

County *issues*

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Lieutenant Governor & Legislators Encourage Officials to Advocate County Issues to Lawmakers

Lieutenant Governor David Dewhurst and four state legislators recently encouraged county officials to strongly advocate for county issues before lawmakers – a tactic that will be crucial if the legislature is to pass a constitutional amendment shielding counties and their beleaguered property taxpayers from unfunded state mandates.

Their comments were made October 6 during the opening general session of the 81st annual conference of the County Judges and Commissioners Association of Texas in Corpus Christi. Besides Dewhurst, legislative speakers were Rep. Glenn Lewis (Fort Worth), chair of the House Committee on County Affairs; Sen. Jeff Wentworth (San Antonio). Casteel and Flynn were freshman legislators during the 78th session earlier this year, and both serve on Lewis's County Affairs Committee.

"We want to be real careful and avoid unfunded mandates," Dewhurst said, adding that early versions of the state budget "would have passed mandates down to the county level."

When questioned about budget cuts that did occur – and which one attendee said resulted in his county's picking up the tab for a senior citizens program – Dewhurst said, "I'm not saying there's not any (unfunded mandates) but it could have been much worse."

The Lieutenant Governor, who received a warm welcome, encouraged county officials to contact lawmakers over important issues. "Make sure that you're vocal, and let us know," he said, and then joked, "Now I don't mean all of you at once, you know."

He also mentioned the possibility of a special session on school finance reform next year. He noted the Senate passed a reform plan that should begin discussions when and if a special session is called. "We're going to have to look at a broader base, past property and sales taxes," the Lieutenant Governor said, adding "one of our less taxed areas is our service industry."

Harris County Judge Robert Eckels, president of the County Judges and Commissioners Association, promised the group that such a session "will be watched closely by counties" since it could result in a major tax overhaul.

Casteel, a former Comal County judge, told the several hundred county officials their most effective tool is "putting a face on your issues" by personally educating legislators regarding issues affecting counties.

Casteel noted that several members of the House County Affairs Committee had previously served as county officials and are aware of county issues.

[Please see Advocate Counties, continued on page 3]

Task Force on Mental Competency Evaluations Reconvenes

Sen. Robert Duncan (Lubbock) reconvened the task force on competency evaluation at the end of September to determine the implementation status of SB 1057.

The following miscellaneous items were discussed relating to counties:

Under the new law (SB 1057), Section 46B.076 requires the court's commitment order and several documents be prepared to send to the mental health facility or residential care facility where the defendant will receive competency restoration treatment. Under new Section 46B.171, it is ordered that copies of the documents listed under 46B.076 must accompany the defendant, which implies it is the sheriff's responsibility to carry the documents, if they are transporting the defendant to a mental health or residential care facility.

The goal of Rider 68 in the appropriations bill (Art. V, TDCJ) is to improve continuity of care by limiting interruption in the administration of psychotropic medication after a person has received competency restoration treatment and is returned to the county jail to await trial. The Texas Correctional Office on Offenders with Medical or Mental Impairments

(TCOOMMI) is in the process of developing the contracts between MHMR and county jails for the 90-day post-release supply of medication. The supply of medication to be granted is expected to be identified in the continuity of care plan prepared by the state mental health and mental retardation facility.

Rider 2 (Art. V) under the appropriations bill for the Commission on Jail Standards, states that the commission, in cooperation with TCOOMMI, shall study how county jail inmates are assessed for mental health status. The commission and TCOOMMI will be looking at a county jail's screening method, referral procedures and level of coordination with the public mental health system. The analysis report is due to the legislature by Jan. 1, 2005.

Go to http://www.lbb.state.tx.us/Bill_78/6_Conf/Bill-78_6.htm to read Riders 2 and 68. Scroll down to Article V: Public Safety and Criminal Justice and open the .pdf file. Rider 68 is on page V-25 and Rider 2 is on page V-30 of the document.

For additional information regarding this article, contact Teresa Aguirre at TeresaA@county.org or 800-456-5974. ➡

NACo Sponsors County Officials to Attend Energy Conference

The National Association of Counties is sponsoring county officials and staff to attend the San Antonio Energy Leadership/Texas Renewables 2003 Conference to be held November Nov. 20-22, 2003, in San Antonio, Texas.

According to NACo's Beth Bleil, the conference will:

- Feature outstanding speakers and panelists with expertise in the national, state and local energy arena.;
- Offer a variety of sessions on national, state and local energy policy and programs, and the latest in energy-related technology.; One energy efficiency session will be geared solely for local governments.;
- Include exhibitors of renewable energy and

"green" products.;

- Bring together renewable energy product and service providers with business and government leaders with decision-making capabilities and an interest in using these sources.; and
- Showcase San Antonio and South Texas as a place to do business for sustainable energy technologies.

Interested county officials or employees should contact Beth Bleil with NACo at bbleil@naco.org for application information. The deadline for application submission has been extended in an effort to give more Texas county officials a chance to apply. ➡

Civil Process Questions Asked of AG

Bell County Attorney Richard Miller recently requested an Attorney General's Opinion (RQ-0056 GA) regarding the execution of civil process in relation to Section 38.16, Penal Code, Preventing Execution of Civil Process.

Miller cited an incident that occurred in Bell County in which a constable attempted to serve civil process to a defendant who, at his place of employment, refused to exit the company's restricted area, thus avoiding service. Acknowledging the refusal, the constable then attempted to serve the defendant by entering the company's restricted area but was denied access by the personnel director. In response to the personnel director's action, the constable then went to the Justice of the Peace court and swore out a complaint under Section 38.16, Penal Code. This section states that a person commits an offense (Class C misdemeanor) if he knowingly by words or actions prevents the execution of

any process in a civil cause.

When Miller was advised of the situation, he was "of the opinion that the personnel director had not violated the statute" and the warrant was later pulled. Unable to cite any Texas cases directly on point, Miller has requested that Attorney General Greg Abbott determine whether or not the personnel director violated the statute by denying the constable access to the defendant. Miller also has asked for clarification regarding what constitutes "preventing execution," asking "...is it overly vague to the extent that it is not enforceable?"

The Attorney General's Office has 180 days to issue an opinion or respond to the request from the Bell County Attorney. For more information regarding this article, contact Rick Thompson at 800-456-5974 or via email at rickt@county.org. 🗺️

[Advocate Counties, continued from page 1]

However, she said, not all legislators have local government experience. "If your legislator is a rancher or a rice farmer and doesn't know anything about county government, you educate them," she said.

"If you go (to visit a legislator), or if you send a letter or an e-mail, it makes a difference," Casteel said.

Laughingly, she added, "If we know that you may take us out (of office), it makes a difference."

Flynn echoed her comments about the importance of county officials personally talking to legislators and letting them know what's important to counties.

Lewis said county officials were instrumental in preventing more severe cuts to areas of the state budget that affect counties during the 78th regular session. Of the "gloom and doom predictions" regarding state budget cuts at the session's beginning, he noted that the cuts ended up not as severe. "The reason it didn't happen is that y'all were there as advocates."

County officials should work together to prepare during the interim before the next regular session that begins in January 2005, Lewis said.

"The most effective thing you can do other than knowing your own legislator is to work through your organizations," he said.

Lewis turned his attention to unfunded mandates and

the constitutional amendment he sponsored during the regular session, HJR91, which was supported by the Texas Association of Counties, County Judges and Commissioners Association of Texas and Texas Conference of Urban Counties. HJR91 would have allowed voters to decide whether the state should pay or reimburse counties for unfunded mandates set by the legislature or state agencies. It passed out of the House County Affairs Committee but died at the end of the session after the state budget and the redistricting controversy became paramount to legislators.

In mentioning the next regular legislative session, Lewis said, "One of the things we have to do is pass that constitutional amendment." Noting that County Affairs Committee members understand the amendment's importance, he added, "Now, we just have to convince the rest of the legislature that it needs to be done!"

Wentworth discussed redistricting – "the R word" as he called it or "what's been in the papers" as Lewis termed it. Wentworth encouraged county officials to join his long-time battle to pass legislation setting up a bipartisan civilian redistricting commission instead of leaving the contentious issue in the hands of legislators.

For more information regarding this article, contact Elna Christopher at 800-456-5974 or via email at elnac@county.org. 🗺️

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



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Washington Watch

By Sue Glover

Governmental Relations Manager

LEGISLATION PENDING TO GIVE PUBLIC SAFETY EMPLOYEES UNION PRIVILEGES

U.S. Sen. Judd Gregg (R-NH) has filed a bill that will provide collective bargaining rights for public safety officers employed by states or their political subdivisions. According to Neal Bomberg with the National Association of Counties, "the bill would mandate that states, counties and cities employing police and firefighters would have to enter into mandatory collective bargaining agreements without regard to state or local law."

The proposed legislation would give states two years to establish laws granting police, firefighters, emergency medical technicians, paramedics and first responders the right to:

- bargain over wages, hours, and conditions of employment;
- sign an enforceable labor contract; and
- pursue arbitration, mediation and fact-finding

against their employer.

According to Bomberg, the National Association of Counties is unequivocally opposed to S.606 and any bill that would mandate collective bargaining for public sector employees. Bomberg explains that "the federal government should not usurp or undermine the authorities, responsibilities and obligations that are generally reserved to the states and localities with respect to labor and employment law."

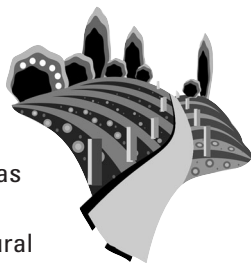
The legislation does provide that states with bargaining rights that are equal to or greater than those contained in the bill would be exempt from the bill, as would subdivisions of public safety officers that cover fewer than 5,000 citizens or have fewer than 25 full-time employees.

On October Oct. 2, 2003, the Senate Health, Education, Labor and Pensions Committee favorably reported the legislation out of committee. The bill is now headed to the Senate floor for consideration. 🗺️

Resources, Naturally

By Paul J. Sugg

Legislative Liaison



WATER SUMMIT

Our Aggies will conduct "The Texas Water Summit" Nov. 5-6 in Austin, focusing on water issues for agricultural and natural resources. It is the child of the Texas Agricultural and Natural Resources Summit Initiative. This initiative, under the guidance of its executive committee, began in 1993 with the goal of identifying and resolving high priority issues facing Texas agriculture and natural resources. More particularly, the initiative's stated goal is "...educating the citizens of this state on agricultural and natural resource issues and opening dialogue between the diverse groups with an interest in **the long-term sustainability of Texas' agricultural and natural resource base...**" When the Aggies, (generally not remembered for their collectivist, activist, radical environmentalist world-view), start talking about sustainability, it might be edifying for those from all points

on the environmental/political spectrum to pay some heed.

Participants in this and previous summits represent agriculture, agri-business, the food industry, natural resources, consumer interests, government, academia and the media. The agendas of previous summits have focused on Texas food and agricultural bio-security, agricultural policy, the beef industry, international agricultural trade, biotechnology, agricultural finance and environmental and natural resource policy.

This particular summit will address these topics:

- meeting future water demands;
- the legal and political implications of water flows on the environment;
- the multiple benefits of meeting environmental needs;
- a legislative perspective on critical water issues;
- water markets and transfers; and
- interstate and international perspectives on water issues.

Invited speakers include Gov. Rick Perry, U.S. Sen. John Cornyn, U.S. Rep. Chet Edwards and Agriculture Commissioner Susan Combs.

For more information, visit the summit's website at <http://agsummit.tamu.edu>. 🗺️

Comptroller Summarizes Legislation, Introduces New Accounting Manual

In the latest issue of the *City and County Financial Management* newsletter, Texas Comptroller Carole Keeton Strayhorn catalogs recently passed state legislation affecting local governments and introduces a new guidebook designed to help local governments accomplish newly mandated accounting and financial reporting requirements.

LEGISLATION

In sections titled "Legislation by the Numbers" and "Bills by Category," bills passed by the 78th Legislature that affect city and county governments are categorized by subject and summarized. The bills are broken into four areas involving financial management: court, fines and fees; municipalities, counties and special districts; and sales tax and economic development. Charts with changes in court costs and fees also appear in the Comptroller's publication.

GASB 34

Regarding the mandated financial reporting of the Governmental Accounting Standards Board, the Comptroller's office has a new manual titled *GASB 34 Manual for Cities and Counties* that aims to assist local governments meet the reporting requirements, which are considerably more detailed than previous requirements.

The Governmental Accounting Standards Board issued GASB 34 in June 1999, with phased-in time frames for meeting the new requirements, which are in full force since June. Governments with \$100 million or more in total revenue had to follow the revised guidelines after June 15, 2001; governments with between \$10 and \$99 million in total revenue began using them after June 15, 2002; and smaller entities with less than \$10 million in total revenue began meeting the guidelines after June 15, 2003.

The GASB 34 manual is available on-line at <http://www.window.state.tx.us/lga/gasb34>. Free printed copies also are available to cities and counties by calling 800-531-5441, Ext. 3-4339.

OTHER NEWS

The September 2003 issue of *Financial Management* also touches on two other items of interest to county government:

- First is one of three County Management System (CMS) reports that Strayhorn's office is generating in response to a 2001 legislative directive. Released in June 2003, the first CMS report was on Jim Hogg County. Since June, a CMS review and report for San Jacinto County also has been completed. A third report will be done for Wichita County. The County Judges and Commissioners Association of Texas worked with the Comptroller's office in selecting the three counties.
- Second is a comparison study of auditors' offices in five counties similar in size and operations – Galveston, Brazoria, Fort Bend, Jefferson and Williamson. The benchmark study recommends that county auditors transfer or eliminate functions that detract from their core financial duties and enhance those core duties with increased staff if need be.

Both of these reports are available on-line at <http://www.window.state.tx.us/lga/fmr>.

The newsletter's "From the Comptroller" page gives Strayhorn's take on new fees passed by the Legislature, first discussed in an Aug. 27 news release from her office. She estimates Texans will pay \$2.7 billion more in fees over the next biennium that began Sept. 1.

The *Financial Management* newsletter will soon be available on-line in the *Publications* section of the Comptroller's Web site at <http://www.window.state.tx.us/m27rep.html>. ➡

Make A Wise Investment

2003 Texas Public Funds Investment Conference

November 20-21, 2003 • Renaissance Houston Hotel • 6 Greenway Plaza East, Houston, TX
 Education Sponsor: L.B.J. School of Public Affairs at the University of Texas at Austin • Co-sponsor: Vinson & Elkins, LLP

OVERVIEW

The 2003 Texas Public Funds Investment Conferences covers important aspects of the investment of public funds through basic and advanced educational sessions. Experts will explain the best investment tools available and share innovative ideas on investing funds in an environment of low interest rates.

AGENDA

Day One-Thursday, Nov. 20

7:30-10:00 a.m. Registration
 8:30-5:00 p.m. Educational Sessions
 5:00-7:00 p.m. Reception

Day Two- Friday, Nov. 21

8:30-Noon Educational Sessions
 Noon Meeting Adjourns

CONTINUING EDUCATION

Take advantage of an opportunity to receive continuing education before the year's end. This conference satisfies ten hours of investment education required by the Public Funds Investment Act; Section 2256.008.

Ten hours of continuing education is available for:

- Certified County Investment Officers (CIOs);
- Auditors, CPA's

Approval is pending for Commissioners, County/District Clerks, Tax Assessors-Collectors, Treasurers

HOTEL INFORMATION

The conference site is the Renaissance Houston Hotel. Room rates are \$80 plus tax. Make your reservations today by calling 800-468-3571. Ask for the Texas Association of Counties' room block. Please make your reservations by October 27, 2003. After this date, all rooms will be subject to availability and price increase.

Registration Fees

	Before 10-27-03	After 10-27-03
County officials and employees	\$100	\$125
City, School or Special District	\$175	\$200
Non-Government	\$500	\$500

Space is limited! Mail, fax or register online at www.county.org by **Oct. 30**
Questions? Call TAC's Education Department at 800-456-5974

CANCELLATION POLICY

Registration fees are transferable to another individual from the same entity. Fees are refundable, less a \$10.00 administration fee, upon written request received in the Association's office by November 10. After this date, refunds are limited to one-half the registration fee. No refund requests are accepted after Nov. 30.


Texas Association of Counties 2003 TEXAS PUBLIC FUNDS INVESTMENT CONFERENCE

Mail completed form with appropriate fee to Texas Association of Counties, TPFIC/Education Dept., Box 2131, Austin, Texas 78768 OR fax completed form to 512-477-1324 and mail check to above address.

NAME	TITLE	
COUNTY/ENTITY	E-MAIL	
ADDRESS	CITY	ZIP
PHONE	FAX	

☐ CIO, 2003 annual fee has been paid - no payment due • I plan to attend the investment track checked: ☐ Basic ☐ Advanced
☐ County Officials or Employees, - \$100 or \$125 • My entity's budget equals approximately \$ _____
☐ City, School or Special District - \$175 or \$ 200
☐ Non-government - \$ 500

☐ Payment Enclosed ☐ Payment to follow ☐ Please invoice
 (Please make checks payable to Texas Association of Counties)

 If special accommodations are needed, please contact Alice Kanelos at (800) 456-5974.



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Changes to Transportation Bill Do Not Affect Financial Opportunities for Counties

Legislation introduced during the third called special session made technical changes to HB 3588 (Trans Corridor Transportation Bill) but did not affect potential revenue generating opportunities for counties.

House Bill 2 (HB 2) was introduced by House Transportation Committee Chairman Mike Krusee (Williamson County) and sought to clean up language in HB 3588 regarding offenses under the Driver Responsibility Program and other technical issues regarding collections contracts and annual reports to the Legislature.

HB 2 was signed in the House and Senate on September 29 but had not received the Governor's approval or veto as of the date of this publication.

Changes proposed by HB 2 include changing the title of the \$30 court cost listed in Article 12 of HB 3588 to be called a state traffic fine. Provisions for how the court cost will be assessed, as well as how much counties may keep as a processing fee, were not changed.

HB 2 also changes when provisions of Subchapters B (Points System) and C (License Suspensions) become applicable. Under HB 3588, the subchapters did not apply to "convictions that became final before September 1, 2003." Corrections in HB 2 change nonapplicability to offenses committed before September 1, 2003.

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

Jail Population Update: Some Jails no Longer Reporting to the Commission on Jail Standards

Some county jail facilities that house only federal prisoners are no longer required to meet both federal and state guidelines. As passed, HB 3517 by Rep. Pete Gallego permits counties that have jail facilities housing only federal prisoners to now meet only federal standards and no longer will report to the Texas Commission on Jail Standards. Ector, Jefferson, McLennan and Reeves counties all have jail facilities that will be affected.

The Texas Commission on Jail Standards released its county jail population report for the month of September 2003. On Sept. 1, the total population in Texas county jails was 64,571, a decrease of 677 inmates from the previous month but only a decrease of 173 from one year ago. Since several facilities are no longer reporting their population numbers to the state, the count for federal prisoners took a 2,172-inmate dive from the August total, yet counties are still housing 8,858 federal inmates.

Reeves County has a facility that was affected by HB 3517. One of the major changes is the guard-to-prisoner

ratio of 1:72, instead of the state requirement of 1:48. Sheriff Arnulfo Gomez reported "it's hard to keep staff in the jails so there's a better chance of staffing the facilities (at the higher ratio)." He also said that instead of laying off staff who are no longer needed at the federal facilities, they will be moved to the county jail to ensure the staffing requirements will remain in compliance with TCJS.

Other statistics from the latest TCJS population report show a significant rise in the number of pretrial and convictions for both felony and misdemeanor defendants. Felons sent to county jail, individuals held on bench warrants and paper ready inmates have all shown an increase. September 1 data showed 20 jails operating at more than 100 percent capacity, while those running at 100 percent stood at 7; overall, county jails were 82.38 percent full.

For more information regarding this article, contact Laura Kinder at 800-456-5974 or via email at LauraK@county.org. 📍

Attorney General Opinions



GA-0095: Honorable Ted G. Walker, Jasper County Criminal District Attorney, whether, as a condition of community supervision, a court may require a defendant charged with a drug offense to pay a “flat-rate” fee into a “special investigation fund” or other fund designated by the court, with the proceeds divided and used by prosecutors and law enforcement agencies (RQ-0034-GA). **Summary:** Under article 42.12, section 11(b) of the Code of Criminal Procedure, a court may require a defendant to make a payment as a condition of community supervision, but only if the payment is a fine, court cost, restitution to the victim, a “condition related personally” to the defendant’s rehabilitation, or another payment expressly authorized by law. A required payment for unspecified use, to be divided between the local prosecutor’s office and local law enforcement, is not a “condition related personally” to the defendant’s rehabilitation under the statute.

GA-0096: Honorable John F. Healey, Jr., Fort Bend County District Attorney, whether an assistant prosecutor’s prior service as an elected district attorney, criminal district attorney, or county attorney who performed the duties of a district attorney qualifies as lifetime service credit for longevity pay purposes (RQ-0035-GA). **Summary:** An assistant prosecutor’s prior service as an elected district attorney, criminal district attorney, or county attorney who performed the duties of a district attorney does not qualify as lifetime service credit for longevity pay purposes.

GA-0098: Honorable Robert R. Puente, Chair, House Committee on Natural Resources, Texas House of Representatives, whether, under the Open Meetings Act, a river authority may hold an informational meeting that is open only to its invitees, including members of the press and community leaders (RQ-0044-GA). **Summary:** An informational meeting of the Sulphur River Basin Authority (the “Authority”) that is open only to the Authority’s invitees, including members of the press and community leaders, contravenes the Open Meetings Act if a quorum of members of the Authority is present or otherwise participates in the deliberations. If a quorum is not present and does not otherwise participate in the deliberations, the informational meeting is not subject to the Act.

GA-0099: Honorable Mike Stafford, Harris County Attorney, whether, if the Harris, Tarrant, or Travis County commissioners court elects to increase district judges’ county salaries under section 32.101, 32.220, or 32.227 of the Government Code, the state comptroller must reduce the judges’ state salaries under section 659.012 of the Government Code (RQ-0079-GA). **Summary:** If the commissioners court of Harris, Tarrant, or Travis county chooses to increase its district judges’ county salaries under section 32.101, 32.220, or 32.227 of the Government Code, the comptroller may not reduce the judges’ state salaries in accordance with section 659.012(e) of the same code. To the extent the General Appropriations Act requires the comptroller to reduce the state salaries in this situation, it unconstitutionally seeks to amend general law.

GA-0101: Honorable Mark Burtner, Lamar County Attorney, whether a sheriff may contract personally to provide security to a private entity (RQ-0031-GA). **Summary:** The sheriff of Lamar County may not enter into a contract which would oblige him to provide security services at the behest of, and solely to, a private apartment complex.

GA-0103: Honorable Frank J. Corte, Jr., Chair, Committee on Defense Affairs & State-Federal Relations, Texas House of Representatives, whether the legislature may authorize the state to operate video lottery terminals (RQ-0039-GA). **Summary:** Article III, section 47(e) of the Texas Constitution does not permit the legislature to

authorize the state to operate video lottery terminals.

GA-0104: Mr. Robert Scott, Chief Deputy Commissioner, Texas Education Agency, whether a school district board of trustees may reimburse a member for expenses incurred in an election contest that involved certain voting rights claims (RQ-0041-GA). **Summary:** A school district may reimburse an officer or employee for the expense of defending a lawsuit only if it determines that (1) the expenditure was for the district’s interest and not merely the officer’s or employee’s personal interest, and (2) the lawsuit arose out of actions by the officer or employee that were undertaken in good faith within the scope of an official duty.

GA-0105: Honorable Mike Stafford, Harris County Attorney, authority of the presiding judge of the statutory probate courts to adopt statewide local rules of administration for the statutory probate courts (RQ-0028-GA). **Summary:** The presiding judge of the statutory probate courts was and is authorized to promulgate statewide local rules of administration for the statutory probate courts.

GA-0106: Honorable Phil King, Chair, Regulated Industry Committee, Texas House of Representatives, reporting and investigating child sexual abuse (RQ-0032-GA). **Summary:** Family Code chapter 261 provides for reporting and investigating child sexual abuse, including specific kinds of sexual conduct. Law enforcement officers, whether on or off duty, are required to report suspected child sexual abuse when they have cause to believe that such sexual abuse has occurred or is occurring. The Department of Family and Protective Services is required to investigate a report of child sexual abuse “allegedly committed by a person responsible for a child’s care, custody, or welfare,” with assistance provided by the appropriate state or local law enforcement agency. The department is not required to investigate a report that alleges child sexual abuse by a person other than a person responsible for a child’s care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate the report if the agency determines an investigation should be conducted. Whether a specific person has cause to believe that a child has been a victim of sexual abuse depends upon the facts within that person’s knowledge.

GA-0109: Honorable Sylvester Turner, Speaker Pro Tempore, Texas House of Representatives, meaning of the phrase “in the custody of a peace officer” for the purposes of article 49.18, Code of Criminal Procedure (RQ-0047-GA). **Summary:** Senate Bill 826, as adopted in 2003 by the 78th Texas Legislature, amends article 49.18 of the Code of Criminal Procedure to define a death “in the custody of a peace officer” as the death of a person who is either under arrest or under the actual physical control or restraint of a peace officer.

GA-0110: Honorable Randall W. (Randy) Reynolds, District Attorney, 143rd Judicial District, Reeves - Ward - Loving Counties, whether a home-rule city may ban the sale of alcoholic or other beverages in glass containers (RQ-0036-GA). **Summary:** A home-rule municipality may not, under section 109.57 of the Alcoholic Beverage Code, prohibit the sale of alcoholic beverages in glass containers within its corporate limits. A home-rule city may, however, prohibit the sale of all glass beverage containers within city limits.

GA-0111: Ms. Peggy D. Rudd, Director and Librarian, Texas State Library and Archives Commission, whether the Kempner Water Supply Corporation is subject to the Local Government Records Act (RQ-0049-GA). **Summary:** The Kempner Water Supply Corporation, a nonprofit

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Attorney General Opinions (*continued*)



water supply corporation that has not converted to the status of a “special utility district,” is not subject to the Local Government Records Act, chapters 201 to 205 of the Local Government Code.

GA-0112: Honorable José R. Rodríguez, El Paso County Attorney, whether a private process server may serve citation in a forcible entry and detainer suit (RQ-0052-GA).

Summary: A private process server is not authorized to serve citation in a forcible entry and detainer suit or a forcible detainer suit.

GA-0113: Honorable Richard J. Miller, Bell County Attorney, whether a refusal to permit a constable to enter the restricted area of a business in order to serve civil process constitutes an offense under section 38.16 of the Penal Code (RQ-0056-GA). **Summary:** A person does not “intentionally or knowingly by words or physical action” prevent “the execution of any process in a civil cause,” Tex. Pen. Code Ann. § 38.16(a) (Vernon 2003), by refusing

to permit a process server to enter an area of his workplace that his employer has designated as “private,” because in that context, section 38.16 contravenes the Fourth Amendment to the United States Constitution. Section 38.16 is not on its face void for vagueness.

GA-0114: Ms. Kristen Klein, Guadalupe County Auditor, whether a community supervision and corrections department may assess a participant in a pretrial intervention program fees under both article 102.012 of the Code of Criminal Procedure and section 76.015(c) of the Government Code (RQ-0058-GA). **Summary:** A community supervision and corrections department may assess a participant in a pretrial intervention program a fee for “the actual cost” of providing services not to exceed \$500 under article 102.012 of the Code of Criminal Procedure. A department may not assess such a participant “a reasonable administrative fee of not less than \$25 and not more than \$40 per month” under section 76.015(c) of the Government Code. ■



RQ-0094-GA: Honorable Greg Lowery, Wise County Attorney, whether a bailiff is entitled to judicial immunity.

RQ-0095-GA: Honorable Jack Skeen, Jr., Criminal District Attorney, Smith County, whether a county may permit the placement of decals, trademarks, or logos of private businesses on county-owned vehicles.

RQ-0099-GA: Honorable Travis J. Koehn, Criminal District Attorney, Austin County, whether a county clerk may charge a fee for posting a notice of a public meeting.

RQ-0100-GA: Honorable Jack Skeen, Jr., Criminal District Attorney, Smith County, regarding Commissioner Court Delegation of Authority to Approve Intra-Departmental Budget Transfers under Local Government Code § 111.070.

RQ-0101-GA: Honorable Sonya Letson, Potter County Attorney, whether a court reporter salaried by a county may also be paid a fee by the county for preparing a transcript.

RQ-0103-GA: Honorable Marsha Monroe, Terrell County Attorney, regarding use of Venue Tax Funds collected by Terrell County under Chapter 334 of the Texas Local Government Code.

RQ-0104-GA: Honorable Fred Hill, Chairman, Local Government Ways and Means, Texas House of Representatives,

whether section 11.13(i), Tax Code, is applicable to homestead exemptions beginning on January 1, 2004, or on January 1, 2003.

RQ-0105-GA: Honorable Jeri Yenne, Criminal District Attorney, Brazoria County, whether the offense of “racing on highway” under section 545.420, Transportation Code, when committed by a juvenile, constitutes a “traffic offense,” “delinquent conduct,” or “conduct indicating a need for supervision”; and what court has jurisdiction over such offense.

RQ-0106-GA: Honorable Myles K. Porter, District and County Attorney, Fannin County, whether a county commissioners court may retain counsel to advise on legal matters without the consent of the county attorney.

RQ-0107-GA: Honorable Chris Harris, The Senate of the State of Texas, determination of the minimum number of signatures of registered voters for the purpose of calling a local option alcohol election.

RQ-0108-GA: Honorable Tempie T. Francis, Motley County Attorney, whether Motley County validly set the salary of its sheriff

RQ-0109-GA: Honorable Ken Armbrister, Chair, Natural Resources, The Senate of the State of Texas, whether a potential juror may be excused from jury service without appearing before a municipal court. ■

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shortsighted because there is a way to provide accountability to the public — if four-fifths of both chambers wish to override a constitutional requirement that the state fund mandated programs, a voting record will be available for anyone to check. **The appropriation process** — the last legislative session was marked by a number of instances where the state sought to forego, or reduce the level of, funding existing county programs. State appropriations for county programs is absolutely

essential and is very much appreciated, but it carries no assurances of continuing financial support beyond the immediate biennium, unless there is statute in place specifically requiring the Legislature to finance a particular program. **A delicate undertaking** — the challenge to pass the legislation is a very awkward one because it sounds as though members of the Legislature and the state leadership are not being fair in the way they handle funding. While state action in past sessions

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has adversely affected county funding, a more intense concern lies with the prospect of trying to manage a county budget while contending with extremely severe state appropriation cuts, the potential for which is always present under the existing system. **Historical benchmark in county history** – Texas counties will never gain complete financial stability unless legislation is passed that substantially reduces, or ideally eliminates, the potential to impose unfunded or underfunded programs on them. If passage is realized, it would be a significant mark in the history of county and state relations.

Capturing, Using, Marketing & Controlling County Information & Data – this is the introduction to the first in a series of comments on interesting issues connected with the “management” of county information and data. In due course, terms like “county information” and “management” will be clearly and fully defined, but for purposes of this opening statement, it is more appropriate to provide the setting in which we find those interesting issues. Centuries ago, the only persons who could read or write were members of the clergy who were held in high regard by the kings and their courts. The transfer of property rights involved the keeping of records, so it was the clergy who served as the “Clericus.” Within the United States, the system of maintaining records and assuring the integrity of those records was adopted by the several states in order to give the transfer of property validity. **Recordation** – far too often, we take for granted the significance of records. For example, the entire concept of real property ownership and its financial structure is dependent upon a system designed to accommodate the “recorded instrument.” This system not only gives surety to the complete preservation of all the “incidents of ownership,” it also provides a forum where “notice” to the world is given with regard to the condition of the property and the nature of its ownership. The records of judicial proceedings are no less important and require extensive custodial assurances of accuracy, entry, execution and verity. It is not possible to ascribe a value to the process of record keeping – within it we find the reliance and dependence of an entire civilization. **The inviolability of records** – it is absolutely essential that the public’s records be systematically and reliably filed, recorded and maintained under circumstances that

assure the highest degree of custodial responsibility for their authenticity, correctness and integrity. This is why you will find in most, if not all, jurisdictions, the office of “Clerk” has been constitutionally removed from the control of the judicial and executive branches of government and is subject only to the power of the voters – and rightly so, wouldn’t you agree?

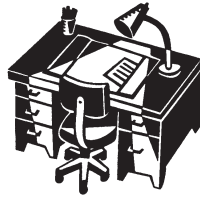
Constitutionally vested – contrary to the perspective of at least one of our most celebrated jurists who sits on the highest court in our state, the constitutional offices of County and District Clerk, which are occupied by elected officials, are absolutely essential to the effectiveness of the checks and balances system inherent within county government. **On the record** – the record is what we rely upon. When representing the public’s trust, the significance of maintaining an open and independent “set of books,” far removed and insulated from opportunists who might be tempted to marshal them in another fashion, cannot be stressed enough. Now that we have taken a peak at the rationale and the well-reasoned philosophy that recognizes the sanctity of records, in the next issue we will move on to a discussion about county information and data.

On the lighter side of things – two fairly elderly ladies who have been very close friends for many decades, were playing cards one day. While they were enjoying their refreshments and taking a little break from their card game, one of the ladies looked over at the other and, in a rather reserved manner, said, “Now please don’t get irritated with me. You know I love you and that we have been very good friends for a long, long time...but, for the life of me after much study and concern, I just simply cannot think of your name! I am so sorry, but I can’t stand it any longer, now, please, tell me your name.” There was a long period of silence...a pause lasting at least several minutes, perhaps longer...during which the other lady simply stared and glared at her good friend before finally saying: “How soon do you need to know?” Thanks for taking the time to read this version of *From the Desk*. We will see you next time, and remember: County Government—it’s the pulse of the people! 🇹🇽

From the Legislative Desk

By Carey “Buck” Boethel

Director of Governmental Relations



Two Parts — there are two sections in this edition of *From the Desk*. The first is an update on the TAC Policy Analysis Group’s (PAG) continuing efforts to promote and help pass unfunded mandate (UFM) laws. The other section is the first of a series of articles that take a look at the dynamics of capturing, utilizing and controlling the management of county data, information and documents.

TAC Policy Analysis Group — when the full membership of PAG convenes this November, it is more than likely the effort to promote the passage of unfunded mandate legislation will be re-urged and recommended to TAC for adoption. Last session, the county UFM constitutional amendment reached the House Calendars Committee where it died late in the process. A special PAG working committee will convene in October to iron out the details and draft recommendations for a grass roots campaign.

The idea is to re-urge the promotion and passage of a statute requiring the state to fund mandated programs and back it up with a constitutional amendment, thus eliminating the option to amend the statute every time the legislature meets. **Financial surprises** — the adage, “nobody likes surprises,” applies to county officials and the taxpayers as well. Both deserve a better shake on the issue of public accountability for increases in local property taxes. As everyone knows, most voters don’t have the time to sort out the nuances of state and local government finance and thus are unaware of how legislative action can result in increased local property taxes. You would think the advocates for “truth in taxation” would want to straighten out that misnomer. As things stand right now, the political heat for most increases in local property taxes is at the expense of incumbent county officials. Critics would argue that this is the nature of the beast — that is, the state funding system works in this fashion and county officials should not seek election if they cannot manage county financial affairs under such conditions. That kind of reasoning is

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