

# THE LIMITS OF COMMISSIONER COURT AUTHORITY

## Can You Tell Them What To Do?

64th Annual V.G. Young Institute  
School for County Commissioners Courts

PRESENTED BY:

**Philip B. Arnold, Partner**

Bickerstaff Heath Delgado Acosta LLP

512.472.8021

parnold@bickerstaff.com

[www.bickerstaff.com](http://www.bickerstaff.com)

Austin | El Paso | Houston | McAllen



# WHAT GIVES YOU THE RIGHT...?

- ◆ The Texas Constitution establishes the Commissioners Court as the county's principal governing body.
- ◆ The Commissioners Court has statutory authority to oversee the fiscal operation of the county by approving and authorizing a budget.

# THE BUDGET

- ◆ The budget is the biggest source of Commissioners Court authority.
- ◆ The Commissioners Court has broad discretion in making budgetary decisions.
  - This is a legislative function, which means the Commissioners Court has immunity from liability for most budgetary decisions.
- ◆ When properly made, budget decisions are not subject to judicial review because of the separation of powers doctrine.



# LEGAL CHALLENGES TO COMMISSIONERS COURT ACTIONS

- ◆ The District Courts have jurisdiction to hear challenges to Commissioners Court orders.
- ◆ However, the District Court cannot substitute its own judgment for that of the Commissioners Court and can only remand the matter to the Commissioners Court for resolution.
- ◆ Commissioners Court orders can only be challenged if a plaintiff can show the court clearly abused its discretion or that it did not have the authority to act in the first place.
  - Also, if the members of the court act *ultra vires*
    - More on this later



# CORE FUNCTIONS

- ◆ The Commissioners Court has discretion regarding the organization of county functions, as long as the **core functions** of constitutional or statutory officers are not invaded.
- ◆ What does that mean?
  - It depends on the office.
- ◆ Let's take a look at a few examples.

# THE COUNTY AUDITOR

- ◆ The County Auditor is appointed by the District Court judge(s).
- ◆ They are independent and powerful if they want to be.
- ◆ The District Court judge(s) approve the budget for the Auditor's staff, which **shall** be adopted by the Commissioners Court.
- ◆ The Auditor purchases their own supplies at county expense.
- ◆ Can you tell a County Auditor what to do?
  - No. A County Auditor answers, for the most part, only to the District Court judges.



# DISTRICT COURT JUDGES

- ◆ District Court Judges' salaries are set by the Legislature.
- ◆ But court operating costs and staff salaries are (usually) set by the Commissioners Court.
- ◆ The District Courts can order the Commissioners Court to set “reasonable” salaries, but they cannot order the Commissioners Court to set an exact salary amount.
- ◆ But **beware!!!**
  - Some District Courts have specific statutes that provide a specific number and type of staff the District Court must have.
    - For example, Local Gov. Code Sec. 53.001(c): Each criminal district court in Tarrant County must have at least three bailiffs assigned regularly to the court.



# COUNTY/DISTRICT ATTORNEY

- ◆ The County Attorney's **core functions** are found in the Texas Constitution ("shall represent the State in all cases in the District and inferior courts in their respective counties").
  - Also in Government Code Chapter 45, which has specific functions for certain county attorneys, and Chapter 43, for District Attorneys.
- ◆ The County Attorney can hire staff, prosecutors, and investigators and "fix" salaries. They may also have special statutes for staff and funding.
- ◆ However, the Commissioners Court "approves" the County Attorney's budget and can choose to fund certain positions, so long as the County Attorney can reasonably perform their **core functions**.



# COUNTY/DISTRICT ATTORNEY, cont.

- ◆ In reality, the County Attorney sends a proposed budget to the Commissioners Court for approval.
- ◆ The Commissioners Court can approve or reject the proposed budget.
- ◆ This can go back and forth until a budget is finally approved.
- ◆ The key is that the budget cannot arbitrarily be rejected by the Commissioners Court (i.e., you must have some reason for rejecting the proposed budget).
- ◆ BUT, the County Attorney/DA has a lot of control over hot check and forfeiture funds.



# COUNTY TREASURER

- ◆ The County Treasurer's core functions are set by the Legislature:
  - chief custodian of county funds.
  - keeps an account of the receipts and expenditures.
  - receive and disburse all money belonging to the county as the Commissioners Court directs.
- ◆ Aside from these core functions, the Commissioners Court can designate another county employee to perform certain functions, such as preparing the payroll.
- ◆ The Commissioners Court sets the Treasurer's salary and budget "that enables the county treasurer to perform the duties of office."
- ◆ The Commissioners Court can limit the number of employees, but cannot directly hire employees for the Treasurer.



# COUNTY CLERK

- ◆ The County Clerk's core functions are established by the Legislature:
  - Keep the county records.
- ◆ The County Clerk has the exclusive authority to dictate how the records are kept.
- ◆ The Commissioners Court cannot tell the County Clerk (or any other elected official) **how** to do their job.
- ◆ **But**, the Commissioners Court can set the number of employees and budget for the County Clerk.

# COUNTY SHERIFF

- ◆ The County Sheriff's core functions are established by the Legislature:
  - chief law enforcement officer for the county, responsible for operating the county jails, investigating crimes, enforcing judgments, and control of the courthouse (subject to Commissioners Court regulations).
- ◆ Salary and budget are set by the Commissioners Court.
- ◆ Can hire jail guards, with Commissioners Court approval.
- ◆ Can hire deputies and reserve deputies, with Commissioners Court approval.



# WHAT ABOUT *ULTRA VIRES* ACTS?

- ◆ Good question!
- ◆ While the Commissioners Court has the discretion to perform certain acts (i.e., setting the budget), it does not have the discretion to do things that it does not have the authority to control.
- ◆ That seems obvious, so let me explain.

# WHAT IS AN *ULTRA VIRES* ACT?

- ◆ Literally translated, it means “beyond the powers.”
- ◆ An *ultra vires* act is an act that exceeds the authority or discretion of the actor.
  - In the case of a government official, immunity does not apply because the official acted on their own and not within the scope of their authority.
  - An *ultra vires* claim is not an exception to sovereign and governmental immunity.
  - Rather, it is a claim that does not implicate immunity in the first instance.

# GOVERNMENTAL IMMUNITY

- ◆ Sovereign or governmental immunity typically protects a governmental body from suit, unless expressly waived.
  - For example, the Texas Tort Claims Act waives immunity for certain negligence claims.
- ◆ However, because an *ultra vires* claim is based on the premise that it was not the government that acted, but rather an individual who did not have the authority to act, immunity does not apply.

# HOW DOES IT WORK?

## A claim must:

- (1) be brought against a government official in their official capacity—not against the governmental entity;
- (2) prove that the officer acted without legal authority or failed to perform a purely ministerial act; and
- (3) seek prospective injunctive relief, as measured from the date of injunction.

# ULTRA VIRES IS NOT ABUSE OF DISCRETION

- ◆ Abuse of discretion means that you acted unreasonably or arbitrarily in taking some action.
  - For example, if the Commissioners Court votes to reduce the County Clerk's budget to \$100, without any basis, that is an abuse of discretion.
- ◆ *Ultra Vires* means you did not have the authority or discretion to begin with.
  - For example, the Sheriff forcefully closes and locks the doors to the Auditor's office. The Sheriff has no authority to do this, outside of an emergency.



# KEY TAKEAWAYS

- ◆ The Commissioners Court sets the salaries and budgets for most county employees.
  - Except judges, county/district attorneys, and the auditor.
- ◆ Unless a specific statute says otherwise, the Commissioners Court determines how many employees an elected official can hire and their salaries.
  - But there are a lot of specific statutes, so be mindful.
- ◆ The Commissioners Court cannot tell another elected official how to do their job.
  - This includes office hours.

# QUESTIONS?

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