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CONFIDENTIAL/ATTORNEY CLIENT PRIVILEGE

February 13, 2015

*VIA FIRST CLASS MAIL*

Mr. Bill Bilyeu  
Collin County Administrator  
Collin County Administration Building  
2300 Bloomdale Rd.  
Suite 4192  
McKinney, Texas 75071

**RE:** Local Government Code 157.903; Commissioners Authority to  
Indemnify Elected And Appointed County Officers

Dear Bill:

A couple of weeks ago, I answered a few questions from Stacey Kemp and Jeff May regarding losses of County funds and the associated liability of county officials and their employees for such losses. Their last question pertained to liability of county employees who are found to have damaged county vehicles covered under the county self-insurance fund. They asked whether the indemnity provisions afforded by section 157.903 of the Local Government Code require approval of such indemnification by the Commissioners Court.

Their email and my response are attached. I had suggested that it may be a best practice to present such matters to the Commissioners Court. At the same time, I promised to research the issue further, as I was concerned about the filing of numerous indemnity requests to the Commissioners Court.

The statute provides as follows:

*Sec. 157.903. AUTHORITY TO INDEMNIFY ELECTED AND APPOINTED COUNTY OFFICERS. The commissioners court of a county by order may provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties if the loss was not the result of the officer's negligence or criminal action.*

The Texas Legislature enacted this provision in 1989.

The Bill Analysis provides the rationale for the bill in the Background section, stating as follows:

*“Presently, a county officer may be held personally liable for the loss of funds while in his possession in the performance of official duties. For instance, a justice of the peace may be robbed in route to the bank to deposit funds. Under current law he would be held personally liable for the funds.”*

Bill Analysis H.B. 2612/CSHB 2612, 71st Reg. Session.

You see that the primary focus of the statute is to allow for indemnity of county officers for losses of county funds, although the statute also speaks to indemnity for damage to personal property.

Unfortunately, I could find no Texas cases or Attorney General Opinions speaking to the issue of indemnity request pertaining to damage to County property. The two Attorney General opinions I provided to Stacey and Jeff (attached to my email) were responsive to their questions regarding losses of county funds, not damage to County property.

However, the bill is permissive, stating that the Commissioners Court *may* provide for indemnity. In addition, section 157.043 of the Local Government Code expressly allows the Commissioners Court to procure liability insurance coverage, or coverage from a governmental pool or self-insurance for a county officer or employee, *“insuring he officer or employee from liability for losses arising from the performance of official duties by the officer or duties of employment by the employee. . . .”*

The statute provides as follows:

*Sec. 157.043. General Liability Insurance for County Officials*

*(a) In this section, "county officer or employee" includes a county or precinct peace officer, the district attorney, or an officer of a special purpose district located in whole or in part in the county.*

*(b) The commissioners court of a county may obtain insurance or similar coverage from a governmental pool operating under Chapter 119 or a self-insurance fund or risk retention group operating under Chapter 2259, Government Code, for a county officer or employee, insuring the officer or employee from liability for losses arising from the performance of official duties by the officer or duties of employment by the employee, including losses resulting from errors or omissions of the officer or employee or from crime, dishonesty, or theft.*

*(c) An insurance policy purchased under Subsection (b) may be a blanket insurance policy covering some or all county officers or employees. The commissioners court may*

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*self-insure for part or all of any deductible required under a blanket insurance policy. A blanket insurance policy purchased under this subsection may be used to satisfy any requirement for insurance required of a county officer by any law.*

*(d) This section is cumulative of other statutory, common law, or constitutional provisions.*

That is what the Commissioners Court has done by virtue of its self-insurance fund.

I could not find any Texas cases or Attorney General opinions interpreting section 157.043. More importantly, none of my research has resulted in any authority holding county officials or employees strictly liable for damage to County property; rather, all of the authorities I have found impose strict liability on County officials for loss of County funds.

For these reasons, I do not see that County officials or County employees must seek indemnification from the Commissioners Court for losses arising from damage to County property that is otherwise covered under the County's self-insurance fund.

Of course, in those instances where the damages are a result of conduct that is deemed to be more than mere negligence, then the County will need to determine if such damages are covered under its self-insurance fund provisions. If not, then perhaps the indemnity provisions under section 157.903 may come into play.

Let me know if you have further questions regarding these matters. I am copying Stacey and Jeff may on this response.

Sincerely,



J. Greg Hudson

Enclosure – January 29, 2015 response to email from Stacey Kemp

cc: Stacey Kemp  
Jeff May

## Greg Hudson

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**From:** Greg Hudson  
**Sent:** Thursday, January 29, 2015 7:42 PM  
**To:** 'Stacey Kemp'  
**Cc:** Jeff May  
**Subject:** RE: collections issue  
**Attachments:** Mattox Opinion No JM-517.pdf; Texas Attorney General Opinion DM-324 (1995).pdf

Stacey, I am sorry I was not at the office when you and Jeff called. I was laid low by a cold or flu (can't decide which, hopefully just a cold). I have answered each of your questions below. Supporting AG opinions are attached. Let me know if this will suffice or if you want my advice in a letter.

Thanks  
Greg

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**From:** Stacey Kemp [<mailto:skemp@co.collin.tx.us>]  
**Sent:** Thursday, January 29, 2015 3:21 PM  
**To:** Greg Hudson  
**Cc:** Jeff May; Stacey Kemp  
**Subject:** RE: collections issue

Greg,  
Unfor

Jeff with Auditors office and I were taking and were wanting to get some clarification on some answers to the following questions please.

1. If an employee quits because of missing funds can those funds be taken out of the employees final paycheck? Unfortunately "no". The AG has ruled on this issue in DM-324 – stating there must be statutory authority for the deduction. See p. 3, concluding that there are no provisions in chapter 155 of the Local Government Code (which allows certain payroll deductions) to cover instances where the employee has lost funds in his/her possession. It would take a civil suit against the employee to collect the missing money.
2. If a clerks enters the wrong amount on a judgment. The Judged ruled the judgment for 900.00 and the clerk put 800.00 on the judgment and the defendant paid the 800.00, who is responsible for the other 100.00 and can the employee be held accountable? The answer is whether the clerk's action is determined to be negligent – if so, then the officer responsible for such collections is responsible. See attached AG Opinion JM-

517. Interestingly the Commissioners Court, after a hearing, can require the officer to pay such amounts through a salary deduction. Here is the statute.

Sec. 154.009. EFFECT OF FAILURE TO COLLECT FEE OR COMMISSION. (a) If, following a hearing, the commissioners court finds that a district, county, or precinct officer has, through neglect, failed to collect a fee or commission that the officer is required by law to collect, the commissioners court shall deduct the amount of the fee or commission from the officer's salary. Before the 10th day before the date of the hearing, the commissioners court shall provide the officer with notice of the time and place of the hearing and an itemized statement of the uncollected fees to be charged against the officer's salary.

(b) This section does not apply to a district, county, or precinct officer if the county treasurer or county auditor is required to collect the fee or commission under Section 154.011.

Again, in such instances there has to be a finding by the Commissioners Court that the employee's actions were negligent.

3. If an employee damages a county vehicle which is covered under the county self-insurance fund does the elected official require indemnification by commissioners court? Good question. Here is what the statute provides:

Sec. 157.903. AUTHORITY TO INDEMNIFY ELECTED AND APPOINTED COUNTY OFFICERS. The commissioners court of a county by order may provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties if the loss was not the result of the officer's negligence or criminal action.

Given the statute does not appear to have an exception for those losses that are covered by insurance (or self-insurance) it is probably the best course of action for the Commissioners to indemnify the officer from liability per the indemnification policy. All that is necessary is a showing there was no negligence or criminal action. Let me check with some other county clients to see what they do under similar situations. It seems like there could be many requests for indemnification arising from fender benders involving sheriff deputies and other employees using county vehicles and I would not want to disrupt the business of the Commissioners Court hearing an untold number of indemnification requests. I will get back to you on this one.

Greg

I heard you were sick again!!!! (Hope your feeling better)

Thanks for the info.  
Stacey Kemp

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**From:** Greg Hudson [<mailto:ghudson@holaw.net>]  
**Sent:** Friday, December 12, 2014 11:19 AM  
**To:** Stacey Kemp  
**Subject:** collections issue

See attached opinion

Greg Hudson

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