorneys, 74 district clerks, 69 county clerks, 15 county/district clerks, 17 sheriffs, one sheriff/tax assessor-collector, 28 tax assessor-collectors, 51 treasurers, nine justices of the peace, seven constables, 52 auditors, 151 county staff and 27 non-county attendees. 🗺️

[HAVA, continued from page 2]

Finally, before a county is eligible to receive any HAVA funds, the county judge will be required to sign a maintenance of effort commitment with the secretary of state. This will be a signed and notarized affidavit stating that the funding pattern for the daily operations for the elections section of the county clerks' (election administration) or tax assessors' (voter registration) budget is not less than the operating budget for elections/voter registration of their Oct. 1, 2002-03 budget cycle. If the funding level is reduced from this budget cycle, the county will not be eligible to receive HAVA funds, but will still be required to meet the federal mandates including the purchasing of and/or replacing specific voting machines.

The maintenance of effort will not be required until the SOS develops the grant program under the general requirements of the Uniform Grant Management Standards later this year.

The state plan was published in the Aug. 1 edition of the *Texas Register* for a 30-day public comment period. HAVA requires that the state plan be sent to the new Election Assistance Commission at the federal level for approval. This commission has yet to be finalized, but is expected to be in place by this Fall. Once it is set up, and the secretary of state has the grant rules and application written, everything will be submitted, and the county judges can start applying for HAVA funds. The funds are expected to be closely monitored by both the federal and state levels to ensure the money is being used strictly according to HAVA requirements or allowances.

For additional information, contact Teresa Aguirre at TeresaA@county.org. 🗺️

Road Acquisition Bill Offers Counties New Method With a Deadline

Counties currently governed by Chapter 281 of the Transportation Code will have until Aug. 31, 2009 to exercise provisions created under a new, temporary chapter now effective in the Code.

House Bill 1117 by Rep. James "Jim" Keffer (Eastland) temporarily adds chapter 258 to the Transportation Code and gives counties with populations of 50,000 or less an opportunity to officially identify which roads are county roads.

Rep. Keffer said HB 1117 was drafted to give Chapter 281 counties an alternate option for acquiring roads.

"HB 1117 does not repeal chapter 281. Rather, it offers a process that landowners and counties can follow to determine which roads are county roads," Keffer said.

Currently, 200 Texas counties are governed by requirements in Chapter 281 which allows road acquisition only by adverse possession, purchase, dedication or condemnation.

Under Chapter 258, counties are able to acquire roads via a county road map process which requires counties to post weekly notices in the local newspaper for four consecutive weeks (advising of a public hearing regarding road acquisition intent), mail notices in tax statements and post a map showing roads proposed for acquisition.

Landowners wishing to challenge road inclusion will have two years from the date the map is adopted to respond in protest.

Counties wishing to take advantage of provisions in Chapter 258 are encouraged to do so because Section 258.007 of the statute mandates the expiration of Chapter 258 on Sept. 1, 2009.

For more information regarding this article, contact Jozette Maxwell at 800-456-5974 or via email at Jozettem@county.org. 📧

Survivor Course Helps Avoid Costly Lawsuits

Everyday, elected officials and county employees face a risk of lawsuits. Occasionally it happens through ignorance of the law. Sometimes, it's just plain carelessness or possibly the result of an unjustified accusation.

The Texas Association of Counties offers a series of regional one-day Survivor courses that gives county officials and employees valuable tools to avoid costly problems associated with lawsuits.

"We have a lot of fun with it," said Jan Halverson, TAC education project manager. "We play a game during the day that keeps it lively and entertaining. But seriously, this is vital information that county officials need to stay out of their own courtrooms. We've made it one day and took a regional approach to make it easier to attend. The last time we did this, we had wonderful feedback from the participants."

It's also a great way for county officials to pick up some continuing education credit at the end of the year.

Programs are 8:30 a.m.-4:30 p.m. at the following dates and locations:

- Sept. 30 - McAllen, Casa De Palmas, 101 North Main Street, 956 631-1101;
- Oct. 2 - Corpus Christi, Omni Bayfront, 900 North Shoreline Drive, 361-886-3535;
- Oct. 14 - Lubbock, Holiday Inn Civic Center, 801 Avenue Q, 806-763-1200;
- Oct. 15 - Abilene, Ambassador (Embassy Suites), 4250 Ridgemont Drive, 915-698-1234;
- Oct. 16 - Odessa, Holiday Inn Centre, 6201 East Business Loop 20, 915-362-2311;
- Oct. 28 - Tyler, Ramada Tyler, Conference Center, 3310 Troup Highway, 903-593-3600; and
- Oct. 30 - Austin, TAC Events Center, 1210 San Antonio Street, 800-456-5974.

See the ad in this newsletter for more information and registration form or go to www.county.org to register on-line. 📧



Washington Watch

By Sue Glover

Governmental Relations Manager

CONGRESSIONAL BUDGET PROCESS LOOMS

With the Oct. 1 start of the new fiscal year approaching, congressional lawmakers appear to be completing work on the spending bills while considering the Congressional Budget Office estimates that the fiscal 2004 budget shortfall will be at least \$480 billion, surpassing this year's estimated record deficit of \$401 billion.

Four of the 13 appropriation bills have been passed by both chambers and await action by conference committees. The remaining nine will need to be passed and sent to conference committee prior to the Oct. 1

deadline or appropriators will need to draft continuing resolutions to keep the government operational past the deadline.

The status of the Appropriation Bills are shown in the chart below.

Numerous county funding programs are included in these appropriations bills. Local Law Enforcement Block Grants, SCAAP funds which reimburse states and counties for criminal alien detention costs, First Responder Grants and Medicaid are but a few of the programs which receive federal funding.

As you will recall the 2003 appropriations bills were combined into one omnibus appropriation bill that was not even enacted until February of 2003. Accordingly, timely appropriations bills which meet the October 1 deadline, may be a thing of the past. 🗝️

<u>BILL</u>	<u>HOUSE</u>	<u>SENATE</u>
<i>Agriculture</i>	Passed	Approved in committee
<i>Commerce, Justice, State and the Judiciary</i>	Passed	No Action
<i>Defense</i>	Passed	Passed
<i>District of Columbia</i>	Approved in committee	Approved in committee
<i>Energy and Water Development</i>	Passed	Approved in committee
<i>Foreign Operations</i>	Passed	Approved in committee
<i>Homeland Security</i>	Passed	Passed
<i>Interior</i>	Passed	Approved in committee
<i>Labor, Health and Human Services, and Education</i>	Passed	Approved in committee
<i>Legislative Branch</i>	Passed	Passed
<i>Military Construction</i>	Passed	Passed
<i>Transportation and Treasury</i>	Approved in committee	No Action
<i>Veterans, Housing, NASA and the EPA</i>	Passed	No Action

[Proposals, continued from page 1]

Amends Subsection (d), Section 1, Article VIII of the Texas Constitution authorizing the legislature to exempt from ad valorem taxation certain travel trailers not held for the production of income. During the 77th Legislative Session, the legislature created an exemption for travel trailers from ad valorem taxes except at the school district level. After the approval of the constitutional amendment in November 2001 it became apparent that what was thought to be an exemption was actually adding individuals to the tax roll. This amendment clarifies the intent of HB 2076 passed in the 77th Legislative Session.

Prop. 4/SJR 30

The proposition will appear on the ballot as follows: *"The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts."*

This would amend the Texas Constitution, Article 16, Section 59(a) to include the development of parks and recreational facilities among the public rights and duties for which the Legislature must pass appropriate laws related to conserving and developing natural resources. This would provide the explicit constitutional authority to certain conservation and reclamation districts (including municipal utility districts) to use tax dollars to develop parks and recreational facilities. It would allow certain MUDs (in addition to using excess funds derived from water and sewer revenues) to issue revenue bonds, with voter approval, to pay for the construction and maintenance of parks and recreational facilities. This would be limited to MUDs located in all or part of the following: Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County and the Tarrant County Regional Water District located in whole or part of Tarrant County.

Prop. 7/HJR 44

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment to permit a six-person jury in a district court misdemeanor trial."*

If the voters approve HJR 44, it could provide financial savings to the counties with district courts that hear misdemeanor cases. The amendment would change Art. V, Sec. 13 of the Texas Constitution by authorizing the

need for only six petit jurors to hear criminal misdemeanor cases in a district court, instead of 12. The amendment also deletes language requiring nine members of a 12-person jury to render a verdict. This amendment would bring uniformity to the court system by having a six-member jury hearing misdemeanor cases whether it is in a district or county court. The enabling legislation for this constitutional amendment, HB 830, was signed by the Governor with an effective date of Jan. 1, 2004.

Prop. 8/HJR 62

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office."*

If approved, HJR 62 will open up a provision affecting elections for statewide, district, or county offices which could save counties time and money in elections administration. Currently, Chapter 2 of the Election Code, affecting political subdivisions, not including counties, declares an unopposed candidate the winner if there are no declared write-in candidates, no opposed candidates and no propositions on the ballot. HJR 62 extends this policy to state, district, and county offices by adding Section 13 to the Texas Constitution under Article 16. The candidate's name would still be printed on the ballot, but no votes would be cast for that candidate. The enabling legislation, HB 1476, states that this provision becomes effective upon passage of the constitutional amendment on Sept. 13.

Prop. 13/HJR 16

The proposition will appear on the ballot as follows: *"The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses."*

Amends Section 1-b, Article VIII, Texas Constitution by adding Subsection (h) which will allow the governing body of a county, city, town or a junior college district to freeze the amount of county, city, town or junior college district residential property taxes imposed on the homestead of a person who is disabled or is 65 or older, from the time the person reached age 65 until the person or his/her spouse who is disabled or 65 years of age older

[Please see Proposals, continued on page 7]

[Proposals, continued from page 6]

ceased to use the property for a homestead. However, the governing body would have to call an election to grant the foregoing freeze if the governing body received a petition signed by 5 percent of the registered voters in the county or municipality, and the property tax freeze would be established if approved by a majority of the voters. Currently, school districts are required to institute a tax freeze once a person turns 65.

Prop. 17/HJR 21

The proposition will appear on the ballot as follows: *"The constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person."*

Amends Section 1-b(d) Article VIII of the Texas Constitution to add disabled individuals as persons qualifying for the school district ad valorem tax freeze. Currently persons over 65 are entitled to an ad valorem tax freeze from the school district on their residence homestead. This amendment will require the same type of freeze for persons who are disabled.

Prop. 18/HJR 59

The proposed amendment will appear on the ballot as follows: *"The constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office."*

HJR 59 is similar to HJR 62, except that it states if there is an unopposed candidate, the name would not be listed on the ballot, therefore declaring the candidate an instant winner without an election. The enabling legislation, HB 1344, was vetoed by the Governor, who

stated this would prevent "voters from seeing the candidates and offices for which the election has been decided without a vote." The governor goes on to say in the veto proclamation that the better practice is prescribed in HB 1476, which is similar except that it allows the candidates name to be printed on the ballot, thereby allowing voters to see who was elected without a vote. Although HB 1344 was vetoed, HJR 59 will still be placed on the September ballot.

Prop. 22/HJR 84

The proposition will appear on the ballot as follows: *"The constitutional amendment authorizing the appointment of a temporary replacement officer to fill a vacancy created when a public officer enters active duty in the United States armed forces."*

Currently, Article 3, Section 12 of the Texas Constitution stipulates that all vacancies in state or district office (except the Legislature) are to be filled by appointment of the governor. This would add Section 72 to Article 16 to stipulate that elected or appointed officers of the state or any political subdivision who are called, drafted or activated into active duty in the United States military would not have to vacate their offices. For an officer that is not a member of the Legislature, the entity or person with the authority to appoint a person to fill a vacancy in that office may appoint a temporary acting officer. The officer entering into active duty may recommend to the appropriate authority an appropriate replacement. The temporary officer would have all the privileges, rights, and duties of the office, is entitled to the same compensation as the officer being replaced, and serves the shorter of either the term of office or the term of active military service of the officer being temporarily replaced. 🗳️

State Revenue to Cover Supply of Medications after Competency Restoration

In an effort to assist counties with a provision in SB 1057 (by Duncan), Rider 68 has been incorporated into Article V of the 2004-2005 budget approved by the 78th Legislature.

Article 46B.086 (Court-Ordered Medications) of SB 1057 applies to defendants who have been found by a court to be incompetent to stand trial and have subsequently been sent to a mental health facility for competency restoration treatment. Once it is determined that the defendant is

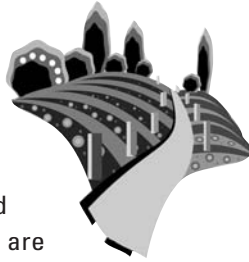
competent to stand trial, a continuity of care plan may be written by the facility requiring the individual to take psychoactive medications.

To financially assist counties in following this continuity of care plan with regard to the psychoactive medications, Rider 68 mandates two items relating to defendants who have been released back to the convicting county to await trial after completing

[Please see Rider 68, continued on page 11]

Resources, Naturally

By Paul J. Sugg
Legislative Liaison



LAND FRAGMENTATION

The challenges presented by land fragmentation and possible solutions are the topics of a study recently produced by the American Farmland Trust and Texas Cooperative Extension: "Texas Rural Lands Trends and Conservation Implications for the 21st Century". This isn't the first time land fragmentation has been discussed in this space and probably won't be the last.

Private ownership of land is an essential component to our cultural ethos: unlike many other western and southwestern states, the largest portion of the state's lands (84 percent) is privately owned farms, ranches and forestlands. (*ethos*—as defined by the 1913 edition of Webster's Dictionary — *the character, sentiment, or disposition of a community or people, considered as a natural endowment; the spirit which actuates manners and customs; also, the characteristic tone or genius of an institution or social organization.*)

Across all parts of the state, the number of farms and ranches is increasing while the number of acres devoted to agriculture is declining. According to the study, in every year since 1970, some 1,000 new farms and ranches came into existence while at the same time, the number of total agricultural acres decreased by 3 million acres. That's 33,000 new farms and ranches on 3 million fewer acres. Seventy-eight percent of the state's farms and ranches are smaller than 500 acres and make up 14 percent of farm and ranch acreage. Some six percent of farms and ranches exceed 2,000 acres, accounting for 63 percent of farm and ranch acreage. More people owning smaller plots of land: but why should we care, especially since so many of us live in urban and suburban Texas?

Granted, it's progressively more difficult to get most of us to care about much as we go about our harried ways in this increasingly complicated world, other than the very immediate and very real demands of our jobs and our families. But one hopes that some will pay some heed to this study and others like it because this trend has significant implications on the state's landscape.

During the 1990s, the number of acres covered by middling farms and ranches (500 to 2,000 acres) declined at the rate of 250,000 acres per year. The majority of

these acres became smaller tracts while the rest were consolidated into larger operations. (Most of the increases in smaller sized tracts have been occurring in the south, central, and east-central regions of the state but areas of larger tract ownership — 2,000+ acres—tending to occur in the Trans-Pecos, the Edwards Plateau and the brush country of South Texas. The Coastal Sand Plains are also experiencing some fragmentation as well.)

The notable land use trend in these smaller tracts (500 acres and fewer) was the conversion of native rangelands and croplands into non-native improved pasture. This results in the loss of significant amounts of wildlife habitat, while the smaller tracts can create more water quality and quantity challenges for both groundwater and surface water resources. The increase in numbers of people demanding services in these areas is not news to those county officials that serve them. Although conventional wisdom has long held that this broadened tax base provides revenue adequate to meet these service needs, recent studies cast doubt on this assumption — most — cows don't need as extensive an infrastructure as most people.

Rural land values are also changing and are even driving the fragmentation trend. As the study reminds us, agricultural value appraisals are based on the utility of land for producing specific agricultural crops, livestock and timber, with year-to-year changes in appraised value tending to be gradual. Market values, however, are based on recent sales of farms and ranches in an area. These appraisals can vary based on the location of a piece of land (especially its proximity to a major population center) and its desirability in terms of recreational opportunities, wildlife or scenic beauty and not for its traditional agricultural value.

The study points to Purchase of Development Rights (PDR) programs as one possible way to slow the conversion and fragmentation of farms, ranches and wildlife habitat. PDR programs buy development rights from willing landowners — this allows landowners to keep their land whole and generate income through the sale of the rights to develop the land. Such programs can be public, private or a combination of both.

Folks who want to own a little piece of the country, other folks who want to or have to sell out, and the ubiquitous land developers (this last group is possibly the ultimate symbol of the American West, much more so than any cowboys, Indians, buffalo, sheep, goats or cattle): they are all changing the face of the what used to be the country. Trends have a way of catching us quietly by surprise. 🗡️

2003 Survivor Course for County Officials

Presented by TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION and TEXAS ASSOCIATION of COUNTIES
Education Cosponsor TEXAS TECH UNIVERSITY SCHOOL of LAW

OVERVIEW

County government can be more challenging than the Amazon jungle. The strategy of television's Survivor is to outwit, outplay and outlast. For counties, it is communicate, cooperate and coordinate. Sound familiar? If so, you're ready for Survivor 2003: a one-day program that gives county officials and employees valuable tools to survive in the sometimes harsh environment of government service.

Everyday, elected officials and county employees face a risk from lawsuits. Occasionally, it happens through ignorance of the law. Sometimes, it's just plain carelessness. Or maybe you are the victim of an unjustified accusation. Regardless of the reason, the consequences can be costly. Experienced County and District Attorneys and other professionals will address common problems associated with the following topics:

- Responding to a lawsuit, who to notify and how to gather information
- Hiring and Firing, Nepotism, Americans Disability Act, Sexual Harassment, At Will Employment
- Open Meetings - Open Records issues
- Communications

WHO SHOULD ATTEND

All elected or appointed county officials and supervisory personnel.

EDUCATION CREDIT

Applications for up to 6 hours of credit are pending for: Attorneys, Commissioners, Auditors/CPA's, TCLEOSE, Tax Assessor/Collectors, County and District Clerks, Treasurers

REGISTRATION

Registration fee is \$50. Please return registration forms and fees to TAC at least one week before the program you plan to attend. Registration fees are transferable, but not refundable. *You can register online at www.county.org.* Mail registration and payment to: Texas Association of Counties Education Dept., P.O. Box 2131, Austin, Texas 78768-2131 Fax (512) 477-1324. Any questions? Phone (512) 478-8753 or (800) 456-5974.

2003 SURVIVOR COURSE REGISTRATION FORM

Presented by Texas District and County Attorneys Association and Texas Association of Counties

Registration Fee (including lunch): \$50

Please check workshop location:

- | | | |
|--|--|--|
| <input type="checkbox"/> McAllen, September 30 | <input type="checkbox"/> Corpus Christi, October 2 | <input type="checkbox"/> Lubbock, October 14 |
| <input type="checkbox"/> Abilene, October 15 | <input type="checkbox"/> Odessa, October 16 | <input type="checkbox"/> Tyler, October 28 |
| <input type="checkbox"/> Austin, October 30 | | |

Name _____ Title _____

County _____ E-mail _____

Address _____ City _____ Zip _____

Phone _____ FAX _____

- ☐ Bill me ☐ Check enclosed

(Please make checks payable to Texas Association of Counties)

- ☐ Please contact the Education Department at (800) 456-5974 if special arrangements are needed.



Texas Association of Counties is approved as a CEU Sponsor member of the International Association for Continuing Education and Training. IACET membership ID number is 9230.

DATES, TIMES and LOCATIONS

Programs are
8:30 a.m. - 4:30 p.m.

September 30 - McAllen
Casa De Palmas
101 North Main Street
(956) 631-1101

October 2 - Corpus Christi
Omni Bayfront
900 North Shoreline Drive
361-886-3535

October 14 - Lubbock
Holiday Inn Civic Center
801 Avenue Q
806-763-1200

October 15 - Abilene
Ambassador (Embassy Suites)
4250 Ridgemont Drive
915-698-1234

October 16 - Odessa
Holiday Inn Centre
6201 East Business Loop 20
915-362-2311

October 28 - Tyler
Ramada Tyler
Conference Center
3310 Troup Highway
903-593-3600

October 30 - Austin
TAC Events Center
1210 San Antonio Street
512-478-8753



CI

Attorney General Opinions



GA-0088: Honorable Ronald D. Hankins, Somervell County Attorney, authority of a county commissioners court partially to close or, alternatively, limit truck traffic on a county road (RQ-0018-GA). **Summary:** A commissioners court may not impose additional

regulations with regard to weight on trucks granted an overweight certificate by the Texas Department of Transportation, but may ban all through truck traffic on a portion of a county road. A commissioners court may not discontinue a public road until a road designated to replace that to be discontinued is ready to replace it. However, the court may abandon or vacate such a road without replacing it.

GA-0089: Honorable Tim Curry, Tarrant County Criminal District Attorney, whether Occupations Code, section 1704.304, providing that certain persons may not recommend a bail bond surety, an attorney, or a law firm to a criminal defendant, precludes those persons from furnishing a list of attorneys or bail bond sureties (RQ-0022-GA). **Summary:** The statute regulating bail bond sureties prohibits (1) a bail bond surety from recommending an attorney or law firm to the surety's client, and (2) various public officers and employees of the jail and court systems from recommending a particular bail bond surety to another person. These provisions prohibit the affected persons from making *any* recommendations of attorneys, law firms or bail bond sureties.

GA-0090: Honorable James L. Anderson, Jr., Aransas County Attorney, whether a county commissioner may lease real property from the county (RQ-0019-GA). **Summary:** Chapter 171 of the Local Government Code permits a county commissioner to have an interest in real property that is affected by a commissioners court action. It repeals the common law of conflicts of interest and modifies section 81.002 of the Local Government Code to the extent they prohibit a county

commissioner from leasing real property from the county. Attorney General Opinion JM-855 (1988) is overruled.

GA-0091: Honorable Mike A. Stafford, Harris County Attorney, valuing repairs made to a residence homestead necessitated by flood, wind, fire, or other damage under sections 11.26 and 23.23 of the Tax Code (RQ-0023-GA). **Summary:** For purposes of section 23.23 of the Tax Code, which caps the market value of a residence homestead's appraised value, the term "new improvement" includes repairs made following a natural disaster because the repairs are not "ordinary maintenance." Enhancements that increase a homestead's market value are new improvements for purposes of section 23.23(a)(2), and their value must be included in the calculation of a homestead's capped appraised value. For purposes of section 11.26(b) of the Tax Code, which permits a school district to increase the tax on a senior's residence homestead if the homestead has been improved, an appraiser must determine whether a homestead damaged by a natural disaster has been repaired or improved.

GA-0093: Honorable Robert B. Scheske, Gonzales County Attorney, whether a local option stock law election, in which a single ballot proposition combined proposals from a petition to restrain cattle with a petition to restrain horses and other animals, was valid (RQ-0027-GA). **Summary:** A local option stock law election, in which a single ballot proposition combines proposals from a petition to restrain cattle and from a petition to restrain horses and other animals, is invalid.

GA-0094: Honorable Tempie T. Francis, Motley County Attorney, whether a county attorney who is not subject to the Professional Prosecutors Act may maintain more than one private civil practice office (RQ-0033-GA). **Summary:** A county attorney who is not subject to the Professional Prosecutors Act may maintain more than one private civil practice office and may maintain an office in more than one county. ■



RQ-0070-GA: Honorable Oliver S. Kitzman, Criminal District Attorney, Waller County, whether a commissioners court is required to provide notice and a hearing before approving the placement of a stop sign on a county road.

RQ-0072-GA: Honorable Charles A. Rosenthal, Jr., District Attorney, Harris County, confinement of juvenile for contempt of court prior to a detention hearing; reconsideration of Attorney General Opinion JC-0454 (2002).

RQ-0075-GA: Honorable David K. Walker, County Attorney, Montgomery County, whether a bail bond licensee may operate under one or more assumed names, and whether a bail bond board may regulate the number of names under which a licensee operates.

RQ-0076-GA: Honorable Joe F. Grubbs, Ellis County and District Attorney, whether a mayor may simultaneously serve as a county purchasing agent.

RQ-0077-GA: Honorable Tracey Bright, Ector County Attorney, whether a county commissioner is entitled to access medical insurance coverage information regarding a former commissioner.

RQ-0079-GA: Honorable Mike Stafford, Harris County Attorney, whether, if Harris County opts to increase the salaries of its district judges, the Comptroller would be required to reduce the state's contribution to those salaries.

RQ-0081-GA: Honorable Ben W. "Bud" Childers, County Attorney, Fort Bend County, whether a tax abatement granted under the Property

Redevelopment and Tax Abatement Act, chapter 312, Tax Code, may be applied retroactively.

RQ-0083-GA: Honorable José R. Rodríguez, County Attorney, El Paso County, whether the Texas Public Investment Act, chapter 2256, Government Code, or the Texas Constitution, prohibits the El Paso Empowerment Zone Corporation from making equity investments in private business.

RQ-0084-GA: Honorable Ray Montgomery, District Attorney, Leon County, whether a county judge may sell oil and gas products to his county.

RQ-0087-GA: Honorable Ken Armbrister, , Chairman, Natural Resources, The Senate of the State of Texas, jurisdiction of a commissioners court over platted subdivision streets in a county of 50,000 or less.

RQ-0089-GA: Honorable Mike Stafford, Harris County Attorney, authority to execute a tax warrant.

RQ-0090-GA: Honorable John L. Forrest, Parker County Attorney, obligation to pay for the services of an attorney ad litem appointed for a parent under the terms of section 107.013 of the Family Code.

RQ-0092-GA: Honorable Edwin E. Powell, Jr., Coryell County Attorney, whether a county is obligated to pay a fee to a justice of the peace for the issuance of copies of death certificates; and whether a county may be reimbursed for its costs in preparing copies of death certificates.

RQ-0093-GA: Honorable Jeri Yenne, Brazoria County Criminal District Attorney, whether a justice of the peace may change the due date or payment of a fine; and whether a justice of the peace may alter the allocation of fines previously assessed. ■

[Rider 68, continued from page 7]

competency restoration treatment.

First, the Texas Council on Offenders with Mental Impairments is required to use the funds appropriated to coordinate with the Texas Department of Mental Health and Mental Retardation, along with the county and municipal jails and community mental health and mental retardation centers to meet the requirements of Rider 68. This collaboration should result in a system for providing the continuity of care for pre- and post-release activities of defendants who have had their competency restored and have been returned to the county jail to await trial.

Second, the money shall be used to cover the cost of a 90-day supply of medication upon the defendant's release from competency restoration treatment and upon his or her return to jail. This medication shall be the same prescription written in the continuity of care plan prepared by the state mental health and mental retardation facility.

Although it is not stated in the rider, it is likely that if the defendant remains in the county jail after this 90-day

period awaiting trial after competency has been restored, the county will likely pick up the cost of the defendant's medication.

The legislative intent is to accomplish two things: (1) to expedite the trial date for persons with mental illness or mental retardation so that they may be released from jail and/or sent for appropriate treatment, and (2) to eliminate the revolving door effect where a person goes into a facility for competency restoration treatment and once the person is subsequently returned to jail to await trial, inappropriate medications may be dispensed and the person decompensates during this time period, putting them back in a facility for additional restoration treatment.

The Rider 68 language can be viewed at www.lbb.state.tx.us/Bill_78/6_Conf/Bill-78_6.htm by clicking on Article V, Public Safety and Criminal Justice and then navigating to page 25 of the .pdf document.

For additional information, contact Teresa Aguirre at TeresaA@county.org. 📧

MHMR Cuts Budget Statewide

Many local mental health/mental retardation centers around the state have been forced to cut their budgets due to the Legislature's funding restraints.

There have been many articles in newspapers across the state this summer reiterating the message that MHMR services and programs are being significantly reduced or eliminated that help people in the community who have a mental illness or are mentally retarded.

While these cuts will affect people with mental illness, services to people with mental retardation are carrying the brunt of these budget cuts because

the cuts will affect the community services and family support services that help keep them living out in the community.

The cuts at the state level will likely result in higher indigent care in county jails, county health clinics, emergency rooms etc. Job positions being cut at the local mental health mental retardation centers around the state include administration, case managers, psychologists and physicians.

For additional information, contact Teresa Aguirre at TeresaA@county.org. 📧

District Clerk Fund Scrubbed from 04-05 Budget

Beginning Sept. 1, certain district clerk offices will no longer receive a monthly \$1,000 allocation from the state.

For approximately the past seven legislative sessions, each appropriations bill allocated an amount of \$1,000 per month, or an amount not to exceed \$12,000 annually, to district clerks in counties with a Texas Department of Criminal Justice (TDCJ) operational correctional facility. This money was intended to support the additional workload and efforts to prosecute defendants charged with controlled substance violations on TDCJ property.

Despite TDCJ's request to continue this item in the budget, the House Appropriations Committee made the decision to remove it during the strains of the budget process. Those concerned about the loss of these funds should establish and maintain contact with their local legislators through the interim and into the next legislative session.

For additional information on this article, contact Teresa Aguirre at TeresaA@county.org. 📧

New Law Applies to Military Discharge Records

After much attention during the interim about identity theft related to open records such as military discharge records (DD-214s), the Legislature passed HB 545 as a possible solution.

The bill includes provisions for military discharge records filed in the county clerk's office both before and after Sept. 1, 2003. If a military discharge record is filed on or after Sept. 1, 2003, it will remain confidential for 75 years from the date of filing. During this time period, inspecting or copying of the military discharge record is restricted unless one of the following persons makes such a request and presents proper identification:

- the veteran;
- a legal guardian of the veteran;
- a spouse or a child or parent of the veteran, or nearest living relative of the veteran;
- personal representative of the estate of the veteran;
- a person named by the veteran, or by a person

described above in a power of attorney; or

- another governmental body.

For discharge records filed with the county clerk before Sept. 1, 2003, the veteran or legal guardian "may direct, in writing, that the county clerk destroy all copies of the record" available to the public. The clerk will then have 15 business days to comply with the direction.

"The county clerk's compliance does not violate any law of this state relating to the preservation, destruction or alienation of public records," the new law states. If someone other than a veteran or legal guardian makes an inspection or duplication request of a record filed before Sept. 1, the county clerk will only be required to search those records that are readily available to the public. This bill became effective Sept. 1, 2003.

For additional information on this article, contact Teresa Aguirre at 800-456-5974 or via e-mail at TeresaA@county.org. 🗺️



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