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Via Email Only: opinion.committee@oag.texas.gov

The Honorable Ken Paxton
Texas Attorney General
ATTN Opinion Committee
P.O. Box 12458
Austin, TX 78711

Re: RQ-0597-KP; Fort Bend County Commissioners Court authority to select a law firm to assist with redrawing voter precinct lines over the objection of the Fort Bend County Attorney.

Dear General Paxton:

The Fort Bend County Attorney's Office submits this letter brief responsive to Rep. Gates' request for opinion dated April 25, 2025. As noted below, this brief concerns only how the respective powers and duties of *Fort Bend County's* Commissioners Court and County Attorney relate to one another. We candidly acknowledge that different Counties, with different statutes relating to the powers and duties of their County Attorneys, will likely have different answers to the questions posed by Rep. Gates.

Issues on which an Opinion is requested¹

- 1. Does the Commissioners Court have the legal authority to select a firm to assist with redistricting county election precincts?**

Short answer: No. The Fort Bend County Commissioners Court does not have the authority to select a law firm to assist with redistricting County election precincts over the Fort Bend County Attorney's objection.

- 2. Can a County Attorney unilaterally make the decision to contract a firm of their choice, without a formal order from the Commissioners Court?**

Short Answer: Yes. In this situation, in which the Fort Bend County Commissioners Court allocated money to hire a law firm to assist with redistricting voter precincts, and stressed the need for immediate expert help in doing so, it is the Fort Bend County Attorney's primary and exclusive duty to hire a law firm to assist with redistricting voter precincts.

¹ The questions presented by Rep. Gates are far broader than the interests of Fort Bend County. Of the 254 Counties in Texas, only five have statutes similar to Fort Bend County's, which vests the County Attorney with the primary and exclusive duty to represent the County and its officers in civil matters. Tex. Govt. Code § 45.179(a). As a result, this brief concerns itself with Fort Bend County's specific statutory situation and does not address the generalized scope of Rep. Gates' requests.

FACTUAL BACKGROUND

On March 25, 2025, Fort Bend County Commissioners Court voted to transfer \$60,000 from Non-Departmental Contingency into Election Services – Fees to allocate funds to correct voter precincts.² The importance of taking action was explained in the Court’s minutes by John Oldham, Fort Bend County’s Elections Administrator. Mr. Oldham explained that: “under statute, Commissioners Court has a responsibility to review precincts every two years and divide those or redraw the lines if they are over a population of 5,000. These precincts exist only for the purpose of voting. Elections can work with the court to review the precincts, but it may be difficult to work on this independently. Mr. Oldham believes a third party is a valid option.” Although he voted against transferring the funds, Commissioner McCoy stated: “for the record, this is an important effort that needs to be undertaken and we want to make sure we have appropriately allocated resources.” Commissioner Meyers emphasized the importance of undertaking this work with expertise and urgency stating: “*we need experts to prepare a plan to make certain we are compliant with both state and federal law.*” A letter received from a state representative pointed out Fort Bend County is not in compliance[with] the state law.” (emphasis added).

The Fort Bend County Attorney took Commissioners Court at its word. By April 10, 2025, she had a proposal from an experienced law firm with expertise in the re-districting process: Brazil & Dunn LLP. Brazil & Dunn had previously assisted not only Fort Bend County, but also Dallas, Harris and Travis Counties in their redistricting efforts, as well as having successfully represented Dallas County in a federal court challenge to the plan it adopted in 2011.³

The Fort Bend County Attorney acted as required by Tex. Govt Code §45.179(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.”

This Office and Texas courts are of the uniform opinion that the Fort Bend County Attorney has the exclusive power to represent the County *in all civil matters pending before the courts*. Redrawing the voter precinct lines is such a civil matter. It is important to note, as a factual matter, that Commissioners Court’s power to redraw the voter precinct lines is not in dispute. The issue is the narrow one of whether Commissioners Court or the County Attorney is allowed to exercise the County Attorney’s exclusive statutory powers within her sphere of authority.

ARGUMENT AND AUTHORITIES

The Texas Legislature expressly delegated the authority to represent Fort Bend County in civil matters to the Fort Bend County attorney.

When a county contains a District Attorney and a County Attorney, Article V, § 21 of the Texas Constitution requires the duties of the respective District Attorney and County Attorney to be regulated by the Legislature.⁴ To this end, the Legislature has promulgated special statutes regulating the duties of county attorneys in specific counties, including Fort Bend.

² Item 26 of the minutes of March 25, 2025 Commissioners Court regular meeting. A copy of the minute for item 26 is attached as exhibit “A,” along with the Budget Transfer and the Court’s approval of the March 25th minutes dated April 8, 2025.

³ *Harding v. County of Dallas, Texas*, 948 F. 3rd 302 (5th Cir. 2020)

⁴ TEX. CONST. art. V, § 21.

Fort Bend County's statute, § 45.179(a) of the Government Code states in relevant part:

"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."⁵

The Legislature granted similar mandates to the County Attorneys for El Paso County,⁶ Grimes County,⁷ Wharton County,⁸ Matagorda County,⁹ and Harris County.¹⁰

However, all County Attorney Offices are not created equal. For example, in Montgomery County, the Legislature explicitly granted the authority to Commissioners Court to employ outside counsel in civil matters, when the County Attorney would otherwise be required to represent the county.¹¹ Additionally, in certain circumstances and jurisdictions containing only a criminal District Attorney, the Legislature specifically authorized commissioners courts to employ outside counsel, for example: Bexar County,¹² Tarrant County,¹³ Walker County,¹⁴ Austin County,¹⁵ and Calhoun County.¹⁶ The Legislature knows how to, and does routinely, create County

⁵ TEX. GOV'T CODE ANN. § 45.179(a) (West 2025).

⁶ "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." TEX. GOV'T CODE ANN. § 45.171(a) (West 2025).

⁷ "The county attorney of Grimes County shall represent the state, Grimes County, and the officials of the county in all civil matters pending before the courts of Grimes County and any other court." TEX. GOV'T CODE ANN. § 45.193(a) (West 2025).

⁸ "The primary duty of the county attorney in Wharton County is to represent the state, Wharton County, and county officials in civil matters." TEX. GOV'T CODE ANN. § 45.341(a) (West 2025).

⁹ "It is the primary duty of the county attorney in Matagorda County to represent the state, Matagorda County, and the officials of the county in civil matters pending before any court in which the state, Matagorda County, or the officials have matters pending." TEX. GOV'T CODE ANN. § 45.261(a) (West 2025).

¹⁰ "It is the primary duty of the county attorney in Harris County or his assistants to represent the state, Harris County, and the officials of Harris County in all civil matters pending before the courts of Harris County and any other courts in which the state, the county, or the officials of the county have matters pending." TEX. GOV'T CODE ANN. § 45.201 (West 2025).

¹¹ "(a) The county attorney of Montgomery County, or the county attorney's assistants, shall represent the state, Montgomery County, and the officials of the county in all civil matters pending before a court of Montgomery County or any other court (c) Notwithstanding Subsection (a), the *commissioners court* in Montgomery County *may retain independent counsel in any civil matter*." TEX. GOV'T CODE ANN. § 45.270(a), (c) (West 2025) (emphasis added).

¹² "The Commissioners Court of Bexar County, acting in conjunction with and on the approval of the criminal district attorney, may employ special counsel, learned in the law, to represent the county in a condemnation or eminent domain proceeding, particularly in a case involving the acquisition of rights-of-way. The employment shall be for the time and on the terms that the commissioners court and the criminal district attorney consider necessary and proper. The employment may be terminated in the manner provided by law for the removal of an assistant, investigator, or other employee of the criminal district attorney." TEX. GOV'T CODE ANN. § 44.115(e) (West) (2025).

¹³ "The Commissioners Court of Tarrant County may employ special counsel of its own choice, learned in the law, to represent the county in condemnation or eminent domain proceedings, to assist the commissioners court, the county engineer, or other county employees in preparing documents necessary in the acquisition of rights-of-way for the county or in the event that the county is required to obtain rights-of-way for state highways, or to assist the county in the acquisition of those rights-of-way. The commissioners court shall set the terms of the employment of special counsel as it considers proper. The commissioners court shall pay the compensation of the special counsel from the road and bridge fund of the county." TEX. GOV'T CODE ANN. § 44.320(d) (West 2025).

¹⁴ "The criminal district attorney shall represent Walker County in any court in which the county has pending business. This subsection does not require the criminal district attorney to represent the county in a delinquent tax suit or condemnation proceeding and does not prevent the county from retaining other legal counsel in a civil matter at any time it considers appropriate to do so." TEX. GOV'T CODE ANN. § 44.336(c) (West 2025).

¹⁵ "The criminal district attorney shall represent the state in all matters in the district and inferior courts in the county. The criminal district attorney shall perform the other duties that are conferred by general law on district and county attorneys. This subsection does not prevent the county from retaining other legal counsel as it considers appropriate. The criminal district attorney may represent any county official or

Attorney's offices with different powers to fit the unique needs of each of the 254 Texas counties. The Legislature knows how to, and does routinely, specifically authorize Commissioners Courts to hire counsel where necessary or desirable. It did not, however, empower Fort Bend County's Commissioners Court to do so without the County Attorney's approval.

We must presume that the Legislature knew what it was doing when it created and empowered the Fort Bend County Attorney's Office. In construing a statute, the "primary objective is to ascertain the Legislature's intent."¹⁷ The words of a statute must be read "according to their plain and common meaning unless a contrary intention is apparent" from the context of the statute.¹⁸ Although courts have discussed Fort Bend's statute in construing similar statutes governing the duties of other county attorney offices, neither courts nor the Attorney General's Office have construed § 45.179(a) itself.

There are three issues that must be addressed in construing §45.179(a) and answering the questions posed by Rep. Gates as they relate to Fort Bend County's situation:

- (1) Is Fort Bend County's Commissioners Court a "court" within the meaning of §45.179(a);
- (2) Do "civil matters" include matters that are not yet in litigation, like redistricting the voting precincts; and
- (3) Is the Fort Bend County Attorney's power and duty to represent Fort Bend County, and the officials of the county, in all civil matters exclusive?

The answer to all three questions is yes.

(1) The Fort Bend County Commissioners Court is a "court" for purposes of § 45.179(a).

Any question about whether a commissioners court is a court for our purpose is foreclosed by Article V, § 1 of the Texas Constitution which declares the: "judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in *Commissioners Courts*, in Courts of Justices of the Peace, and in such other courts as may be provided by law."¹⁹ Commissioners Courts are "courts of general jurisdiction in the sphere of powers conferred on them. A commissioners court order is entitled to the same weight and consideration as any other judgment from a constitutional court, and a commissioners court is a court of record."²⁰ As a court of record, Commissioners Court speaks through its minutes.²¹

employee of Austin County in any civil matter in a court in the county if the matter arises out of the performance of official duties by the official or employee." TEX. GOV'T CODE ANN. § 44.108(b) (West 2025).

¹⁶ "The criminal district attorney shall represent Calhoun County in any court in which the county has pending business. This subsection does not prevent the county from retaining other legal counsel in a civil matter as it considers appropriate." TEX. GOV'T CODE ANN. § 44.129(b) (West 2025).

¹⁷ *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 51 (Tex. 2014).

¹⁸ *Nathan v. Whittington*, 408 S.W.3d 870, 872 (Tex. 2013); see also TEX. GOV'T CODE ANN. § 311.011(a) (West 2025) (providing that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage").

¹⁹ TEX. CONST. art. V, § 1 (emphasis added).

²⁰ See *Welch v. Kent*, 153 S.W.2d 284, 286-87 (Tex. Civ. App.—Beaumont 1941, no writ) (commissioners court in approving and disapproving claims acts in a judicial capacity and such orders are a "judgment" of a "court of record"); *Maples v. Henderson Cnty.*, 259 S.W.2d 264, 267 (Tex. Civ. App.—Dallas 1953, writ ref'd n.r.e.) ("The commissioners court is a court of record, and speaks through its minutes" (citing *Gano v. Cnty. of Palo Pinto*, 8 S.W. 634, 635 (Tex. 1888)); *Mecom v. Ford*, 252 S.W. 491, 497 (Tex. 1923) ("Commissioners' courts in Texas are courts of record, and as such have control over their own records. They have inherent power to correct and amend such records and the same can be altered or changed only by the order of such court itself."). Tes. Atty Gen. Op. JM764 (1987). *Bradford v. Moseley*, 223 S.W. 171, 173 (Tex. Comm'n App. 1920, judgment approved) ("commissioners courts "are not courts of limited and special jurisdiction, but courts of general jurisdiction in the sphere of the powers conferred on them) (internal citations omitted).

Furthermore, in addition to a commissioners court sitting in “sessions”²² during “terms”²³ and issuing “orders,”²⁴ a commissioners court is vested with judicial authority to issue writs and necessary process, to subpoena witnesses, and to find persons in contempt of court.²⁵ A commissioners court may require testimony under oath.²⁶ A commissioners court is an atypical court, but a court nevertheless.

Fort Bend County Commissioners Court is clearly a “court” for purposes of § 45.179(a) of the Government Code. The Fort Bend County Attorney is charged, in part, to represent the County and County officials in civil matters before the Commissioners Court.

(2) “Civil matters” as contemplated by § 45.179(a) includes non-litigation matters before the Commissioners Court, such as redistricting matters.

The Fourteenth Court of Appeals includes non-litigation matters within the scope of “civil matters” in the context of the County Attorney’s powers and duties. In *Driscoll v. Harris County Commissioners Court*, the court considered the interaction of Article 2372p, V.T.C.S., (now codified as § 89.001 of the Local Government Code (Special Counsel in Populous Counties))²⁷ with those of Article 6795b-1 (authorizing certain counties to construct, operate, and maintain a “turnpike, highway, or any combination of such facilities”).²⁸ *Driscoll* also considered whether the Harris Commissioners Court could employ special legal counsel other than the Harris County Attorney to perform legal services for the board of the county toll road authority.²⁹

Factually, the Commissioners Court designated the Court as the operating board of the toll road authority and authorized the preparation and legal documentation concerning the issuance of fifty million dollars in toll road revenue and unlimited tax bonds.³⁰ The operating board engaged the services of an outside law firm to assist with the issuance of the bonds.³¹ The Harris County Attorney objected to the employment of special counsel, and informed the Harris County Commissioners Court that the County Attorney’s Office was capable of performing the requisite work.³² Further, the Harris County Attorney complained that the employment of special counsel without input from the County Attorney’s Office was contrary to law.³³ The Harris County Commissioners Court continued the employment of outside counsel, and the County Attorney filed suit.³⁴

The Court addressed the statutory predecessor of § 45.201 of the Government Code (Special duties of the Harris County Attorney’s Office).³⁵ This statute required the Harris County Attorney to “represent the State of Texas, Harris County, and the officials of such county in all civil matter pending before the courts of Harris County .

²¹ *Maples v. Henderson Cnty.*, 259 S.W.2d 264, 267 (Tex. Civ. App.—Dallas 1953, writ ref’d n.r.e.) (“The commissioners court is a court of record, and speaks through its minutes . . .” (citing *Gano v. Cnty. of Palo Pinto*, 8 S.W. 634, 635 (Tex. 1888)).

²² DAVID B. BROOKS, 35 TEX. PRAC., COUNTY AND SPECIAL DISTRICT LAW § 5.5 (2d ed.).

²³ TEX. LOC. GOV’T CODE ANN. § 81.005 (West 2025).

²⁴ DAVID B. BROOKS, 35 TEX. PRAC., COUNTY AND SPECIAL DISTRICT LAW § 5.11 (2d ed.).

²⁵ TEX. LOC. GOV’T CODE ANN. §§ 81.022-.023 (West 2025).

²⁶ *Id.* § 81.030.

²⁷ *Driscoll v. Harris Cnty. Comm’rs Ct.*, 688 S.W.2d 569, 575, 578 (Tex. App.—Houston [14th Dist.] 1984, writ ref’d n.r.e.).

²⁸ *Id.* at 574, 581.

²⁹ *Id.* at 569.

³⁰ *Id.* at 577.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 578-79.

...³⁶ The Court noted that this provision imposed “specific duties upon the county attorney of Harris County which are not imposed upon county attorneys, criminal district attorneys or district attorneys generally.”³⁷

The Court determined that the Commissioners Court usurped the authority of the County Attorney by employing legal counsel other than the County Attorney to perform legal services for the Toll Road Authority.³⁸ It should be noted that Harris County was also subject to the statutory predecessor of § 89.001 of the Local Government Code, which at that time authorized a commissioners court, in counties with a population of at least 500,000, to employ special counsel upon selection by the county attorney.³⁹

It was suggested that there was a distinction between an attorney’s duty of representing a client and providing advice to a client, and that only selecting an attorney for representation was prohibited by then Article 2372p (now § 89.001 of the Local Government Code).⁴⁰ That view was rejected by the *Driscoll* Court.⁴¹ The Attorney General’s Office, when discussing *Driscoll*, concluded that “no reasonable distinction can be made” between legal representation and legal advice.⁴² Redistricting of voter precincts lines is a civil matter pending in Commissioners Court.

(3) Authority of the Fort Bend County Attorney’s Office to Provide Representation on Civil Matters pending in Courts is Exclusive.

If there is no reasonable distinction between legal representation and legal advice, then employment of outside counsel to provide legal advice concerning redistricting matters is equivalent to outside counsel representing the Commissioners Court. Such legal representation by outside counsel selected by Commissioners Court infringes on the primary duty of the Fort Bend County Attorney—to represent the County in civil matters.⁴³ The Attorney General’s Office has previously determined that Article V, § 21 of the Texas Constitution (requiring a county attorney to represent the State), § 41.007 of the Government Code (duty to provide opinions upon request), and § 45.201 of the Government Code (special statute describing the duties of the Harris County Attorney’s Office), compelled Harris County officials to obtain legal representation and legal advice from the Harris County Attorney alone, except as provided by law.⁴⁴ As the special statute describing the duties of the Harris County Attorney’s Office (§ 45.201(a) of the Government Code) is similar to the special statute detailing the duties of the Fort Bend County Attorney’s Office (§ 45.179(a)), the Fort Bend County Commissioners Court is required to obtain legal advice and legal representation from the Fort Bend County Attorney’s Office, except as prescribed by law.⁴⁵

The Texas Attorney General has also indicated that § 45.179(a) vests the exclusive duty to represent Commissioners Court and the County in the Fort Bend County Attorney. For example, the El Paso County Attorney refused to consent to a proposal to be superseded by outside counsel.⁴⁶ Factually, the El Paso County Auditor sought an opinion concerning whether the County’s Bail Bond Board may employ legal counsel over the objection

³⁶ *Id.* at 578.

³⁷ *Id.* at 579 (on motion for rehearing).

³⁸ *Id.* at 582.

³⁹ *Id.* at 579-80.

⁴⁰ Tex. Att’y Gen. Op. JM-1281 (1990) at 3; *Driscoll*, 688 S.W.2d at 582.

⁴¹ Tex. Att’y Gen. Op. JM-1281 (1990) at 3; *Driscoll*, 688 S.W.2d at 582.

⁴² Tex. Att’y Gen. Op. JM-1281 (1990) at 3.

⁴³ TEX. GOV’T CODE ANN. § 45.179(a) (West 2025).

⁴⁴ Tex. Att’y Gen. Op. JM-1281 (1990).

⁴⁵ See generally TEX. GOV’T CODE ANN. § 45.201 (West 2025); cf. *id.* § 45.179(a).

⁴⁶ Tex. Att’y Gen. Op. No. GA-0074 (2003).

of the County Attorney.⁴⁷ The Attorney General's Office concluded that the Bail Bond Board may not seek legal counsel without the consent of the County Attorney.⁴⁸

The Attorney General's Office noted that § 45.171(a) of the Government Code explicitly requires the El Paso County Attorney 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."⁴⁹ Further, § 41.007 of the Government Code imposed a duty on the County Attorney to provide legal advice.⁵⁰ These provisions charged the El Paso County Attorney "with the legal representation of the county and its officials" including the Bail Bond Board,⁵¹ and the County Attorney may not be divested of his duties against his will.⁵²

Similarly, the Harris County Attorney inquired whether the Commissioners Court of Harris County may appoint a licensed attorney to advise the Sheriff or a County Commissioner.⁵³ Factually, the Harris County Commissioners Court created attorney positions for the purpose of advising the Sheriff and County Commissioners.⁵⁴ When creating these positions, Harris County did not comply with the provision of § 81.023 of the Local Government Code (now redesignated as § 89.001 (Special Counsel in Populous Counties)). Because Harris County did not comply with § 81.023 when creating these positions, the Attorney General's Office concluded that Harris County was prohibited from creating these positions.⁵⁵

In reaching this conclusion, the Attorney General's Office had the opportunity to construe the intertwined provisions of § 45.201 of the Government Code (Harris County Attorney's Office) (former Article 331h of Vernon's Civil Statutes), § 41.007 of the Government Code (Requirement to provide Opinions to County and Precinct Officials upon request) (former Article 334 of Vernon's Civil Statutes), and § 81.023 of the Local Government Code (now redesignated as § 89.001 (Special Counsel in Populous Counties)) (former Article 2372p of Vernon's Civil Statutes) as discussed in *Driscoll*.⁵⁶ The Attorney General's Office noted:

"We believe that the thrust of . . . section 45.201 of the Government Code, which declares it to be the 'primary duty' of the Harris County attorney 'to represent the State,' and section 41.007 of the Government Code, which requires a county attorney, on request, to 'give to a county or precinct official of his district or county a written opinion or written advice,' taken together, is to compel the various officials of Harris County to obtain representation and advice in all legal matters from the Harris County attorney, and him alone, absent the exceptions provided by section 81.023 of the Local Government Code."⁵⁷

The above opinions construed special statutes governing the duties of the County Attorneys in El Paso County and Harris County. As illustrated below, the special statutes governing the duties of the county attorney in El Paso, Harris, and Fort Bend County are similar:

⁴⁷ *Id.*

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 2 (citing TEX. GOV'T CODE ANN. § 45.171(a) (Vernon Supp. 2003)).

⁵⁰ Tex. Att'y Gen. Op. No. GA-0074 (2003) at 2.

⁵¹ *Id.* at 2.

⁵² *Id.* at 3.

⁵³ Tex. Att'y Gen. Op. No. JM-1281 (1990).

⁵⁴ *Id.* at 1, 7.

⁵⁵ Tex. Att'y Gen. Op. No. JM-1281 (1990) at 4-7.

⁵⁶ Tex. Att'y Gen. Op. No. JM-1281 (1990) at 2-3. The *Driscoll* case was discussed under section 2, the definition of "civil matters."

⁵⁷ Tex. Att'y Gen. Op. No. JM-1281 (1990) at 3.

§ 45.171(a) – El Paso County	§ 45.201 – Harris County	§ 45.179(a) – Fort Bend 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.	It is the primary duty of the county attorney in Harris County or his assistants to represent the state, Harris County, and the officials of Harris County in all civil matters pending before the courts of Harris County and any other courts in which the state, the county, or the officials of the county have matters pending. The county attorney shall represent the Harris County Flood Control District and perform the other duties imposed by this section without any additional fee, compensation, or perquisite other than that paid by Harris County out of its officers' salary fund.	(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.

In construing a statute, it is presumed that the Legislature chooses its words carefully, that each word in a statute is included for a purpose, and that words not included were purposefully excluded.⁵⁸ The special statutes governing the duties of the county attorneys in El Paso, Harris, and Fort Bend County do not expressly authorize commissioners court to retain independent counsel in any civil matter.⁵⁹ These statutes are unlike the special statute controlling the duties of the Montgomery County Attorney.⁶⁰ Had the Legislature sought to authorize commissioners' courts in El Paso, Harris, and Fort Bend Counties to unilaterally employ outside counsel, it could have done so, but did not.⁶¹ The conclusion that Fort Bend County's Commissioners Court lacks the right to ire counsel over the County Attorney's objection is inescapable, even though some other Commissioners Courts were granted that power.

Cases that have allowed Commissioners Courts to hire counsel over the County Attorney's objection are distinguishable because they did not involve statutes similar to Fort Bend County's. For example, in a suit brought by the Cameron County Attorney complaining of the transfer of the civil division from the county attorney's office to the commissioners court, the Corpus Christi court concluded that the civil division could be transferred to the commissioners court.⁶² The Court determined that the Cameron County Attorney's Office "never had the exclusive

⁵⁸ *Kappus v. Kappus*, 284 S.W.3d 831, 835 (Tex. 2009); *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008).

⁵⁹ See TEX. GOV'T CODE ANN. §§ 45.201 (Harris County Attorney), 45.171 (El Paso County Attorney), 45.179 (Fort Bend); cf. *id.* § 45.270 (Montgomery County).

⁶⁰ "Notwithstanding Subsection (a), the commissioners court in Montgomery County may retain independent counsel in any civil matter." TEX. GOV'T CODE ANN. § 45.270(c) (West 2025) (emphasis added).

⁶¹ See *Kappus*, 284 S.W.3d at 835 (recognizing that the Legislature chooses "its words carefully and intentionally").

⁶² *Cascos v. Cameron Co. Atty.*, 319 S.W.3d 205 (Tex. App.—Corpus Christi—Edinburg 2010, no pet.), *abrogated on other grounds by In re State Bd. for Educator Certification*, 452 S.W.3d 802 (Tex. 2014) (orig. proceeding).

right to represent Cameron County in civil matters in the first place.”⁶³ Thus, it was not it was not an abuse of discretion for the commissioners court to transfer the civil legal division out of the county attorney's office.⁶⁴ In reaching this decision, the Court noted that: “County Attorneys in *Fort Bend County*, Grimes County, Harris County, Lee County, Matagorda County, Montgomery County, Oldham County, Swisher County, and Wharton County are empowered with *the exclusive right* to represent their respective Commissioners Courts *in civil matters or in all County matters*.”⁶⁵

Likewise, in *Guynes v. Galveston County*, the Galveston County Commissioners Court, with the consent of the Galveston Criminal District Attorney, created a legal department to advise the Commissioners Court.⁶⁶ The Texas Supreme Court held the Galveston County Commissioners Court may employ staff attorneys to advise it concerning civil matters.⁶⁷

The Galveston Criminal District Attorney had a special statute (§ 44.184 of the Government Code) which vested exclusive responsibility to represent the State in criminal matters; however, § 44.184 did not vest exclusive responsibility for civil representation upon the Criminal District Attorney. Therefore, the Commissioners Court was free to create a separate civil division to represent the County in civil matters.⁶⁸ *Guynes* was a situation where the Galveston County Attorney's Office had been abolished by statute.⁶⁹ This is not the situation in Fort Bend County.

The following Attorney General opinions also imply that the Fort Bend County Attorney has the exclusive duty to provide representation to the County, and may not be divested of that duty against her will:

- The Henderson County Attorney sought an opinion from the Attorney General's Office asking whether the district judges may authorize the County Auditor to retain legal counsel to respond to Public Information Act Requests.⁷⁰ Factually, the County Attorney did not consent to the retention of outside counsel.⁷¹ The Attorney General's Office concluded that since the County Attorney did not have an “exclusive duty to provide legal advice in all civil matters in Henderson County,” the retention of outside counsel by the Auditor did not improperly infringe upon the statutory duties of the County Attorney.⁷²

In reaching this conclusion, the Attorney General's Office briefly discussed the special statute governing the duties of El Paso County Attorney's Office (§ 45.171(a) of the Government Code).⁷³ Pursuant to § 45.171(a), the El Paso County Attorney was required to represent El Paso County and its officials in “all civil matters.”⁷⁴ Unlike the El Paso County Attorney's Office, no “similar statute” gave “the Henderson County Attorney general civil authority over all Henderson County legal affairs.”⁷⁵

⁶³ *Cascos*, 319 S.W.3d at 230.

⁶⁴ *Id.* at 230-31.

⁶⁵ *Id.* at 227-228.

⁶⁶ *Guynes v. Galveston Cnty.*, 861 S.W.2d 861 (Tex. 1993).

⁶⁷ *Id.*

⁶⁸ *Id.* at 864.

⁶⁹ *Guynes*, 861 S.W.2d at 862.

⁷⁰ Tex. Att'y Gen. Op. GA-0545 (2007).

⁷¹ *Id.* at 1.

⁷² *Id.* at 2.

⁷³ *Id.*

⁷⁴ *Id.* (citing TEX. GOV'T CODE ANN. § 45.171(a) West 2007).

⁷⁵ Tex. Att'y Gen. Op. GA-0545 (2007) at 2. *See also* TEX. GOV'T CODE ANN. § 45.207 (Vernon 2004) (reserved for Henderson County).

- The El Paso County Auditor sought an opinion from the Attorney General's Office regarding whether the El Paso County Attorney may provide legal advice and representation to the El Paso County Ethics Commission.⁷⁶ The Attorney General's Office determined that the El Paso County Attorney was required to represent the El Paso County Ethics Commission pursuant to § 161.061 of the Local Government Code.⁷⁷

In reaching this decision, the Attorney General's Office discussed its prior opinion: Opinion Number GA-0074 (2003).⁷⁸ Opinion Number GA-0074 imposed a duty on the El Paso County Attorney to advise and represent the Bail Bond Board, and the County Attorney could not be involuntarily divested of that duty.⁷⁹ Thus, when applying the reasoning of Opinion Number GA-0074, the Attorney General's Office concluded that the County Attorney was also required to advise the El Paso County Ethics Commission.⁸⁰

- In Attorney General Opinion Number GA-0153, the Fannin County Attorney inquired whether the Fannin County Commissioners Court may retain counsel to advise it on legal matters without the consent of the County Attorney.⁸¹ The Attorney General's Office noted the Legislature "promulgated special statutes regulating the duties of county attorneys in specific counties, in some cases expressly requiring a county attorney to represent the county in civil actions. See Tex. Gov't Code Ann. §§ 45.171 (Vernon Supp. 2004) (County Attorney of El Paso County), .179 (County Attorney of Fort Bend County)"⁸² However, no special statute addressed the duties of the Fannin County Attorney.⁸³

Since the Fannin County Attorney lacked a general statutory duty to represent the county in civil actions, the Attorney General's Office determined that the Fannin County Commissioners Court may retain private counsel (even as a salaried employee), without the consent of the Fannin County Attorney.⁸⁴ The Attorney General's Office further determined that the employment of a private attorney by the Commissioners Court would not usurp the authority of the County Attorney under § 41.007 of the Government Code, since § 41.007 only requires a county attorney to render an opinion upon request.⁸⁵

Pursuant to § 45.179(a) of the Government Code, the opinions of the appellate courts, and opinions from the Attorney General's Office, the Fort Bend County Attorney has the exclusive right to represent the commissioners court in civil matters like redistricting of voting precincts.⁸⁶ Thus, the Fort Bend County Commissioners Court may not employ outside counsel to provide legal services in civil matters without the consent of the Fort Bend County Attorney.

⁷⁶ Tex. Att'y Gen. Op. No. GA-0817 (2010).

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 2.

⁷⁹ *Id.* at 2.

⁸⁰ *Id.* at 2.

⁸¹ Tex. Att'y Gen. Op. GA-0153 (2004).

⁸² *Id.* at 2.

⁸³ *Id.*

⁸⁴ *Id.* at 4.

⁸⁵ *Id.* at 4 (emphasis original).

⁸⁶ See generally *Cascos*, 319 S.W.3d at 227-28; see also Tex. Att'y Gen. Op. JM-1281 (1990) at 3-4.

**Hiring counsel to assist with redistricting voter precincts is within the
Fort Bend County Attorney's exclusive sphere of authority.**

We acknowledge that courts and Attorney General Opinions have long recognized that political subdivisions have common-law authority to employ counsel to provide legal representation in the absence of statutory limitations.⁸⁷ However, these opinions generally conclude that a commissioners court is not authorized to employ other counsel without the approval of the county attorney unless *expressly* authorized to do so by statute.⁸⁸ Commissioners Court cannot use its generalized *implied* power to replace, displace or usurp the duties of an elected official given exclusive powers to represent the County and Court in civil matters.⁸⁹ Further, a commissioners court may not take action which in effect abolishes a constitutional office absent constitutional authorization.⁹⁰ Any decision by Commissioners Court to employ outside counsel over the objection of the Fort Bend County Attorney interferes with the performance of the statutory duties within the sphere of authority of that Office, and is thus impermissible.⁹¹

Fort Bend County Commissioners and the County Attorney are all elected constitutional officers.⁹² A county commissioners court has only the powers that the Texas Constitution or a state statute confer on it.⁹³ Both commissioners court and the County Attorney have the implied authority to exercise the power necessary to accomplish their constitutional and statutory duties.⁹⁴

A commissioners court's primary function is to administer the county's business affairs.⁹⁵ However, a commissioners court is "not charged with the management and control of *all* of the [c]ounty's business affairs."⁹⁶ Rather, an elected county officer "occupies a sphere of authority . . . within which another officer may not interfere or usurp."⁹⁷

As courts have observed, "in Texas, elected county officials hold 'virtually absolute sway over the particular tasks or areas of responsibility entrusted to [them] by state statute.'"⁹⁸ This "sphere of authority" consists of those duties the Texas Constitution and statutes delegate to the officer.⁹⁹ A public officer's express statutory authority carries with it implied authority reasonably necessary to carry out the statute's purpose.¹⁰⁰ However, "a county

⁸⁷ See *City of Corsicana v. Babb*, 290 S.W. 736, 737 (Tex. Comm'n App. 1927, holding approved); *City Nat'l Bank v. Presidio Cnty.*, 26 S.W. 775, 777 (Tex. Civ. App. 1894, no writ); Tex. Att'y Gen. Op. No. JC-0047 (1999) at 2-3 (citing attorney general opinions).

⁸⁸ Tex. Att'y Gen. Op. Nos. JM-1281 (1990), JM-633 (1987).

⁸⁹ *Terrell v. Greene*, 31 S.W. 631 (Tex. 1895); *Aldrich v. Dallas Cnty.*, 167 S.W.2d 560 (Tex. Civ. App.—Dallas, 1942, writ dismissed).

⁹⁰ *Moncrief v. Gurley*, 609 S.W.2d 863 (Tex. Civ. App.—Fort Worth 1980, writ refused n.r.e.); *Cowell v. Ayers*, 220 S.W. 764 (Tex. 1920); Tex. Att'y Gen. Op. No. MW-59 (1979).

⁹¹ See generally *In Jones v. Veltman*, 171 S.W. 287, 290 (Tex. Civ. App.—San Antonio 1914, writ refused) (the court of civil appeals construed the county attorney's statutory duty to advise county officials to be all inclusive).

⁹² See TEX. CONST. art. V, § 18(b) (establishing a county commissioners court for each county); *id.* art. V, § 21 (establishing the office of county attorney).

⁹³ TEX. CONST. art. V, § 18(b); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003).

⁹⁴ *City of San Antonio*, 111 S.W.3d at 28.

⁹⁵ *Id.* at 27.

⁹⁶ *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961) (emphasis added).

⁹⁷ *Renken v. Harris Cnty.*, 808 S.W.2d 222, 226 (Tex. App.—Houston [14th Dist.] 1991, no writ) (citing *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961)).

⁹⁸ *Hooten v. Enriquez*, 863 S.W.2d 522, 531 (Tex. App.—El Paso 1993, no writ) (quoting *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980)).

⁹⁹ See *Renken*, 808 S.W.2d at 226; *Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App.—Austin 1997, pet. denied).

¹⁰⁰ See *Bullock v. Calvert*, 480 S.W.2d 367, 371-72 (Tex. 1972) (stating that "[i]t is quite true that every specific, permissible act of a public officer need not be expressed in a statute; we imply the authority to do those acts necessary to achieve the power or object expressly granted, because the Legislature must have intended to grant the constituent details within the larger commission").

commissioners court generally may not second-guess a county officer's use of county employees to accomplish the officer's constitutional or statutory duties”¹⁰¹

Prior opinions from the Attorney General’s Office have concluded that this *sphere of authority* of an elected county officer includes the “implied authority to set the working conditions for his or her own employees.”¹⁰² While a commissioners court, via the budgetary process, has “a considerable ability to shape the way in which an elected county official uses the resources of his office . . . it cannot make those decisions for him. It may, in effect, tell that official what resources it will place at his disposal. But it may not micro-manage his decisions as to the use of those resources.”¹⁰³

CONCLUSION

Under Fort Bend County’s statute creating and empowering its County Attorney, she, not Commissioners Court, has the exclusive power to advise, or, once the Court has authorized the money to do so, hire outside counsel to advise, Commissioners Court regarding civil matters before it. Any other outcome intrudes on the Fort Bend County Attorney’s constitutional and statutory sphere of authority, and as such is improper and contrary to the law.

Respectfully submitted,

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¹⁰¹ Tex. Att’y Gen. Op. No. JC-0239 (2000) at 5.

¹⁰² See generally Tex. Att’y Gen. Op. Nos. JC-0239 (2000) at 2; and JC-0131 (1999) at 2.

¹⁰³ Tex. Att’y Gen. Op. No. JC-0239 (2000) at 3.