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**MEMORANDUM**

**TO:** Fort Bend County Commissioners Court

**FROM:** J. Grady Randle

**CC:** Fort Bend County Attorney

Texas Attorney General Opinions Committee, RQ-0597-KP

**RE:** Fort Bend County Attorney Authority to Represent County in Non-Litigation Matters

**DATE:** November 11, 2025

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To the Fort Bend County Commissioners Court:

**ASSIGNMENT SCOPE**

The Randle Law Office (RLO) was retained to render a legal opinion on whether the Fort Bend County Attorney (CA) has exclusive authority to represent Fort Bend County (County) in all civil matters, including non-litigation matters. This opinion does not address the quality of the legal representation by the CA or any potential conflict of interest.

**LEGAL QUESTION**

Does the CA have the exclusive authority to represent the County in all civil matters including those matters not in litigation?

**SHORT ANSWER**

No, the County Attorney's primary duty, as defined by statute, is to represent the State, Fort Bend County, and the officials "in all civil matters *pending before the courts* of Fort Bend County *and any other courts* in which the state, Fort Bend County, or the county officials have matters pending." (emphasis added) (Texas Government Code section 45.179). The Fort Bend County Commissioners Court (CC) retains authority to hire legal counsel for other county responsibilities including non-litigation matters, such as redistricting.

## STATUTORY FRAMEWORK

The Fort Bend CA's office was created by the Texas Legislature in 1989 and is codified in Texas Government Code Title 2, Judicial Branch; Subtitle C Prosecuting Attorneys; Chapter 45 County Attorneys; Subchapter B Provisions Applicable to Specific Counties; Section 45.179 Fort Bend County. See Exhibit A. The Texas Legislature set the scope of authority for the CA in section 45.179(a):

(a) It is the primary duty of the county attorney in Fort Bend County to represent the state, Fort Bend County, and the officials of the county in all civil matters pending before the courts of Fort Bend County and any other courts in which the state, Fort Bend County, or the county officials have matters pending.<sup>1</sup>

There is no judicial or Attorney General interpretation of section 45.179 where Fort Bend County was a party.

The CA's assertion that the Commissioners Court (CC) cannot retain a law firm over her objection, but she may select a law firm without an order from the CC, is inconsistent with case law and Texas Attorney General (AG) opinion KP-0492, (2025), attached as Exhibit B.

## STATUTORY INTERPRETATION RULES

The primary rule of statutory interpretation is that:

1. A court must look to the intent of the Legislature and must construe the statute to give effect to that intent. *Lee-Hickman's Invs. v. Alpha Invesco Corp.*, 139 S.W.3d 698, 700 (Tex. App.-Corpus Christi 2004, no pet.) (per curiam) (citing *City of Austin v. L.S. Ranch, Ltd.*, 970 S.W.2d 750, 752 (Tex. App.-Austin 1998, no pet.)).
2. Every word of a statute must be presumed to have been used for a purpose, and each sentence, clause, and word is to be given effect if reasonable and possible. See *Tex. Workers' Compensation Ins. Fund v. Del Indus., Inc.*, 35 S.W.3d 591, 593 (Tex.2000) (citing *Perkins v. State*, 367 S.W.2d 140, 146 (Tex.1963)); see also *Cameron v. Terrell & Grant, Inc.*, 618 S.W.2d 535, 540 (Tex.1981).
3. Every word excluded from a statute must also be presumed to have been excluded for a purpose. See *Cameron*, 618 S.W.2d at 540.
4. Courts do not view disputed portions of a statute in isolation. *Id.* (citing *Bridgestone/Firestone, Inc. v. Glyn-Jones*, 878 S.W.2d 132, 133 (Tex.1994)).
5. Courts discern legislative intent from the plain meaning of the words of the statute. See *Alpha Invesco Corp.*, 139 S.W.3d at 700 (citing *L.S. Ranch, Ltd.*, 970 S.W.2d at 752).

The phrase "pending before the courts of Fort Bend County and any other courts ...", has never been construed by a court or the AG. The CA simply ignores this language. To ignore this

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<sup>1</sup> Section 45.179 (b-h) further sets out powers, duties, restrictions and privileges for civil commitment, children's protective services, family law and juvenile matters, criminal matters, and quo warranto not relevant to this analysis.

phrase violates statutory imputation rules that “every word of a statute must be presumed to have been used for a purpose, and each sentence, clause, and word is to be given effect if reasonable and possible”. In reviewing the plain language of the statute, “pending before the courts” clearly means litigation.

It is without dispute that the CA is to represent the County in all civil actions pending in a court, in other words, litigation. The only other reference to the language of “pending before the courts” is found in *Government Code, Title 2, Judicial Branch, Subtitle A Courts, Chapter 23, General Provisions for Trial Courts, Subchapter B Priority in Settings Hearing and Trials, Section 23.101(b)* (“Insofar as practicable, the trial courts shall observe the preference provided by Subsection (a) in ruling on, hearing, and trying the matters pending before the courts.”) (emphasis added).

Likewise, any attempt by the CA to add “exclusive” to the statute violates the statutory interpretation rules referenced above.

### **NATURE OF THE COMMISSIONER COURT**

In Texas, "court" refers to a tribunal or a branch of the judiciary where legal disputes are heard and determined. A commissioners court is not a judicial tribunal.

A county commissioners court is the chief administrative body of the county exercising such powers and jurisdiction over all county business, as is conferred by the Texas Constitution and the laws of the State. TEX. CONST. art. V, § 18(b). “The commissioners court is therefore “the county’s principal governing body.” *Comm’rs Ct. of Titus Cnty. v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997). The powers and duties of a commissioners court “include aspects of legislative, executive, administrative, and judicial functions.” *Id.* Duties expressly assigned to the commissioners court include the implied authority to exercise powers necessary to accomplish those express duties. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003). A commissioners court has express “statutory authority to oversee the fiscal operation of the county by approving and authorizing a budget.” *Griffin v. Birkman*, 266 S.W.3d 189, 194 (Tex. App.--Austin 2008, pet. denied); see generally TEX. LOC. GOV’T CODE §§ 111.001–.096 (governing county budget preparation). The commissioners court’s duty to prepare and authorize a budget is a legislative function. *Henry v. Cox*, 520 S.W.3d 28, 36 (Tex. 2017). Funding for personnel is among the fiscal matters considered in preparing the budget. See *Tex. Att’y Gen. Op. No. KP-0052* (2015) at 2.

The CA, without quoting any authority, simply concluded that the CC is “clearly a court” for the purpose of 45.179”. In other words, the CA is to represent the CC, before the CC. No court or the AG has held a commissioners court is a “court” in defining the power of a county attorney. Judicial courts are not subject to the Open Meetings Act or to the Public Information Act; a commissioners court is. The CA’s claim that the Commissioners Court qualifies as a “court” under section 45.179 is unsupported by legal authority.

## CIVIL MATTERS AND LITIGATION

The CA argues that “civil matters” includes non-litigation matters. However, section 45.179 specifies that “civil matters pending before the courts of Fort Bend County...” indicating litigation. The CA’s reliance on *Driscoll v. Harris Cnty. Com’rs Ct*, 668 S.W. 2d 569, (Tex. App. –Houston [14<sup>th</sup> Dist.] 1984, writ re’ d n.r.e) is misplaced. The Driscoll court relied on specific statutes for Harris County not applicable to Fort Bend County. Section 45.179, while similar, is not verbatim. Driscoll relied on a specific statute for populous counties, not applicable to Fort Bend County, see *Local Government Code* 89.001. Further, Government Code section 41.007 does not apply, as no county official has made a request for an opinion.

In contrast, *Guynes v. Galveston County*, 861 S.W. 2d 861 (Tex. 1993), and related cases affirm that unless a statute explicitly grants exclusive authority, a commissioners court may retain outside counsel for civil matters not within the county attorney’s exclusive domain.

In *Holmes v Eckels*, 731 SW2d 101 (Tex. App. –Houston [1<sup>st</sup> Dist.] 1987), writ ref’d n.r.e, the court held the legislature has specifically imposed on the Harris County Attorney the duty to represent that county in "all civil matters pending before the courts of Harris County..." *Tex. Gov’t Code* § 45.201. See also, *Op. Tex. Att’y Gen. No. JM-1281* (1990) (Harris County Attorney vested with exclusive statutory authority to represent county in civil matters or approve counsel for specific matters; therefore, the commissioners court could not employ its own staff counsel). There are no statutes imposing exclusive authority on the CA for Fort Bend County.

In *Gibson v. Davis*, 236 S.W. 202, 212 (Tex. Civ. App.—Galveston 1921, no writ) the court held that although the Galveston County Criminal District Attorney has the exclusive duty to represent the state in criminal matters, section 44.184 does not impose a corresponding exclusive duty to represent the county in civil matters. The Department assists the Commissioners Court in carrying out a wide range of duties related to the county’s civil business — personnel matters, bond issues, rights-of-way acquisitions, workers’ compensation claims, tort claims — none of which fall within the exclusive ambit of the Criminal District Attorney’s statutory duties. When read in conjunction with the long-standing authority of the Commissioners Court to seek legal assistance, we understand section 44.184 to impose a duty on the Criminal District Attorney to represent the county if requested, but not to deprive the Commissioners Court of the option of availing itself of the advice of other counsel when the legal matter to be addressed is not one within the Criminal District Attorney’s exclusive domain. See *Gibson v. Davis*, 236 S.W. 202, 212 (Tex. Civ. App.—Galveston 1921, no writ).

“[I]n the exercise of its implied powers, just as it could set the terms of a contract with outside counsel, we conclude that the Commissioners Court may set the terms and conditions of employment. So long as the Commissioners Court has not delegated the Criminal District Attorney’s duties, and the summary judgment record presents no evidence that it has, that court may in the exercise of its discretion choose the method of hiring attorneys it deems most beneficial to the residents and taxpayers of Galveston County.” *Guynes*, p.863. Here Fort Bend County CA

seeks to deprive the CC of the option of to avail itself of the advice of other counsel when the legal matter to be addressed is not one within the CA's exclusive domain.

### **PRIMARY DUTY AND DELEGATION**

The CA's primary duty is to represent the state, Fort Bend County and the officials of the county in all civil matters pending before the courts of Fort Bend County and any other courts. *Texas Government Code*, section 45.179(a). State law grants other elected county officers a sphere of authority "within which the Commissioners Court may not interfere or usurp." *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961). That "sphere of authority consists of the officer's core duties under the Texas Constitution and statutes." *Harris Cnty. v. Coats*, 607 S.W.3d 359, 377 (Tex. App.— Houston [14th Dist.] 2020, no pet.); see also *Tex. Att'y Gen. Op. No. KP-0111* (2016) at 2.

A core duty is one exclusively assigned by state law to a particular officer. See *Agan*, 940 S.W.2d at 808. While a commissioners court "cannot take core functions" from an elected county official, it may delegate to an "appropriate county official" a function that is not exclusively assigned to a particular county official. *Id.* at 80–81. The Texas Constitution obligates county attorneys to "represent the State in all cases in the District and inferior courts in their respective counties," unless a county is included in a district with a district attorney—in which case their "respective duties" are to "be regulated by the Legislature." *Id.* "[C]ounty and district attorneys are [thus] charged primarily with the enforcement of criminal statutes, and 'it is **not** one of their prescribed legal duties to represent the county in its general legal business.'" *Guynes v. Galveston Cnty.*, 861 S.W.2d 861, 864 (Tex. 1993) (citations omitted) (emphasis added). There is no statute that vests the County Attorney with exclusive authority to manage county contracts, oversee county procurement processes, or ensure county contracts comply with legal and regulatory requirements.

Texas courts have long "upheld the power of a commissioners court to hire counsel to assist it or other officials in carrying out their responsibilities so long as the statutory duties of other county officials are not thereby usurped." *Guynes*, 861 S.W.2d at 863–64 (holding the Galveston County Commissioners Court had authority to use and fund a county legal department "in the conduct of its civil legal affairs"); see also, e.g., *Gattis v. Duty*, 349 S.W.3d 193, 208 (Tex. App.— Austin 2011, no pet.) (observing that a commissioners court possesses authority to hire counsel). And where, as here, a commissioners court was not obligated to exclusively use the county attorney for civil matters, an appeals court found a county commissioners court could establish a civil legal division under its supervision pursuant to its authority to conduct county business and its authority over budgetary matters. See *Cascos*, 319 S.W.3d at 230–32. As long as the commissioners court does not impinge on the statutory duties of other officials, it retains the implied power to control litigation and choose its legal remedies. See *Looscan v. Harris County*, 58 Tex. 511, 514 (1883); *Terrell*, 31 S.W. at 633; *Travis County v. Matthews*, 235 S.W.2d 691, 697 (Tex. Civ. App.-Austin 1950, writ ref'd n.r.e). It is not one of their [county attorney] prescribed legal duties to represent

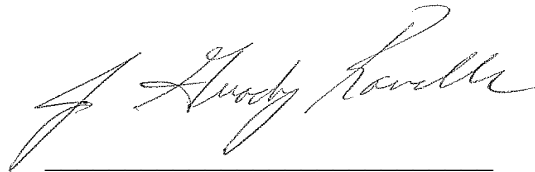
the county in its general legal business or the conduct of ordinary civil actions.” *Hill Farm, Inc. v. Hill County*, 425 S.W.2d 414, 419 (Tex. Civ. App.-Waco 1968), *aff’d*, 436 S.W.2d 320 (Tex.1969).

### **CONCLUSION**

Texas courts have consistently upheld a commissioners court’s authority to hire legal counsel for civil matters, provided it does not interfere with the statutory duties of other officials. The Fort Bend County Attorney does not have exclusive authority to represent the County in all civil matters at any stage. Her statutory duty is limited to litigation. The Commissioners Court retains the right to hire legal counsel for non-litigation matters and general county business. Therefore, hiring a law firm to advise the CC concerning redistricting does not usurp or interfere with the CA core duties of representation in litigation in a court.

Very truly yours,

**RANDLE LAW OFFICE, LTD, L.L.P.**

A handwritten signature in black ink, appearing to read "J. Grady Randle", written in a cursive style.

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J. Grady Randle

1. Enclosures:
  - a. Exhibit A: Texas Government Code Title 2. Judicial Branch Subtitle C, Prosecuting Attorneys Chapter 45.179
  - b. Exhibit B: Attorney General Opinion KP-0492 (2025)

# Exhibit A

and bond forfeiture matters for which the district attorney is responsible, pending before the courts of Ector County and any other court in which the state, Ector County, or the county officials have matters pending.

(b) The county attorney has no power, duty, or privilege in Ector County relating to criminal matters, juvenile matters under Title 3, Family Code, or matters involving children's protective services.

Added by Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 14.02, eff. September 1, 2021.

Sec. 45.171. EL PASO COUNTY. (a) It is the primary duty of the county attorney in El Paso County or his assistants to represent the state, El Paso County, and the officials of El Paso County in all civil matters pending before the courts of El Paso County and any other courts in which the state, the county, or the officials of the county have matters pending.

(b) The county attorney has the powers, duties, and privileges relating to the prosecution of misdemeanors that relate to health and environmental matters and that relate to the prosecution of misdemeanors under Section 32.42, Penal Code.

(c) At the request of the district attorney, the county attorney may assist the district attorney in criminal cases in El Paso County.

(d) The county attorney in El Paso County performs the duty of collecting and processing checks and similar sight orders as provided under Article 102.007, Code of Criminal Procedure, and prosecutes misdemeanors where a check or sight order is the instrument by which the misdemeanor is committed.

Added by Acts 1993, 73rd Leg., ch. 493, Sec. 2, eff. Oct. 1, 1993.

Sec. 45.175. FAYETTE COUNTY. In Fayette County the county attorney of Fayette County shall perform the duties imposed on and have the powers conferred on district attorneys by general law and is entitled to be compensated by the state in the manner and amount set by general law relating to the salary paid to district attorneys by the state.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 2.62(a), eff. Sept. 1, 1987.  
Amended by Acts 1991, 72nd Leg., ch. 2, Sec. 1, eff. Feb. 28, 1991.

Sec. 45.179. FORT BEND COUNTY. (a) It is the primary duty of the county attorney in Fort Bend County to represent the state, Fort Bend County, and the officials of the county in all civil matters pending before

the courts of Fort Bend County and any other courts in which the state, Fort Bend County, or the county officials have matters pending.

(b) The county attorney shall represent the Fort Bend County Drainage District and any other county entity created by law.

(c) The county attorney has the powers, duties, and privileges in Fort Bend County relating to civil commitment matters under Subtitle C, Title 7, Health and Safety Code, for and on behalf of the state.

(c-1) The county attorney has the powers, duties, and privileges in Fort Bend County relating to matters involving children's protective services.

(d) The county attorney has no power, duty, or privilege in Fort Bend County relating to family law and juvenile matters, except as provided by Subsection (c-1), protective orders under Title 4, Family Code, orders under Chapter 159, Family Code, and proceedings under Title 3, Family Code.

(e) The county attorney has no power, duty, or privilege in Fort Bend County relating to criminal matters or matters directly relating to criminal matters, including any asset forfeiture relating to a criminal activity, and bond forfeiture proceedings through judgment other than collection of a final judgment on a bond forfeiture.

(f) Except as provided by Section 43.181(d), the county attorney has all the powers, duties, and privileges in Fort Bend County relating to quo warranto and removal from office proceedings.

(g) At the request of the district attorney, the county attorney may assist the district attorney in criminal cases in Fort Bend County.

(h) The county attorney shall, with the approval of the commissioners court, appoint the assistant county attorneys and other assistants necessary to the proper performance of the county attorney's duties. The commissioners court shall set the salary of an assistant to the county attorney.

Added by Acts 1989, 71st Leg., ch. 1099, Sec. 2, eff. Jan. 1, 1991.

Amended by Acts 1991, 72nd Leg. ch. 76, Sec. 15, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 7.31, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 659 (H.B. 3263), Sec. 2, eff. September 1, 2005.

Sec. 45.189. GONZALES COUNTY. (a) In Gonzales County, the county attorney of Gonzales County shall perform the duties imposed on and have the powers conferred on district attorneys by general law.

# Exhibit B



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 25, 2025

Ms. Jacky Cockerham  
Aransas County Auditor  
2840 Highway 35 North  
Rockport, Texas 78382

**Opinion No. KP-0492**

Re: Authority of a county commissioners court to create a new legal-support position and transfer funding or positions away from the county attorney's office (RQ-0561-KP)

Dear Ms. Cockerham:

You ask several questions regarding the authority of the Aransas County Commissioners Court in relation to an existing contract and procurement specialist position and a proposed attorney position.<sup>1</sup> Your primary concerns are whether the Commissioners Court has authority to (1) move the contract and procurement specialist position, as well as its associated funding, from the Aransas County Attorney's Office ("County Attorney") to the Aransas County Auditor's Office ("Auditor"); and (2) "create a new attorney position to provide legal support exclusively for the Commissioners Court and department heads" and "defund an existing civil attorney position within the County Attorney's Office in order to finance this newly created legal position." Request Letter at 2, 4.

**General Authority of a County Commissioners Court and County Officials**

A county commissioners court "shall exercise such powers and jurisdiction over all county business, as is conferred by" the Texas Constitution and the laws of the State. TEX. CONST. art. V, § 18(b). The commissioners court is therefore "the county's principal governing body." *Comm'rs Ct. of Titus Cnty. v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997). The powers and duties of a commissioners court "include aspects of legislative, executive, administrative, and judicial functions." *Id.* Duties expressly assigned to the commissioners court include the implied authority

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<sup>1</sup> See Letters from Ms. Jacky Cockerham, Aransas Cnty. Auditor, to Off. of the Tex. Att'y Gen., Op. Comm. at 2, 4 (Aug. 28, 2024), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2024/RQ0561KP.pdf> ("Request Letter"). You sent two letters on August 28, 2024, which we combined into a single request and treat as a single document for citation purposes.

to exercise powers necessary to accomplish those express duties. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003).

A commissioners court has express “statutory authority to oversee the fiscal operation of the county by approving and authorizing a budget.” *Griffin v. Birkman*, 266 S.W.3d 189, 194 (Tex. App.—Austin 2008, pet. denied); *see generally* TEX. LOC. GOV’T CODE §§ 111.001–.096 (governing county budget preparation).<sup>2</sup> The commissioners court’s duty to prepare and authorize a budget is a legislative function. *Henry v. Cox*, 520 S.W.3d 28, 36 (Tex. 2017). Funding for personnel is among the fiscal matters considered in preparing the budget. *See* Tex. Att’y Gen. Op. No. KP-0052 (2015) at 2. A commissioners court generally has broad discretion to make budgetary decisions, subject to review for abuse of discretion. *Agan*, 940 S.W.2d at 81; *Griffin*, 266 S.W.3d at 194–95.

At the same time, state law grants other elected county officers a sphere of authority “within which the Commissioners Court may not interfere or usurp.” *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961). That “sphere of authority consists of the officer’s core duties under the Texas Constitution and statutes.” *Harris Cnty. v. Coats*, 607 S.W.3d 359, 377 (Tex. App.—Houston [14th Dist.] 2020, no pet.); *see also* Tex. Att’y Gen. Op. No. KP-0111 (2016) at 2. A core duty is one exclusively assigned by state law to a particular officer. *See Agan*, 940 S.W.2d at 80–82. While a commissioners court “cannot take core functions” from an elected county official, it may delegate to an “appropriate county official” a function that is not exclusively assigned to a particular county official. *Id.* at 80–81. With that context, we turn back to your questions.

### **Contract and Procurement Specialist Position**

As background regarding your question about the Commissioners Court’s authority to transfer the contract and procurement specialist position away from the County Attorney, you explain the position “is responsible for managing contracts, overseeing procurement processes, and ensuring compliance with legal and regulatory requirements.”<sup>3</sup> Request Letter at 3. You say the Commissioners Court is discussing transferring this position to the Auditor, “where it would

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<sup>2</sup> By virtue of its size, we presume Local Government Code sections 111.001 through 111.014 govern Aransas County’s budget preparation. *See* TEX. LOC. GOV’T CODE §§ 111.001–.014 (addressing budget preparation in counties with 225,000 or less population); U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/aransascountytexas> (last visited Nov. 21, 2024) (indicating the population of Aransas County from the most recent federal decennial census is 23,830); *see also* TEX. GOV’T CODE § 311.005(3) (defining “[p]opulation” for purposes of construing statutes as “the population shown by the most recent federal decennial census”).

<sup>3</sup> The Aransas County Attorney’s brief submitted to our office in response to your request reveals disagreement about the contracts and procurement specialist’s duties. *See* Brief from Ms. Amanda Oster, Aransas Cnty. Att’y, to Off. of the Tex. Att’y Gen., Op. Comm. at 3 n.5 (Sept. 23, 2024) (“County Attorney’s Brief”) (on file with the Op. Comm.) (stating the approved job description for the position includes “responsibilities that align with . . . core paralegal functions performed in the County Attorney’s Office”). Because this office does not resolve disputed questions of fact, we adopt your factual description and note that different facts may result in a different conclusion. *See, e.g.*, Tex. Att’y Gen. Op. No. KP-0446 (2023) at 1 n.2 (explaining this office does not resolve disputed questions of fact in the opinion process).

align more closely with financial oversight and auditing functions[,] . . . improve operational efficiency[,] and better integrate procurement activities.”<sup>4</sup> *Id.*

A county attorney is an elected county official, and thus, we first consider whether the duties of the contract and procurement specialist are core functions of the County Attorney. *See* TEX. CONST. art. V, § 21 (providing that “[a] county attorney[] . . . shall be elected by the qualified voters of each county[] . . . and hold his office for the term of four years”). The Texas Constitution obligates county attorneys to “represent the State in all cases in the District and inferior courts in their respective counties,” unless a county is included in a district with a district attorney—in which case their “respective duties” are to “be regulated by the Legislature.” *Id.* “[C]ounty and district attorneys are [thus] charged primarily with the enforcement of criminal statutes, and ‘it is not one of their prescribed legal duties to represent the county in its general legal business.’” *Guynes v. Galveston Cnty.*, 861 S.W.2d 861, 864 (Tex. 1993) (citations omitted). To be sure, the Legislature can provide otherwise. *See, e.g., Cascos v. Cameron Cnty. Att’y*, 319 S.W.3d 205, 227–28 (Tex. App.—Corpus Christi 2010, no pet.) (specifying various county attorneys who possess “the exclusive right to represent their respective Commissioners Courts . . . in all County matters”), *abrogated on other grounds by In re State Bd. for Educator Certification*, 452 S.W.3d 802 (Tex. 2014).

Here, however, the Legislature has not exclusively assigned the County Attorney to represent the Commissioners Court in all matters and instead provided that “the county attorney of Aransas County shall perform the duties imposed on and have the powers conferred on district attorneys by general law.” TEX. GOV’T CODE § 45.104(a); *see also* TEX. CODE CRIM. PROC. art. 2A.102(a) (providing that “[e]ach district attorney shall represent the state in all criminal cases in the district courts of the attorney’s district”). We are aware of no statute that vests the County Attorney with exclusive authority to manage county contracts, oversee county procurement processes, or ensure county contracts comply with legal and regulatory requirements. In fact, to the extent state law addresses these duties, it assigns them to other offices. *See, e.g.,* TEX. LOC. GOV’T CODE § 262.011(e) (requiring a county purchasing agent to supervise purchases made on competitive bid). Absent some provision of law that makes the contracts and procurement specialist’s responsibilities core duties of the County Attorney, the Commissioners Court could

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<sup>4</sup> A county auditor must “see to the strict enforcement of the law governing county finances.” TEX. LOC. GOV’T CODE § 112.006(b); *see also, e.g., id.* §§ 113.064(a) (explaining that “[a] claim, bill, or account may not be allowed or paid [by a county] until it has been examined and approved by the auditor”), .065 (explaining that “[t]he county auditor may not audit or approve a claim unless the claim was incurred as provided by law”). This raises a potential concern whether a position overseeing purchases and managing contracts can be appropriately housed in the auditor’s office—effectively requiring an auditor to “audit[] her own work.” *See, e.g.,* County Attorney’s Brief at 2 n.5 (noting the Auditor originally “requested that the Commissioners Court move the [contract and procurement specialist] position from the County Auditor’s Office to that of the County Judge or County Attorney” to avoid this concern); *cf. also, e.g.,* Tex. Att’y Gen. LO-93-008 (1993) at 1 (highlighting under a separate standard that a marital relationship between a member of the county commissioners court and the county auditor “could make it impossible” for the parties to “exercise appropriate independence of judgment” required by their official functions). Though we recognize the Legislature has authorized a limited subset of auditors to act as county purchasing agents, TEX. LOC. GOV’T CODE § 262.012, the County Attorney indicates that “Aransas County does not have” a county purchasing agent, County Attorney’s Brief at 2 n.3. Furthermore, you do not ask about conflicts of interest—an issue involving questions of fact beyond the scope of this opinion—and we do not address whether the position should be transferred to the Auditor because that is decision for the Commissioners Court in the first instance. *See infra* p. 4.

reassign both the position and associated funding to another appropriate office. *See id.* §§ 111.001–.014; *see also Agan*, 940 S.W.2d at 80–81. Ultimately, “[t]he budgetary decision to transfer . . . responsibilities to [another] office is a legislative function for which the Commissioners Court receives broad discretion.” *Agan*, 940 S.W.2d at 81. The specific office to which this position and funding may be reassigned is therefore a determination for the Commissioners Court in the first instance. *See, e.g., Tex. Att’y Gen. Op. Nos. GA-0503* (2007) at 4 (declining specific delegation question), *JC-0102* (1999) at 4 (same); *see also, e.g., Tex. Att’y Gen. Op. No. KP-0052* (2015) at 2 (discussing circumstances in which a final budget may be amended).

### **Attorney Position**

We next consider your questions about a new attorney position. Request Letter at 2. As background, you tell us the position “would report directly to the Commissioners Court and provide dedicated legal support to both the Commissioners Court and various County department heads.” *Id.* at 1. You say the new position will “ensur[e] more efficient handling of legal matters and reduc[e] potential conflicts of interest” and “would be distinct from the civil attorney roles currently housed with[]” the County Attorney. *Id.* But you do not provide any other details about the duties of the proposed attorney position. *Id.* As such, we address your question in broad terms.

Texas courts have long “upheld the power of a commissioners court to hire counsel to assist it or other officials in carrying out their responsibilities so long as the statutory duties of other county officials are not thereby usurped.” *Guynes*, 861 S.W.2d at 863–64 (holding the Galveston County Commissioners Court had authority to use and fund a county legal department “in the conduct of its civil legal affairs”); *see also, e.g., Gattis v. Duty*, 349 S.W.3d 193, 208 (Tex. App.—Austin 2011, no pet.) (observing that a commissioners court possesses authority to hire counsel). And where, as here, a commissioners court was not obligated to exclusively use the county attorney for civil matters, an appeals court found a county commissioners court could establish a civil legal division under its supervision pursuant to its authority to conduct county business and its authority over budgetary matters. *See Cascos*, 319 S.W.3d at 230–32. To the extent the new attorney’s duties do not usurp the statutory duties of other county officials, including the County Attorney, the Commissioners Court may create the attorney position you describe.

Next, we address whether the Commissioners Court has authority to “defund an existing civil attorney position within the County Attorney’s Office in order to finance this newly created legal position.” Request Letter at 2. Certain officers who require “the services of deputies, assistants, or clerks in the performance of the officer’s duties” must apply to the commissioners court for the authority to appoint deputies, assistants, or clerks. TEX. LOC. GOV’T CODE § 151.001(a); *see also, e.g., Tex. Att’y Gen. Op. No. GA-0350* (2005) at 2 (explaining that a county attorney must apply to the commissioners court for authority to employ assistant county attorneys). Upon receiving the application, “the commissioners court by order shall determine the number of employees that may be appointed and shall authorize their appointment.” TEX. LOC. GOV’T CODE § 151.002. The officer may fill the requested positions only after the commissioners court issues an order approving, in whole or in part, the officer’s request. *Id.* § 151.003; *see also, e.g., Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App.—Austin 1997, writ denied) (explaining that a commissioners court determines the number and compensation of a sheriff’s employees). These requirements demonstrate that when setting the budget for any given year, the commissioners court

may reconsider whether a previously funded position in a particular department is still necessary. *See Hinojosa v. Tarrant Cnty.*, No. 4:08-CV-315-A, 2009 WL 1309218, at \*1–2 (N.D. Tex. May 5, 2009) (mem. op. & order) (describing a commissioners court “final decision-making authority to adopt a budget that may, among other things, create certain new positions or eliminate certain existing positions”), *aff’d sub nom.*, *Cook v. Tarrant Cnty.*, 372 F. App’x 493 (5th Cir. 2010) (per curiam); *see also Randall Cnty. Comm’rs Ct. v. Sherrod*, 854 S.W.2d 914, 923 (Tex. App.—Amarillo 1993, no pet.) (per curiam) (Poff, J., concurring and dissenting in part) (“Here, the Commissioners Court had no mandatory statutory duty to employ a third investigator in the D.A.’s office. The Commissioners Court reasonably exercised its discretion in declining to fund the position.”). At least one court has upheld a budget amendment transferring funds, previously allocated to the county attorney’s office, in order to partially fund a new legal position to advise the commissioners court. *See Gattis*, 349 S.W.3d at 207; *cf. Griffin*, 266 S.W.3d at 201–02 (upholding a budget amendment transferring funds for a law-enforcement mental health unit from constable’s office to county sheriff’s office).

While the Commissioners Court may have authority through the exercise of its budgetary power to defund the existing attorney position in some circumstances, it may not thereby usurp or interfere with the County Attorney’s core duties. *See Tex. Att’y Gen. Op. No. KP-0429* (2023) at 4 (discussing the limitations of the budgetary power). Other than characterizing this position as a “civil attorney position” you do not tell us the duties of the attorney and thus, we cannot assess whether defunding the position would usurp or interfere with the County Attorney’s core duties.<sup>5</sup> Request Letter at 2. To the extent it does not usurp or interfere with the County Attorney’s core duties, the Commissioners Court has authority through the exercise of its budgetary power to defund an existing civil attorney position to finance the new attorney position.

Finally, you ask about “legal limitations[] . . . that the Commissioners Court must observe when reallocating responsibilities and funding between these positions.” *Id.* An exhaustive treatment of those limitations is beyond the scope of an Attorney General opinion, but broadly speaking, when exercising its budgetary powers, the Commissioners Court must not act “arbitrarily, capriciously, collusively, fraudulently, or otherwise in abuse of its discretion.” *Griffin*, 266 S.W.3d at 195. “A commissioners court can act illegally, unreasonably, or arbitrarily by acting contrary to a legal delegation of power or limitation on its own powers or by exercising powers that have been delegated to another county officer by the Texas Constitution or by statute.” *Hobbs v. Gattis*, No. 01-19-00025-CV, 2020 WL 6065439, at \*5 (Tex. App.—Houston [1st Dist.] Oct. 15, 2020, no pet.) (mem. op.). In sum, the Commissioners Court must not exceed its own authority or invade the County Attorney’s sphere of authority.

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<sup>5</sup> The County Attorney tells us the attorney handles not only civil matters but also criminal matters, as a “sworn deputy prosecutor.” County Attorney’s Brief at 5 n.7, 11 n.13. But again, “[t]his office cannot engage in fact finding in an attorney general opinion.” Tex. Att’y Gen. Op. No. KP-0275 (2019) at 3 n.4.

S U M M A R Y

A commissioners court has authority to delegate to any appropriate county official a function that is not a core duty of another county official. To the extent the duties of the contract and procurement specialist position are not core duties of the Aransas County Attorney's Office, the position and its associated funding may be transferred from the County Attorney to another appropriate county office. The specific office to which this position and funding may be reassigned is a determination for the Commissioners Court in the first instance, as long as other conflicts are not created with the transfer of duties.

A commissioners court has authority to hire legal counsel to assist with county responsibilities so long as the statutory duties of other county officials are not thereby usurped. To the extent it does not usurp or interfere with the statutory duties of other county officials, including the County Attorney, the Aransas Commissioners Court is authorized to create a new attorney position concerning the affairs of Aransas County. To the extent it does not usurp or interfere with the County Attorney's core duties, the Commissioners Court has, in some circumstances, authority through the exercise of its budgetary power to defund an existing civil attorney position to finance the new attorney position.

Very truly yours,



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