



RQ-0162-jc

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Office of the Attorney General
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December 8, 1999

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Opinion Committee

Honorable John Cornyn
Texas Attorney General
Administrative Office
P.O. Box 12548
Austin, Texas 78711

FILE # ML-41153-99

I.D. # 41153

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Liz Robinson

Re: Electronic Transfer of Tax Revenues to County Fund at County Depository by County Officers

Dear Attorney General Cornyn:

I respectfully request that you issue an opinion in answer of the following question:

If tax revenues received by the county tax assessor-collector are deposited in the tax assessor-collector's account with the county depository preceding transfer of the funds to the proper county fund at the county depository, which county officer is the proper party to initiate the electronic transfer of funds?

Section 113.021(a) of the Texas Local Government Code requires county officers to deposit all funds belonging to the county with the county treasurer. However, the county tax assessor-collector is required to deposit the money in accordance with the procedures prescribed by the Tax Code or other laws. Section 116.113(b) of the Texas Gov't Code (formerly Texas Revised Civil Statutes Ann. art.1657) requires the county tax assessor-collector to immediately deposit in the county depository taxes collected on behalf of the state, the county, or a district or municipal subdivision of the county. As the county tax assessor-collector is statutorily responsible for the funds deposited with the county depository pending transfer of those funds to the taxing units for which the funds were collected, the tax assessor-collector would have sole authority to transfer tax revenues from the tax assessor-collector's account with the county depository to a county fund. Tex. Tax Code Ann. §31.10 (Vernon 1992).

Texas Attorney General Opinions H-183 and H-1181 issued on December 18, 1973, and June 12, 1978, respectively, recognize that a county tax assessor-collector is required to subsequently transfer funds from the tax assessor-collector's account with the county depository to the county treasurer and the funds are to be accompanied by a deposit warrant issued in triplicate. The deposit

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warrant authorizes the county treasurer to receive the amount stated in the warrant. Tex. Gov't Code Ann. §113.023(a).

Since Section 2256.051 of the Texas Government Code allows a local government to use electronic means to transfer funds collected or controlled by the local government, it appears the county tax assessor-collector would have authority to electronically transfer tax revenues to other taxing units as well as to move county tax revenues from the tax assessor-collector's account with the county depository to the proper county fund at the county depository. However, the tax assessor-collector must comply with the statutory requirement of delivering the deposit warrant to the county treasurer. Tex. Loc. Gov't Code Ann. §113.023(a). Likewise, the county treasurer may be given authority by the county tax assessor-collector to electronically transfer funds from the tax assessor-collector's account to the proper county fund at the county depository upon delivery of the deposit warrant by the tax assessor-collector to the county treasurer. The delivery of the deposit warrant to the county treasurer acts as an implied delegation of authority by the county tax assessor-collector for the county treasurer to initiate the electronic transfer of funds. *Id.*

This office, in its analysis of Section 2256.051 of the Texas Government Code, has interpreted the statute as granting a county tax assessor-collector authority to electronically transfer tax revenues. This analysis is based, in part, on Attorney General Letter Opinion 96-023, issued on February 29, 1996, which reflects that the repeal of Section 113.007 of the Texas Local Government Code granting a county tax assessor-collector the authority to electronically transfer taxes collected on behalf of the county was a result of the enactment of Chapter 2256 Texas Government Code, being the Public Funds Investment Act. However this office recognizes that a county has only those powers conferred upon it specifically or by necessary implication. Canales v. Laughlin, 214 S.W.2d 451 (Tex. 1948). Accordingly, Section 2256.051 of the Texas Government Code may be strictly interpreted to allow a local government, being a county acting through the actions of its governing body, to use electronic means to transfer funds and not a county officer, such as a county tax assessor-collector, performing the statutory duties required of his office.

I respectfully request that your examination of this issue take into account the language of the statutes and the prior Attorney General Opinions which are cited herein to conclude that tax revenues in the county tax assessor-collector's account may be electronically transferred to the proper county fund at the county depository by the county tax assessor-collector or the county treasurer if the procedures and authorizations set-out herein are followed by those county officers.

Sincerely,



SUSAN D. REED

Bexar County Criminal District Attorney
Bexar County, Texas

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