

# **SOMEONE KNEW WHAT THEY WERE DOING**

**BY**

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Prior to the late nineteenth century , the prevailing legal opinion of the day, that judicial courts had no power to review the political acts, made the determinations of the Commissioners Court absolute and final, except in cases where the result was clearly outside of the jurisdiction of the Commissioners Court, or a clearly capricious act, and therefore void. However, an amendment to the Constitution of 1876 granted supervisory powers to the District Court to review acts of the Commissioners Court.

The County Auditor was introduced into the District Court supervisory role in 1905. Created by statute rather than Constitutional amendment, the County Auditor emerged fourteen years after the grant of supervisory jurisdiction to the District Courts, and thus appears to be a legislative act by those responsible for creating the office of County Auditor intended as an adjunct to the District Courts exercise of supervisory jurisdiction over the Commissioners Court.

Initially, the County Judge and District Judges having jurisdiction in the county appointed the Auditor jointly. The legislature subsequently amended the statute to provide for the appointment of the county auditor by only the District Judges.

The powers and responsibilities of the County Auditor reach into every corner of the courthouse, including district officers, and virtually every other officer, including the Commissioners Court. The County Auditor has financial oversight for all county offices and officers, and may prescribe the accounting procedures for all county officers, including the District Clerk and District Attorney. The County Auditor may disapprove the payment of claims against the county, and the County Commissioners Court may not pay a claim without Auditor approval. The Auditor must counter-sign all checks, other than checks to jurors.

Unlike the County Judge or the Commissioners Court, the County Auditor may request an attorney general's opinion, and utilize that opinion to encourage other county officials to comply with the determinations of the Attorney General.

Another critical area, which sets the Auditor apart from the elected officials, is County Commissioners Court has little authority over the budget of the County Auditor. In a 1979 court case the court held that only if the County Auditor's budget request was found to be clearly unreasonable could the Commissioners Court deny the request, again subject to review by the District Judges. This case treats the County Auditor in an entirely different manner than any other county officer making a budget request. In regard to all other county officers, the budget authority of the Commissioners Court is paramount, absent an abuse of discretion by the Commissioners court in denying a requested budget.

In view of these powers and responsibilities, and most notably the oversight authority granted the County Auditor, it is not surprising that numerous situations of ill will toward the County Auditor have surfaced over the years and will likely continue into the future. It is also not surprising that quite often the Auditor finds that they are not the most popular official in the courthouse. A quote by a District Judge from a newspaper article summarizes this point well. "Being a County Auditor is a thankless position, because the very nature of the job makes it, in some ways, antagonistic to what department heads want to do". Another quote from the same newspaper article by a twelve-year County Commissioner states, "When there is no controversy, it means everything is being rubber-stamped. But when there is (controversy), it means...department heads don't agree with the Auditor and all that...because she is doing a good job. And she is not rubber-stamping everything that they request."

In addition to the numerous responsibilities sighted above, the Local Government Code dictates, "the County Auditor shall see to the strict enforcement of the law governing county finances". Auditors find themselves in a very unpopular situation when they are forced to "step up" and make the difficult call that a given action is not in compliance with the law. With these responsibilities and oversight authority vested in the auditor mixed with the highly charged political environment of Counties it is no wonder that the job of a Texas County Auditor may be one of the most difficult positions in the state.

SO, HOW DOES A TEXAS COUNTY AUDITOR FUNCTION IN AN EFFECTIVE MANNER IN THIS ENVIRONMENT?

BECAUSE "SOMEONE KNEW WHAT THEY WERE DOING"!

If the statutes had not been adopted to allow for the level of independence the Auditor has today, the Auditor would not be able to carry out these duties and responsibilities in a proper manner. The underlying concept present in the minds of those who framed the original legislation, which created the Auditor's office, was that the County Auditor is not appointed by or responsible to any elected officer or elected body charged with administration and policy determination for the County. Instead, the selection of the Auditor is vested upon the District Judges(s) whose district(s) include the county. District Judges are not primarily chosen with a view to their interest in, their knowledge of, or their policies toward local government. There can be no doubt that the method of creating, determining and controlling the salary of the County Auditor is a creature of the Texas Legislature, who in turn delegated those powers to the judiciary.

The Texas Association of County Auditors encourages all State Representatives, Senators, and County officials to take the time to understand the difficult but critical role county auditors play in this state. Although no one enjoys oversight and on occasion questioning of their actions/decisions, in today's" environment the county auditor may be the best friend and safety net the county has.

The Texas Association of County Auditors believes that the taxpayers of every county in this state deserve to have a qualified and independent County Auditor. We live in a

society that is becoming more dependent on technology by the day and taxpayers who expect fiscal accountability from their state and local government. Texas counties can ill afford to unnecessarily expose their officials and these taxpayers to inadequate fiscal accountability.

There are those who will argue that other county officials may assume the duties of the County Auditor in a county with no Auditor, however, the statutes establishing the County Auditor set forth specific qualifications for this office and there is no other office in the county which possess the level of independence to properly execute and enforce the duties and responsibilities of a Texas County Auditor.

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