

ADDITIONAL DUTIES AND RESPONSIBILITIES

**SEMINAR FOR NEWLY ELECTED COUNTY
JUDGES AND COMMISSIONERS**

**TEXAS A&M HOTEL AND CONFERENCE CENTER
COLLEGE STATION, TEXAS
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**THE VG YOUNG INSTITUTE OF COUNTY GOVERNMENT – A PART OF
TEXAS A&M AGRILIFE EXTENSION AND TEXAS A&M UNIVERSITY**

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THE BASICS – WHAT IS YOUR ROLE?

- **You serve as an elected member of a commissioners court of a Texas County.**
- **Your role involves duties and responsibilities relating to county governance matters – some are mandatory – some are discretionary.**
- **All must be considered with an understanding of the most basic principles of Texas county government: the rules of limited authority.**

THE BASICS: RULES OF LIMITED AUTHORITY

- The primary function of a commissioners court is to administer the business affairs of the county.
- Though created by the Texas Constitution, counties and commissioners courts are subject to the Legislature's regulation.
- The commissioners court is the county's governing body -- its powers and duties under the Texas statutes involve legislative, executive, administrative, and judicial functions.
- A commissioners court may exercise only those powers (1) expressly given by the Texas Constitution or Legislature, or (2) necessarily implied (i.e., indispensable) to perform those express powers.
- An individual court member has no authority to bind the county by that member's separate action. Valid court action only occurs through a recorded vote of the court at a public meeting lawfully called and conducted pursuant to the Texas Open Meetings Act.

***See State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020) (regarding implied powers); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28, 31 (Tex. 2003) (regarding limited authority); *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997) (regarding limited types of authority); *Canales v. Laughlin*, 147 Tex. 169, 214 S.W.2d 451, 455 (1948) (regarding limited authority and invalid action of single court member); Tex. Const. Art. V, Sec. 18; Tex. Loc. Gov't Code Ch. 81; Tex. Gov't Code Ch. 551.**

THE BASICS: SOME TOPICS OF **COMMISSIONERS COURT RESPONSIBILITY**

- **Financial Matters – including budget, tax assessment/collection, payment of expenses/claims, and related claim/litigation matters.**
- **Contract Matters – including contract analysis/review, authorization/approval, implementation, and related claim/litigation matters.**
- **Personnel Matters – including hiring/management of staff, compensation, benefits, discipline, employee/workplace policies, filling vacancies in elective/appointed office matters, and related claims/litigation matters.**
- **Public Building/Facility Matters – including physical plant and equipment management, acquisition/disposition of real property and public facilities, public financing issues, premises liability, and related claims/litigation matters.**
- **Public Road/Bridge Matters – including the design, laying-out or abandoning, construction, repair, maintenance, financing, and related claims/litigation matters.**
- **Land Regulation Matters – including subdivision/manufactured home rental community development, floodplain and stormwater management, sewer/septic system management, and related enforcement/claim/litigation matters.**
- **Business Regulation Matters – including sexually oriented businesses, massage parlors, game rooms, auto wrecking/salvage yards, flea markets, junkyards, recycling facilities, and related claim/litigation matters.**
- **Elections – including the holding of primary, general, and special elections.**

TOPIC: FINANCIAL

- **Power of County Auditor – Auditor approval is required before the commissioners court may lawfully vote to pay a bill, claim, or account. Tex. Loc. Gov't Code §§ 113.064-.065.**
- **Pauper Support – The commissioners court may provide support for county resident paupers who are unable to support themselves. Tex. Loc. Gov't Code § 81.027.**
- **Donations – The commissioners court may accept donations of labor, services, money, materials, or other property for use regarding a lawful county function. Tex. Loc. Gov't Code § 81.032; Tex. Transp. Code §§ 251.019, 252.214.**
- **Economic Development – To stimulate business and commercial activity in the county, the commissioners court may make loans and grants of public money, provide personnel and services of the county, engage in tax abatement, and accept contributions, gifts, or other resources to develop/administer authorized economic development programs; however, the county's donation of its real property is not authorized for economic development unless otherwise allowed by statute. Tex. Loc. Gov't Code §§ 381.001-.005; Tex. Tax Code Ch. 312.**
- **Budget Procedure – Budget adoption rules/procedure depend on a county's population. Tex. Loc. Gov't Code §§ 111.001-.111.014 (less than 225,000 population); 111.031-111.045 (more than 225,000 population), and 111.061-111.075 (alternate procedure/more than 125,000 population).**

TOPIC: BUSINESS REGULATION

- Sexually Oriented Businesses – The county may regulate a sexually oriented business (“SOB”) located in the unincorporated area. The type of SOB subject to regulation includes any commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. Tex. Loc. Gov’t Code §§ 243.001-243.011.
- Massage Parlors – The county may prohibit or otherwise regulate a massage parlor located in the unincorporated area. Tex. Loc. Gov’t Code §§ 234.101-.107.
- Game Rooms – The county may regulate a game room located in the unincorporated area. The type of game room subject to regulation includes any for profit business located in a building or place that contains six or more: (1) amusement redemption devices; or (2) electronic, electromechanical, or mechanical contrivances that, for consideration, afford a player the opportunity to obtain a prize or thing of value, the award of which is determined solely or partially by chance, regardless of whether the contrivance is designed, made, or adopted solely for bona fide amusement purposes. Tex. Loc. Gov’t Code §§ 234.131-.140.
- Certain Outdoor Business – The county may regulate certain outdoor businesses located in the unincorporated area by enacting mandatory “visual aesthetic standards” those businesses must follow. The outdoor businesses subject to county regulation are as follows: (1) automotive wrecking and salvage yards; (2) junk yards; (3) recycling businesses; (4) flea markets; (5) demolition businesses; and (6) outdoor resale businesses. Tex. Loc. Gov’t Code §§ 234.001-.005.

TOPIC: PERSONNEL

- **County Commissioner Vacancy** – If a county commissioner vacancy occurs, the county judge shall appoint a suitable resident from the precinct in which the vacancy exists to fill the vacancy until the next general election – subject to an alternative procedure which must occur in a county with more than 300,000 in population. Tex. Loc. Gov't Code § 87.042.
- **Other Vacancy** – The commissioner court may (by a majority vote of the court members who are present and voting) fill a vacancy in the office of county judge, county clerk, district and county clerk, sheriff, county attorney, county treasurer, county surveyor, county tax assessor-collector, justice of the peace, or constable – with the person appointed to hold office until the next general election. Tex. Loc. Gov't Code § 87.041.
- **County Fire Marshal** – To address the statutory problems of counties less than 250,000 in population (or counties not being adjacent to such populous counties) not being authorized to enact a fire code for the unincorporated area, a commissioners court may appoint a County Fire Marshal with broad fire and life safety hazard prevention and enforcement authority. Tex. Loc. Gov't Code §§ 233.061, 352.011-.023.
- **Joint Employment of County Auditor.** The courts of two or more counties (neither having a population of more than 3.3 million) may agree to jointly employ and compensate a county auditor. Tex. Loc. Gov't Code § 84.008.
- **Conflict of Interest Disclosure.** A commissioners court must ensure compliance by affected county officials and employees with applicable statutory conflict of interest disclosure requirements. Tex. Loc. Gov't Code Chs. 171, 176.
- **Salaries.** The court shall set the compensation, office, travel expenses, and other allowances for county and precinct officers and employees paid wholly from county funds -- with minimum salaries (see § 152.012 statute) and a salary grievance committee required for potential resolution of disputes. Tex. Loc. Gov't Code §§ 152.011-.018.

TOPIC: PERSONNEL

- **Purchasing Agent -- Procedures exist (dependent on county population) for a commissioners court to employ a purchasing agent, and in counties in which a county auditor exists, the auditor may be required to act as the county's purchasing agent. Tex. Loc. Gov't Code §§ 262.011-.012.**
- **Sheriff and Constable Fees – A commissioners court may set reasonable fees to be charged for the services of the county sheriff and constables, and the fees must: not be higher than necessary to pay the expenses incurred; be set before October 1st; and not be set more than once a year. Tex. Loc. Gov't Code §§ 118.131 (effective 1-1-2024).**
- **Open Government Compliance – The county, its officials, and employees MUST COMPLY with all applicable provisions of the Texas Open Meetings Act (“TOMA”) and the Texas Public Information Act (“TPIA”). Criminal penalties (including incarceration + fines) and civil enforcement remedies exist for those who violate these statutes. You must complete at least 1-hour of authorized training in each topic not later than the 90th day after you take office. Tex. Gov't Code §§ 551.005 (required TOMA training), 552.012 (required TPIA training).**
- **Removal from Office – You may be removed from office through a judgment in a civil removal lawsuit filed in your local district court for: incompetency; official misconduct; intoxication on or off duty caused by drinking an alcoholic beverage (unless pursuant to a medical prescription); or failure to execute or give a bond required by law. Tex. Loc. Gov't Code Ch. 87.**

TOPIC: CONTRACTS

- **Interlocal Governmental Cooperative Contracts** – Counties may make contracts with other governmental entities, but special/mandatory rules and procedures exist regarding those contracts. Tex. Gov't Code Ch. 791.
- **Multi-Year Contracts** – Typically, multi-year county contracts (including indemnity contracts) are prohibited by the Texas Constitution unless special procedures and contract language are used. *City of Bonham v. Southwest Sanitation, Inc.*, 871 S.W.2d 765, 767-69 (Tex. App. – Texarkana 1994, writ denied); *City-County Solid Waste Board v. Capital City Leasing, Inc.*, 813 S.W.2d 705, 707 (Tex. App. – Austin 1991, writ denied); Tex. Const. art. XI, §§ 5, 7; Tex. Loc. Gov't Code § 271.903 (regarding “current revenue” commitment recitations and procedure).
- **Texas Open Meetings Act Violation** – A governmental contract made in violation of the Texas Open Meetings Act (“TOMA,” being Chapter 551 of the Texas Gov't Code) is voidable through a successful litigation challenge. *Olympic Waste Services v. City of Grand Saline*, 204 S.W.3d 496, 504 (Tex. App. – Tyler 2006, no pet.) (no TOMA violation found); Tex. Gov't Code § 551.141.
- **Credit Card or Other Electronic Payments** -- Counties may permit the credit card or other electronic payment of fees, fines, or other charges; however, the required equipment and bank account procedures likely will involve out of state vendors – and they likely will insist on contracts with the county that include their jurisdiction’s “choice of law,” “venue,” or “trial” waiver provisions. Tex. Local Gov't Code §§ 132.001-.007.
- **Withholding of Payments to Persons Indebted to County** – A County may withhold payment it owes to a person who is indebted to the county, the State of Texas, or a salary fund. Tex. Loc. Gov't Code §§ 154.025, 154.045.

TOPIC: CONTRACTS

- **Governmental Immunity -- Under the protective doctrine of governmental immunity under Texas law, a county typically remains immune from suit regarding an alleged default of a goods or services contract with a vendor. The Texas Legislature did not include a county as a “local governmental entity” when it enacted a specific statutory waiver of immunity from suit regarding goods or services contracts. Tex. Loc. Gov’t Code §§ 271.151-.160.**
- **Immunity Waiver -- Under Texas law regarding a county contract involving engineering, architectural, or construction services provided to a county – or involving goods related to such services – the Texas Legislature has by statute waived the governmental immunity protection regarding a county. A county therefore is not immune from suit in that situation and, given sufficient evidence in litigation, a judgment of liability can be obtained against a county for a breach of that type of contract. Tex. Loc. Gov’t Code § 262.007.**
- **Competitive Bidding – The competitive bidding requirements of the Texas County Purchasing Act apply to “goods or services” contracts -- but discretionary exemptions may apply if the Commissioners Court by order grants an exemption. Tex. Loc. Gov’t Code §§ 262.021-.037.**
- **Special RFQ Statutes – Special statutes exist which prohibit the typical county bidding procedure of Chapter 262, Texas Local Government Code – and these special statutes apply to (1) public works projects and (2) professional engagements involving the hiring of architects, engineers, and certain other professionals. These statutes require special Request for Qualifications (or RFQ) procedure, public notices, and a special delivery system analysis and related requirements for the county project made the basis of the engagement of the architect, engineer or other professional. Tex. Gov’t Code Chs. 2254, 2269.**

TOPIC: CONTRACTS

Compliance with applicable Special Disclosure statutes:

- **Tex. Gov't Code Ch. 2264 (regarding a contract in which the county awards a public subsidy, disclosure requirements regarding county remedies [i.e., the return of the subsidy, plus interest] should the vendor use undocumented labor and be convicted of a federal criminal offense regarding that labor use);**
- **Tex. Gov't Code Ch. 2271 (requiring disclosures that the vendor does not boycott Israel and will not do so during the contract);**
- **Tex. Gov't Code Ch. 2274 (requiring disclosures that the vendor does boycott firearms or firearm companies and will not do so during the contract);**
- **Tex. Gov't Code Ch. 2276 (requiring disclosures that the vendor does not boycott energy companies and will not do so during the contract);**
- **Tex. Loc. Gov't Code Chs. 171 (disclosure of county personnel conflicts of interest) and 176 (disclosure of vendor and county personnel conflicts of interests); and**
- **Tex. Gov't Code § 2252.908 (Form 1295/Texas Ethics Commission -- Certificate of Interested Parties procedure required).**

TOPIC: LAND RELATED MATTERS & REGULATION

Certain key statutes exist regarding land use regulation or acquisition/disposition:

- **Tex. Loc. Gov't Code Ch. 232 (subdivisions and MHRC regulation)**
- **Tex. Loc. Gov't Code Ch. 242 (subdivision regulation in the ETJ);**
- **Tex. Gov't Code Ch. 2007 (takings impact assessment requirements);**
- **Tex. Loc. Gov't Code Ch. 245 (issuance of local permits – “rules of the game” statute);**
- **Tex. Water Code Ch. 16, Subchs. I, J (mandatory floodplain management);**
- **Tex. Loc. Gov't Code §§ 240.901, 240.905 (increased floodplain management – certain counties);**
- **Tex. Loc. Gov't Code § 272.001 (land disposition -- default statute);**
- **Tex. Loc. Gov't Code § 263.001 (land disposition – public auction);**
- **Tex. Loc. Gov't Code § 263.007 (land disposition – sealed bid procedure);**
- **Tex. Loc. Gov't Code § 263.008 (land disposition – real estate broker procedure);**
- **Tex. Loc. Gov't Code §§ 241.001-.903, 263.051 (county airport land and regulation);**
- **Tex. Transp. Code Ch. 22 (county airport land and operations);**
- **Tex. Loc. Gov't Code §§ 261.001-.003 (eminent domain, using Tex. Prop. Code Ch. 21 procedure);**
- **Tex. Health and Safety Code Ch. 366 (wastewater management).**

TOPIC: LAND RELATED MATTERS & REGULATION

Certain key statutes exist regarding county road damage and ROW matters:

- **Tex. Loc. Gov't Code § 240.907 (\$500.00 fee for cutting county road);**
- **Tex. Nat. Res. Code § 111.020 (common carrier/petroleum – ROW use);**
- **Tex. Util. Code § 181.005 (gas corporation – ROW use);**
- **Tex. Util. Code §§ 181.022, 181.024-.025 (gas utility – ROW use);**
- **Tex. Util. Code §§ 181.042, 181.044, 181.046 (electric utility – ROW use);**
- **Tex. Util. Code § 181.082 (telephone and telegraph corporation – ROW use);**
- **Tex. Util. Code §§ 181.101-.104 (community antenna and cable television utilities – ROW use);**
- **Tex. Water Code § 49.220 (water districts and water supply corporations -- ROW use); and**
- **Tex. Loc. Gov't Code § 552.104 (water supply corporation or municipality – ROW use).**

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