



Playing in the Piggpen: County and City Partnership Opportunities

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County Government Structure

Countywide Elected Officials

- County Judge
- District Judge
- County Court at Law Judge
- Probate Court Judge
- Sheriff
- Criminal District Attorney
- District Attorney
- County Attorney
- County Clerk
- District Clerk
- Tax Assessor-Collector
- County Treasurer
- County Surveyor

Precinct Elected Officials

- County Commissioners
- Justice of the Peace
- Constable

Appointed Officials

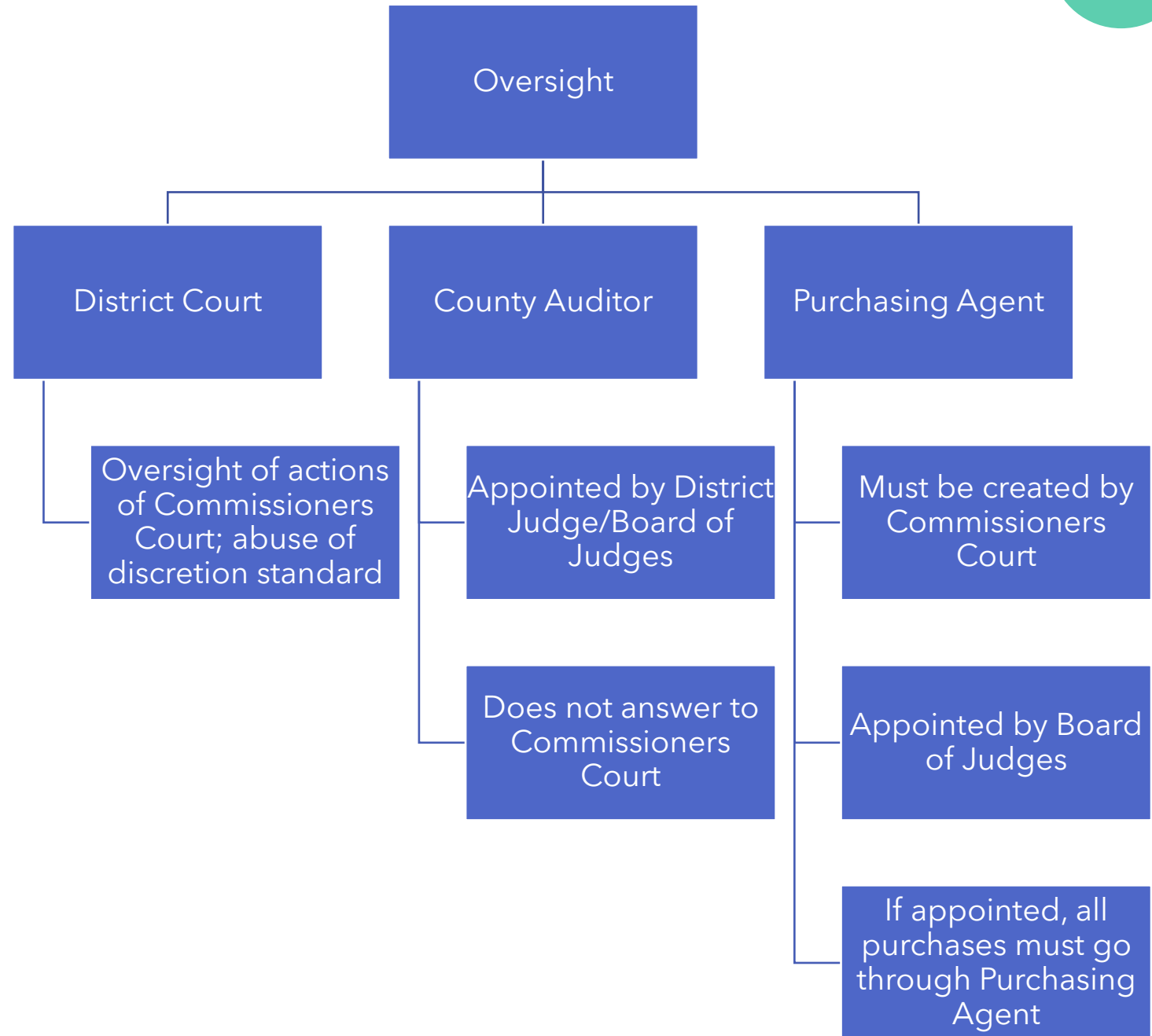
- County Auditor
- Purchasing Agent
- Fire Marshal

County Structure Cont.

Commissioners Court is a Judicial/Legislative Body

- County is a corporate and political body. Tex. Loc. Gov't Code Ann. § 71.001
- County Judge is Presiding Officer of Commissioners Court (if present)
- "Commissioners Court shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State." Tex. Const. Art. V, § 18(b).
 - "This provision has been interpreted to mean that although a commissioners court may exercise broad discretion in conducting county business, the legal basis for any action taken must be grounded ultimately in the constitution or statutes." *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993).
- Court exercises authority through budget and orders
 - Once funds are budgeted to County Elected Official's budget, Court has little control over how they are spent; "**Sphere of Authority**"

County Structure Cont.



County Powers & Authority

Texas Constitution sets limits; Legislature passes laws authorizing County's authority within confines of Texas Constitution.

"Commissioners Courts have only those powers expressly granted by the Constitution or by statute and those necessarily implied." *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003).

"While a Commissioners Court has "broad discretion in conducting county business, the legal basis for any action taken must be grounded ultimately in the constitution or statutes." *Guynes v. Galveston Cty.*, 861S.W.2d861, 863 (Tex. 1993).

County's expenditure of public funds is controlled by the Constitution, "the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever." Tex. Const. art. III, § 52(a).

"Article III, section 52(a)'s purpose is to "prevent the gratuitous grant of [public] funds to any individual, corporation, or purpose. whatsoever." *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928).

"Spending public funds for a legitimate public purpose to obtain a clear public benefit, , however, is not an unconstitutional grant of public funds." *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995)

Specific County Powers

Disasters: Natural; Man-made; and Public Health Emergencies

Indigent Health Care: "A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents." Tex. Health & Safety Code Ann. 61.0221.

Support of Indigents: Child Welfare and Pauper Burials

Regulation of Subdivisions - Platting and Flood Control

Roads and Bridges - Commissioners Court may exercise authority of **all** County roads and bridges

Fire Protection

Animal Control

- Estrays and assisting State in Burying Infected livestock
- Rabies Authority

Agriculture Exhibits, Parks, Libraries, Museums, and Cultural Resources

Economic Development



Statutory Sources of County Authority

1. **Statutory Authority**

- Agriculture Code
- Family Code
- Government Code
- Health & Safety Code
- Local Government Code
- Parks & Wildlife Code
- **Tax Code**
- **Transportation Code**
- **Water Code**

2. **Implied Authority** - Authority to carry out Constitutional and Statutory functions

County's Contracting Authority

County may contract for any public purpose the Constitution and statutes authorize

Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission - Texas Supreme Court articulated a three-part test by which to determine whether an expenditure or transfer of public funds satisfies article III, section 52(a). The test requires that

- the predominant purpose of the expenditure is to accomplish a public purpose, not to benefit private parties;
- the public entity must retain sufficient control over the expenditure to ensure that the public purpose is accomplished; and
- the public entity receives a return benefit. (The return benefit received by the county need not be monetary, but could instead be the accomplishment of the county's public purpose.)
- The determination whether a particular expenditure satisfies the three-part test is for the political subdivision to make in the first instance, subject to judicial review for abuse of discretion.

Counties have the authority to contract in the same manner as private parties and are liable for breaches of their agreements.

- Such contracts must be entered into by the Commissioners Court acting as a body, or through its authorized agent;
- No member of the Commissioners Court individually, including the County Judge, and no other county official has the authority to contract for the county.
- The Commissioners Court may, however, ratify an otherwise unenforceable contract executed individually by a county official.

Tex. Loc. Gov't Code Ann. § 262.001. Appointment of Agent to Make Contracts. "(a) The commissioners court of a county may appoint an agent to make a contract on behalf of the county for: (3) **any other purpose authorized by law.**"

- A contract or other act of an agent appointed under this section that is properly executed on behalf of the county and is within the agent's authority binds the county to the contract for all purposes.

***Commissioners Court cannot bind a future Commissioners Court. Funds dedicated in multi-year contracts must be budgeted each year. Contract needs to include non-appropriations clause.**

Contracting with other Governmental Entities

Interlocal Cooperation Act, Chapter 791, Texas Government Code

“Governmental functions and services” means all or part of a function or service in any of the following areas:

- Police protection and detention services;
- Fire protection;
- Streets, roads, and drainage;
- Public health and welfare;
- Parks and recreation;
- Library and museum services;
- Records center services;
- Waste disposal;
- Planning;
- Engineering;
- Administrative functions;
- Public funds investment;
- Comprehensive health care and hospital services; or
- Other governmental functions in which the contracting parties are mutually interested.

Interlocal
Contract
Requirements
Tex. Gov't
Code Ann. §
791.011

- (d) An interlocal contract must:
 - (1) be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body;
 - (2) state the purpose, terms, rights, and duties of the contracting parties; and
 - (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.
- (e) Payments under contract must fairly compensate each party.
- (f) Contract may be renewed.
- (i) Notwithstanding Subsection (d), an interlocal contract may have a specified term of years.

Approval Requirements for Counties

Tex. Gov't Code Ann. § 791.014

- (a) Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal contract, the commissioners court of a county must give specific written approval for the project.
- (b) The approval must:
 - (1) be given in a document other than the interlocal contract;
 - (2) describe the type of project to be undertaken; and
 - (3) identify the project's location.
- (c) The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.
- (d) A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:
 - (1) the county begins the project without the approval required by this section; and
 - (2) the local government makes the payment before the project is begun by the county.






Common Projects - Roads

Tex. Gov't Code Ann. § 791.032. Construction, Improvement, and Repair of Streets in Municipalities.

“With the approval of the governing body of a municipality, a local government may enter into an interlocal contract with the municipality to finance the construction, improvement, maintenance, or repair of streets or alleys in the municipality, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways

Tex. Transp. Code Ann. § 251.015. Assisting Other Governmental Entity.

The commissioners court of a county may use county road equipment, construction equipment, including trucks, and employees necessary to operate the equipment to assist another governmental entity on a project if:

- (1) the cost does not exceed \$15,000;
 - (2) the use of the equipment or employees does not interfere with the county's work schedule; and
 - (3) the county pays only the costs that the county would pay if the county did not assist the governmental entity.
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Common Projects – Roads (Cont.)

Tex. Transp. Code Ann. § 251.012. County Authority in Municipality.

- (a) With the approval of the governing body of a municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, including the provision of:
 - (1) necessary roadbed preparation or material;
 - (2) paving or other hard covering of the street or alley;
 - (3) curbs, gutters, bridges, or drainage facilities; or
 - (4) any construction, improvement, maintenance, or repair allowed under Section 791.032, Government Code, if the commissioners court finds that the county will receive benefits as a result of the work on the street or alley.
- (b) County work authorized by this section may be done or financed:
 - (1) by the county through the use of county equipment;
 - (2) by an independent contractor with whom the county has contracted;
 - (3) by the county as an independent contractor with the municipality; or
 - (4) by the municipality, with the municipality to be reimbursed by the county.
- (c) A county acting under this section has, to the extent practicable, the same powers and duties relating to imposing assessments for the construction, improvement, maintenance, or repair as the municipality would have if the municipality were to finance and undertake that activity.
- (d) A county acting under Subsection (b) may not spend bond proceeds for the construction of a new road in a municipality unless the construction is specifically authorized in the election approving the issuance of the bonds, regardless of the source of the money used to acquire the equipment used to construct the road.
- (e) The authority granted by this section is in addition to the authority of a county provided by a local road law.





Parking – Municipalities: Local Government Code, Chapter 601

- Parking Facilities: public lot, garage, parking terminal, or other structure or accommodation for the parking of motor vehicles off the street or highway, and includes equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in the parking of vehicles.
- Municipality Creates Parking Authority “City of _____ Parking Authority”
- An authority may:
 - (1) construct, improve, maintain, repair, or operate a project;
 - (2) conduct research necessary for efficient operation of a parking facility;
 - (3) establish a permanent coordinated system of parking facilities;
 - (4) plan, design, locate, hold, construct, improve, maintain, operate, own, or lease land and facilities for the parking of vehicles;
- An authority may collect charges for the use of its facility at reasonable rates determined by the authority for the purpose of paying the expenses and obligations of the authority.

Parking – Counties: Local Government Code, Chapter 615

- **615.001. Parking On County Property.**

- (a) The commissioners court of a county by order may regulate the parking of vehicles on property owned or leased by the county.
- (b) The commissioners court may adopt rules under this section to:
 - (1) limit the use of parking spaces to certain vehicles or types of vehicles;
 - (2) limit the time that a vehicle may be parked in a specific space or area; or
 - (3) prohibit the parking of vehicles in certain areas.

- **615.002. Regulation of Courthouse Parking Lots In Certain Counties.**

- (a) This section applies to a county with a population of:
 - 1) 14,800 to 15,000;
 - 2) 19,900 to 20,000;
 - 3) 21,300 to 21,500;
 - 4) 57,800 to 57,900;
 - 5) 36,000 to 36,500; or
 - 6) 234,000 or more.
- (b) The commissioners court of the county may purchase necessary equipment and may make and enforce rules for parking in a county-owned or county-leased parking lot in, under, adjacent to, or near the county courthouse.
- (c) The commissioners court and the governing body of the municipality in which the courthouse is located may contract for enforcement of the rules.
- (d) The sheriff's department of the county may enforce the rules.
- (e) A person commits an offense if the person violates a parking rule adopted under this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$1 nor more than \$20.

- **615.003. Parking Lots and Parking Garages In Certain Counties**

- (a) A county with a population of 150,000 or more may construct, enlarge, equip, and operate a parking lot or parking garage adjacent to or near the county courthouse.
- (b) The county may lease the parking lot or parking garage to a person on terms considered appropriate by the commissioners court of the county.
- (c) To exercise a power granted by this section, the commissioners court of the county may appropriate and spend money from the general fund or the permanent improvement fund of the county

Parking – Counties Cont.



- Conflict between 615.002 and 615.003
- Kendall County asked TX. Legislature to amend 615.003
- New law: S.B. 2878 – Section 7.30. Section 615.003(a), Local Government Code, is amended to read as follows: A county [~~with a population of 150,000 or more~~] may construct, enlarge, equip, and operate a parking lot or parking garage adjacent to or near the county courthouse.

Purpose: Should the County want to build a parking garage in the future, the County is not prohibited by statute. The County can also partner with the City to construct the parking garage, and the garage can be jointly maintained and operated.

City and County both benefit from the project.

Flood Control – Local Government Code

§ 561.002. Joint Project

- (a) The commissioners court of a county may contract with a governmental unit, including a county, municipality, or other political subdivision, to jointly acquire a right-of-way or to jointly construct or maintain a canal, drain, levee, or other improvement for the purpose of providing flood control or drainage as it relates to flood control or for the purpose of providing and maintaining necessary outlets.
- (c) The contracting entities may provide by contract, on mutually agreeable terms, that they shall jointly maintain the project or that one of them shall maintain the project under its exclusive direction and control while the other entity contributes to the expense of maintenance.

§ 561.003. Plans and Programs.

- The commissioners court of a county may contract with the federal soil conservation service, a state soil conservation district, the state extension service, a conservation and reclamation district, a drainage district, a water control and improvement district, a navigation district, a flood control district, a levee improvement district, or a municipality as provided by Section 256.006, Transportation Code, for the purpose of carrying out plans and programs for flood control and soil conservation. The contract may provide that payments due under the contract are payable from and secured by a pledge of any revenue of the county or the county's ad valorem taxes or a combination of those revenues and taxes.

§ 561.004. Survey By County With Tax Valuation Of \$290 Million Or More

- In a county with a tax valuation of \$290 million or more according to the most recently approved county tax roll, the commissioners court of the county may spend not more than \$15,000 in any one year out of the general fund of the county to make a preliminary engineering survey relating to drainage, reclamation, conservation, levee improvement, or water control.

Flood Control Projects - Soil & Water Conservation Districts

Tex. Agric. Code Ann. § 201.152.
Contracts For Flood Control And
Drainage.

- (a) A county, city, water control and improvement district, drainage district, or other political subdivision may contract with a conservation district for the joint acquisition of rights-of-way or for joint construction or maintenance of dams, flood retention structures, canals, drains, levees, or other improvements for flood control and drainage related to flood control or for making the necessary outlets and maintaining them. The contracts and agreements may contain terms, provisions, and details that the governing bodies of the respective political subdivisions determine to be necessary under the facts and circumstances.
- (b) A county, city, water control and improvement district, drainage district, or other political subdivision may contribute funds to a conservation district for the construction or maintenance of canals, dams, flood retention structures, drains, levees, and other improvements for flood control and drainage related to flood control or for making the necessary outlets and maintaining them. The political subdivision may contribute the funds regardless of whether title to the property is vested in the State of Texas or a conservation district if the work to be accomplished is for the mutual benefit of the donor and the agency or political subdivision having title to the property on which the improvements are located.
- (c) A county, city, water control and improvement district, drainage district, or other political subdivision may contribute funds to a conservation district for a specific purpose authorized by this chapter or for use in the exercise of any power or duty conferred on a conservation district by this chapter that will benefit the contributing district or political subdivision. All or part of any funds contributed by a county, city, water control and improvement district, drainage district, or other political subdivision to a conservation district may be used by the conservation district to match funds received from the state.

Miscellaneous Opportunities

Rainwater Harvesting

- Property Tax Exemptions and Rebates
- Xeriscaping Regulations

Fire Ants

Soil Erosion Control

Weather Modification Projects

Airports

Water Supply

Flood Control Projects

Building for Canneries for Unemployment Relief

Widowed Mothers



Questions

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