

2017 SPECIAL & DEDICATED FUNDS

TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio Street Austin, Texas 78701

Honorable Joyce Hudman
Brazoria County Clerk & Association President

Gene Terry
Executive Director

Rex Hall
Assistant Executive Director

PREPARED BY ASSOCIATION LEGAL DEPARTMENT

Stan Reid
General Counsel

Jenny Gilchrist
Associate General Counsel

Katherine Howard
Associate General Counsel

Paul Miles
Associate General Counsel

Michael Pichinson
Associate General Counsel

Jamie Chandler
Paralegal

Kristi Shepperson
Paralegal



LEGAL RESEARCH

Legal Helpline: (888) 275-8224 • Toll Free: (800) 456-5974
or visit our website at www.county.org



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Table of Contents

INTRODUCTION	1
I. SPECIAL AND DEDICATED FUNDS BY COUNTY OFFICE	3
A. Constable	3
1. Forfeiture Fund	3
2. Law Enforcement Officer Standards and Education Fund Account	5
B. County Attorney	6
1. Forfeiture Fund	6
2. Hot Check Fund	8
3. Pretrial Intervention Program Fund	10
C. County Clerk	11
1. County Clerk Errors and Omissions Contingency Fund	11
2. County and District Court Technology Fund	11
3. County Clerk Records Archive Account	12
4. County Clerk Records Management and Preservation Fund	13
5. County Records Management and Preservation Fund	15
6. County Records Preservation Account	15
7. Electronic Filing Fee	16
D. Criminal District Attorney	17
1. Forfeiture Fund	17
2. Hot Check Fund	19
3. Pretrial Intervention Program Fund	21
E. District Attorney	21
1. Forfeiture Fund	22
2. Hot Check Fund	24
3. Pretrial Intervention Program Fund	26
F. District Clerk	27
1. County and District Court Technology Fund	27
2. District Clerk Records Management and Preservation Fund	27
3. District Court Records Technology Fund	28
4. District Clerk Errors and Omissions Contingency Fund	29
5. Electronic Filing Fee	29
G. Sheriff	30
1. Forfeiture Fund	30
2. Jail Commissary Fund	32
3. Law Enforcement Officer Standards and Education Fund Account	34
H. Tax Assessor-Collector	35
1. Election Code Chapter 19 Fund	35

2. Motor Vehicle Inventory Tax Fund Interest.....	37
3. Tax Assessor-Collector Motor Vehicle Registration Fee Account	38
I. Voter Registrar	39
1. Election Code Chapter 19 Fund	39
II.FUNDS DEDICATED TO CERTAIN PURPOSES.....	40
A. Road and Bridge Funds.....	40
1. County and Road District Highway Fund.....	40
2. County Special Road and Bridge Tax Fund	40
3. a. Farm-to-Market and Lateral Road Fund; and	41
b. Flood Control Fund	41
4. Motor Vehicle Registration Fees.....	42
5. County Energy Transportation Reinvestment Zone Account.....	43
B. Records Management and Preservation Funds	44
1. County Records Management and Preservation Fund.....	44
2. Court Records Preservation Account.....	44
3. District Clerk Records Management and Preservation Fund and Court Records Archiving Fee	45
4. County Records Technology and Infrastructure Fee.....	46
C. Tax Assessor-Collector Motor Vehicle Registration Fee Account	46
D. Security Funds	47
1. Courthouse Security Fund	47
2. Justice Court Building Security Fund	48
E. Technology Funds.....	49
1. County and District Court Technology Fund	49
2. Justice Court Technology Fund	49
F. Court-Related Funds.....	50
1. County Child Abuse Prevention Fund.....	50
2. Juvenile Case Manager Fund	50
3. Juvenile Delinquency Prevention Fund	51
4. Supplemental Court-Initiated Guardianship Fee.....	52
5. Supplemental Public Probate Administrator Fee.....	52
6. Judicial Donation Trust Fund	52
7. Truancy Court Costs Fund.....	53
G. Library Funds.....	53
1. County Free Library Fund.....	54
2. County Law Library Fund	54
H. Health and Safety Funds	55
1. County and Public Health District Fund.....	55
2. Dog Registration Fund.....	56

3. Fire Code Inspection and Permit Fund	56
4. County Health Care Provider Participation Fund in Certain Counties	57
5. Optional County Fee For Child Safety	59
I. Development Funds.....	60
1. County Airport Fund.....	60
2. Land Use Restriction Fund.....	61
3. Special Improvement District Fund.....	61
J. Errors and Omissions Contingency Funds.....	61
1. County Clerk Errors and Omissions Contingency Fund	61
2. District Clerk Errors and Omissions Contingency Fund	62
K. Motor Vehicle Safety Responsibility Fund.....	62
1. Motor Vehicle Safety and Responsibility Fund	62
L. Election Funds.....	63
1. Election Code Chapter 19 Fund	63
2. Election Services Contract Fund	64

The  symbol indicates sections that have been updated since the previous publication.

SPECIAL AND DEDICATED FUNDS

INTRODUCTION

This publication is provided as a convenient reference for county officials to identify and review various special and dedicated funds established in the county and the purposes for which the funds may be used.¹ For ease of use, we have divided the document into two sections: funds by county office and funds dedicated to a particular purpose. Funds are repeated wherever applicable; for example, the forfeiture fund applies to both the county attorney and the district attorney and therefore appears under both offices.

This outline should not be relied upon as a comprehensive list of every special or dedicated fund, but includes the most common dedicated funds that are statutorily segregated from the county's general fund. Funds created under federal law and funds specific to an individual county are not included in this publication. To help us make this a better resource, please let us know if you find an error or omission.

The general rule that governs the management of county money is simple: the commissioners court has the authority to determine how to allocate the county's resources, and county money may be expended to serve any county purpose that the commissioners court deems appropriate. However, there are many exceptions to the general rule, which establish separate funds outside of the general fund with specific limits on expenditures. Special and dedicated funds are still county monies, and must be delivered to the county treasurer and placed in the county depository.

Many of the funds to which the general rule does not apply are under the control of a specific elected official, not the commissioners court, or are under the shared authority of an elected official and the commissioners court. The remainder of these funds are managed by the commissioners court but may only be spent on certain specified purposes. As noted above, this outline is organized by county office and information about funds that are subject to the control of more than one county office is duplicated where appropriate.

Local Government Code §113.021 provides that interest on most special and dedicated funds accrues "for the benefit of the county" and therefore may be retained in the special or dedicated fund or deposited in the general fund. This section overrules the common law which holds that the interest earned becomes part of the principal and, therefore,

¹ This publication includes changes adopted by the 85th Legislature during the Regular Session (2017).

subject to the control of the specified elected official.² There are a number of statutory exceptions to the requirement that interest accrues to the general fund, some of which are identified in the text.

The following information is included about each fund: (1) the statutory authority for the fund; (2) the source of the money in the fund; (3) the elected official who controls the fund; and (4) the purposes for which the fund may be used. Additionally, attorney general or court opinions interpreting the way the funds should be managed are summarized.

The following principles apply to management and expenditure of all county funds:

1. The general rule is that county monies are under the control of the commissioners court. The commissioners court has discretion to determine how to spend county money.
2. To change the general rule and place money under the control of another elected official, express legislative language is required: such as “the money may be spent at the sole discretion of” the elected official or “the money is to be administered solely by” the elected official.
3. If the statute creating a particular fund specifies that the fund may be spent only for certain purposes, the commissioners court or other elected official is bound by the restrictions imposed.
4. All expenditures from funds controlled by the commissioners court or another elected official are subject to review by the county auditor, who has authority under Local Government Code §115.0035 to audit the accounts controlled by any county, district or precinct officer.
5. Funds under the exclusive control of another elected official may or may not be subject to the competitive bidding requirement, depending on statutory authority.
6. Except as otherwise noted above, as a general rule, interest on special funds accrues to the benefit of the county and is deposited in the general fund.

² Local Gov't Code §113.021 also provides that all county money, whether collected as fees, commissions, funds or “other money” shall be deposited by the officer receiving it with the county treasurer.

I. SPECIAL AND DEDICATED FUNDS BY COUNTY OFFICE

A. CONSTABLE

1. Forfeiture Fund^{3 4}

- Statute: Code Crim. Proc. Chapter 59; specific allocation and disposition described in Code Crim. Proc. art. 59.06
- Source: Contraband seized by law enforcement authorities, including property used in the commission of a crime, proceeds of a crime and property purchased with the proceeds of a crime.
- Controlled by: County Attorney, District Attorney or Criminal District Attorney, and Law Enforcement Agencies⁵
- Purposes: Prosecuting attorney's fund may only be used for official purposes of his or her office. Law enforcement agency's fund may only be used for law enforcement purposes. Law enforcement agency may dedicate not more than 10% of the gross amount of the fund to a scholarship fund for children of peace officers killed in the line of duty.
- Limitations: If a local agreement between the attorney representing the state and law enforcement agencies allows proceeds to go to the sheriff's Department or local attorney representing the state, the sheriff or local attorney representing the state may allocate and spend the official's portion without commissioners court approval, but must submit a budget for expenditure of the money. If a local agreement is not executed, property must be sold and the proceeds distributed under Code Crim. Proc. art. 59.06(a).

Forfeiture funds may not be used to: offset or reduce the amount budgeted for the applicable agency; increase the salary of an employee whose salary is set by commissioners court without commissioners court

³ See also County Attorney, District Attorney or Criminal District Attorney, and Sheriff.

⁴ The state auditor may at any time audit forfeiture funds or investigate their expenditure. Code Crim. Proc. art. 59.061.

⁵ "Law Enforcement Agency" is defined as an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. Code Crim. Proc. art. 59.01(5). At the county level, this would include the sheriff, constable, district attorney, criminal district attorney, and county attorney.

approval; pay expenses related to the training or education of any member of the judiciary; contribute to a political campaign; make donations to any entity, except as provided by Code Crim. Proc. art. 59.06(d)(2); pay expenses for travel or education seminars that would violate applicable restrictions established by commissioners court; or purchase alcoholic beverages.

A sheriff or local attorney representing the state who is not seeking re-election, failed to timely file an application for candidacy in the general primary, or lost his or her bid for re-election must seek commissioners court approval for any expenditure of forfeiture funds, as of the earliest triggering event described.

Money derived from the sale of property seized by a DPS peace officer in connection with a violation of the Texas Controlled Substances Act and forfeited pursuant to a judgment under Code Crim. Proc. art. 59.03 is allocated by local agreement between the attorney representing the state and DPS.



Interpretation:

KP-0126 (2017): A district attorney may spend forfeiture funds on carpet for a county owned building to the extent it serves an authorized purpose of the attorney's office. Commissioners court approval of expenditure is not required, provided it does not usurp or unreasonably interfere with court's authority related to county buildings.

KP-0088 (2016): The question of whether a criminal district attorney may expend forfeiture funds to hire a consultant to investigate operations of a juvenile detention center is a fact question, to be determined by whether or not the expenditure is for an official purpose of the attorney's office.

GA-1059 (2014): A court would be unlikely to conclude that a district attorney may use asset forfeiture funds to purchase land and a building for subsequent sale or lease to other entities as such use of the property would likely not be considered an official purpose of the district attorney's office under Code Crim. Proc. art. 59.06.

GA-0920 (2012): The district attorney for the 198th Judicial District may make expenditures from the attorney's asset forfeiture fund after the attorney fails to file for re-election and the filing deadline has passed when those expenditures were from the budget previously approved by the regional review committee. County commissioners courts and a regional review committee are among the entities that may approve

expenditures from a district attorney's asset forfeiture fund. Cash is a kind of property subject to Code Crim. Proc. art. 59.06 requirements.

GA-0755 (2010): A district attorney is not authorized to use the forfeiture fund to pay for the district attorney's legal defense.

GA-0704 (2009): In a county without an auditor, the treasurer is required to examine the sheriff's forfeiture fund accounts.

GA-0613 (2008): A district attorney may not use the forfeiture fund to assist a county's purchase of a juvenile detention center.

DM-0247 (1993): Provides an overview of the management of forfeiture funds in a multi-county district.

DM-0162 (1992): Forfeiture fund monies must be given to the county treasurer to deposit in the county depository.

JM-1253 (1990): The use of forfeiture fund money for bonuses for assistants whose salary is set by commissioners court is subject to commissioners court approval.

2. Law Enforcement Officer Standards and Education Fund Account⁶

Statute: Occupations Code §1701.157

Source: An equal share of the 20 percent of the state general revenue fund allocated by the Comptroller for local law enforcement agencies.

Controlled by: Law Enforcement Agency⁷

Purposes: To pay for continuing education of licensed peace officer or training for full-time fully paid law enforcement support personnel⁸.

Limitation: May not be used to replace money provided by county on recurrent basis for training law enforcement officers and support personnel.

⁶ See also Sheriff.

⁷ "Law Enforcement Agency" is not defined in §1701.157. The term has not been clarified by case law or through the opinion process. The text of §1701.157 suggests it refers to any county office or unit employing peace officers.

⁸ Occupations Code §1701.157(d)

Head of the law enforcement agency must maintain a complete record of money received and spent. Money received from the state is subject to audit by the comptroller and expenditures are subject to audit by the state auditor.

Interpretation:

GA -0869 (2011): The county auditor has oversight of funds allocated to a constable from the state law enforcement officer standards and education fund account, and the account must be maintained in an official county depository.

JC-0190 (2000): Money allocated to local law enforcement agency for continuing education may not be diverted to the general fund.

B. COUNTY ATTORNEY

1. Forfeiture Fund^{9 10}

Statute: Code Crim. Proc. Chapter 59; specific allocation and disposition described in Code Crim. Proc. art. 59.06

Source: Contraband seized by law enforcement authorities, including property used in the commission of a crime, proceeds of a crime and property purchased with the proceeds of a crime.

Controlled by: County Attorney, District Attorney or Criminal District Attorney, and Law Enforcement Agencies¹¹

Purposes: Prosecuting attorney's fund may only be used for official purposes of his or her office. Law enforcement agency's fund may only be used for law enforcement purposes.

⁹ See also Constable, District Attorney or Criminal District Attorney, and Sheriff.

¹⁰ The state auditor may at any time audit forfeiture funds or investigate their expenditure. Code Crim. Proc. art. 59.061.

¹¹ "Law Enforcement Agency" is defined as an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. Code Crim. Proc. art. 59.01(5). At the county level, this would include the sheriff, constable, district attorney, criminal district attorney, and county attorney.

Limitations: If a local agreement between the attorney representing the state and law enforcement agencies allows proceeds to go to the sheriff's Department or local attorney representing the state, the sheriff or local attorney representing the state may allocate and spend the official's portion without commissioners court approval, but must submit a budget for expenditure of the money. If a local agreement is not executed, property must be sold and the proceeds distributed under Code Crim. Proc. art. 59.06(a).

Forfeiture funds may not be used to: offset or reduce the amount budgeted for the applicable agency; increase the salary of an employee whose salary is set by commissioners court without commissioners court approval; pay expenses related to the training or education of any member of the judiciary; contribute to a political campaign; make donations to any entity, except as provided by Code Crim. Proc. art. 59.06(d)(2); pay expenses for travel or education seminars that would violate applicable restrictions established by commissioners court; or purchase alcoholic beverages.

A sheriff or local attorney representing the state who is not seeking re-election, failed to timely file an application for candidacy in the general primary, or lost his or her bid for re-election must seek commissioners court approval for any expenditure of forfeiture funds, as of the earliest triggering event described.

Money derived from the sale of property seized by a DPS peace officer in connection with a violation of the Texas Controlled Substances Act and forfeited pursuant to a default judgment under Code Crim. Proc. art. 59.03 is allocated by local agreement between the attorney representing the state and DPS.

Interpretation:



KP-0126 (2017): A district attorney may spend forfeiture funds on carpet for a county owned building to the extent it serves an authorized purpose of the attorney's office. Commissioners court approval of expenditure is not required, provided it does not usurp or unreasonably interfere with court's authority related to county buildings.

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GA-0704 (2009): In a county without an auditor, the treasurer is required to examine the sheriff's forfeiture fund accounts.

GA-0613 (2008): A district attorney may not use the forfeiture fund to assist a county's purchase of a juvenile detention center.

DM-0247 (1993): Provides an overview of the management of forfeiture funds in a multi-county district.

DM-0162 (1992): Forfeiture fund monies must be given to the county treasurer to deposit in the county depository.

JM-1253 (1990): The use of forfeiture fund money for bonuses for assistants whose salary is set by commissioners court is subject to commissioners court approval.

2. Hot Check Fund¹²

Statute: Code Crim. Proc. art. 102.007

¹² See also District Attorney and Criminal District Attorney.

Ancillary funding statute:

Gov't Code §103.021(21)

Source: Fee paid by defendant convicted of an offense involving hot checks or similar sight orders; not to exceed various amounts up to \$75 depending on the amount of the hot check or sight order.

Controlled by: County Attorney, District Attorney or Criminal District Attorney¹³

Purposes: Only to pay the salaries and defray the expenses of the prosecutor's office.

Limitations: May not use to supplement the county or district attorney's salary. The commissioners court may not reduce the budget of the county or district attorney's office because of the availability of the hot check funds.



Interpretation:

KP-0121 (2016): Funds received under Gov't Code §45.125 (authorizing donations to Brown County Attorney's Office) may not be comingled with hot-check fund established under Code Crim. Pro. art. 102.007.

GA-0475 (2006): The Gillespie County Attorney may use money in the attorney's hot check fund to sponsor a children's book (how to be a good citizen) if the book is related to the attorney's official business and no other law prohibits such an expenditure.

GA-0053 (2003): District Attorney's hot check fund is subject to audit by county auditor.

JC-0397 (2001): A district attorney may not require the county commissioners court to expend county money to pay the employer's share of employment taxes on the assistant district attorney salary supplements paid from the district attorney's hot check fund. The district attorney is responsible for compliance with tax laws.

JC-0084 (1999): A county auditor may require the county attorney to provide receipts for purchases of goods and services from the hot check fund, or for reimbursement out of this account for purchases.

¹³ Code Crim. Proc. art. 102.007(f) specifically provides that: "Expenditures from this fund shall be at the sole discretion of the attorney..."

JC-0062 (1999): Under Local Gov't Code §113.021(c), interest that accrues on the principal of a prosecutor's hot check fund must be severed from the principal. The interest accrues instead for the benefit of the county.

DM-0357 (1995): The county attorney's hot check fund is wholly outside of the county budgeting process. The county judge, or the county auditor on behalf of the county judge, may not require the county attorney to submit a budget for use of the county attorney's hot check fund for the upcoming fiscal year.

JM-1034 (1990): The Hot Check Fund is under exclusive control of County Attorney. See also JM 738 (1987) (same).

3. Pretrial Intervention Program Fund¹⁴

Statute: Code Crim. Proc. art. 102.0121

Source: Fee not to exceed \$500 paid by a defendant participating in pretrial intervention program administered by a district attorney, criminal district attorney or county attorney. Optional, collected by prosecuting attorney.

Controlled by: County Attorney, District Attorney or Criminal District Attorney

Purpose: To reimburse a county for expenses, including the expenses of the office of the prosecuting attorney, related to a defendant's participation in a pretrial intervention program offered in the county.

Limitations: Monies may only be used to administer pretrial intervention program.

The money in the fund may be expended only in accordance with a budget approved by the commissioners court.



Interpretation:

KP-0121 (2016): A court would likely conclude that pretrial intervention agreement cannot be conditioned on payment of an amount in excess of the fee authorized by Code Crim. Pro. art. 102.0121. Fee authorized by Code Crim. Pro. art. 102.0121 may only be used for expenses of a prosecuting attorney's office related to a defendant's participation in a pretrial intervention program offered by the county.

¹⁴ See also District Attorney and Criminal District Attorney.

GA-1039 (2014): Pretrial intervention program funds may be used to refurbish courthouse facilities, train staff, and purchase office supplies only to the extent that the expenditures reimburse the county for expenses related to a defendant's participation in a pretrial intervention program and are used for administration of the program. The commissioners court determines the reimbursement amount, subject to judicial review.

C. COUNTY CLERK

1. County Clerk Errors and Omissions Contingency Fund

Statute: Local Gov't Code §82.003(c)

Ancillary funding statutes:

Gov't Code §101.0814(1) (Statutory County Court Fees); Gov't Code §101.1013(2) (Probate Court Fees); Gov't Code §101.1214(1) (County Court Fees)

Source: Civil court filing fee not to exceed \$5. Optional, may be set by commissioners court if the county clerk determines insurance coverage is unavailable at a reasonable cost.

Controlled by: Commissioners Court

Purpose: To provide insurance or similar coverage for county clerk's errors and omissions in an amount of at least \$10,000 but not to exceed \$500,000. The amount of coverage required within the statutory range is determined by reviewing the maximum amount of fees collected in any year during the term of office preceding the term for which the insurance is obtained.

Limitation: When the contingency fund reaches the required amount, the clerk shall stop collecting the additional fee.

2. County and District Court Technology Fund

Statute: Code Crim. Proc. art. 102.0169

Ancillary funding statutes:

Gov't Code §102.041(4) (District Court); Gov't Code §102.061(4) (Statutory County Court); Gov't Code §102.081(4) (County Court)

Source: Fee assessed against those convicted of a criminal offense in a county court, statutory county court, or district court - \$4.

Controlled by: Commissioners Court

Purposes: To pay the cost of continuing education and training for county court, statutory county court, or district court judges and clerks regarding technological enhancements; purchase and maintenance of technological enhancements including: computer systems, networks, hardware and software; imaging systems; electronic kiosks; and docket management systems.

3. County Clerk Records Archive Account

Statutes: Local Gov't Code §§118.011(f), 118.025

Source: Fees paid for recording or filing services, set by the commissioners court, not to exceed \$10. Optional, set by the commissioners court. Accrued interest remains with this account.

Note: *Effective September 1, 2019, the filing/recording maximum fee will decrease from \$10 to \$5.*

Controlled by: County Clerk and Commissioners Court, by agreement, subject to annual public hearing and commissioners court budgetary authorization.

Purposes: Monies may be expended only for the preservation and restoration services performed by the county clerk in connection with maintaining a county clerk's records archive on public documents designated by the county clerk as part of the records archive. The monies may not be used to purchase, lease, or develop computer software to geographically index public records, excluding indexing public records by lot and block description.

Additional Requirements:

Fee set by commissioners court as part of budget process. County clerk designates public documents that are part of records archive and prepares plan to pay for preservation and restoration of records archive, subject to approval by the commissioners court. Public hearing required.

4. County Clerk Records Management and Preservation Fund

Statutes: Local Gov't Code §§ 118.011(b)(2), 118.0216; Code Crim. Proc. art. 102.005(f)(2); see also Local Gov't Code §203.003

Source: Fees for filing or recording services for non-court-related documents – not to exceed \$10 (optional, set by the county clerk); Fee imposed on defendants convicted of offense in county court or county court at law) - \$2.50 (mandatory).

Note: *Effective September 1, 2019, the filing/recording maximum fee for non-court related documents will decrease from \$10 to \$5.*

Controlled by: County Clerk and Commissioners Court, by agreement, subject to commissioners court budgetary authorization.

Purposes: Used for specific records management and preservation, including for automation purposes.

Interpretation:

GA-1063 (2014): The fee imposed under Code Crim. Proc. art. 102.005 applies to a defendant convicted of an offense in a county-level court.

GA-1055 (2014): The Records Management and Preservation Fee set out in §118.011(b)(2), Local Gov't Code, relates to non-court-related filings. Changes in this fee are not subject to the Comptroller's duty to list changes to court-related fees under Gov't Code §51.607(a).

GA-0638 (2008): The fund may be used to pay that portion of the salaries of any employee in the clerk's office who performs tasks that further specific records management and preservation purposes.

A county clerk may expend money in the county clerk's records management and preservation fund to supplement deputies' salaries set by the commissioners court, but

only if: (1) the county commissioners court has implemented a bonus or supplement plan in place when the deputies were employed; (2) the commissioners court has given prior approval of the supplement; and (3) the county clerk has considered whether the supplement is proportional to the amount of time each employee spends on specific management and preservation, including automation purposes.

A county clerk may use the \$2.50 records management and preservation fee collected under Code Crim. Proc. art. 102.005(f)(2) from defendants convicted of an offense in county court or county court at law for any purpose for which the clerk may use fees collected under Local Gov't Code §§ 118.011(b)(2) and 118.0216.

GA-0118 (2003): The County Clerk Records Management and Preservation Fund may be used for employee salaries, so long as the employees perform records management and preservation functions. The clerk must determine what constitutes records management and preservation functions.

DM-0492 (1998): The records management and preservation fee must be spent for specific records preservation and automation projects, subject to the commissioners court's advance approval, and may not be diverted from its statutorily assigned purposes to pay other expenses of the clerk's office. Neither the county clerk nor the commissioners court controls this fund; as a practical matter they will have to agree.

DM-0371 (1995): A county clerk may collect the records management and preservation fee only on documents filed with the clerk in his or her capacity as county clerk, and not on birth, death, and fetal death records filed with clerk in his or her capacity as local registrar.

Hooten v Enriquez, 863 S.W. 2d 522 (Tex App.—El Paso 1993): County clerk has exclusive and absolute discretion to develop records management policies and procedure that will preserve permanent records in the clerk's office and monies collected under Local Gov't Code 118.011(b)(2) may only be used to pay for records management projects within the county clerk's office.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

5. County Records Management and Preservation Fund

Statutes: Local Gov't Code §§118.052(3)(G), 118.0546, 118.0645; Gov't Code §§51.317(b)(4) and (c)(1); Code Crim. Proc. art. 102.005(f)(1); see also Local Gov't Code §203.003(6)

Ancillary funding statutes:

Gov't Code §101.0611(7) (District Court); Gov't Code §101.0814(4)(G) (Statutory County Court); Gov't Code §101.1013(4)(G) (Probate Court); Gov't Code §101.1214(4)(G)(County Court)

Source: Fee for filing civil case - \$5;
Fee imposed on defendant convicted of an offense in county court, county court at law, or a district court - \$22.50.

Controlled by: Commissioners Court

Purposes: Records management preservation or automation purposes in the county.

Limitations: Expenditures from the fund require prior approval of the commissioner court.

Interpretation:

GA-1063 (2014): The fee imposed under Code Crim. Proc. art. 102.005 applies to a defendant convicted of an offense in a county-level court.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

6. County Records Preservation Account

Statute: Gov't Code §51.708

Ancillary funding statutes:

Gov't Code §101.0611(3)(D) (District Court); Gov't Code §101.0811(7)(D) (Statutory County Court); Gov't Code §101.1212(4) (County Court)

Source: Filing fee in civil cases filed in county court, statutory county court, and district court, not to exceed \$10.

Controlled by: Commissioners Court

Purposes: Digitize court records and preserve the records from natural disasters.

Interpretation:

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

7. Electronic Filing Fee¹⁵

Statute: Gov't Code §51.851

Source: Fee for filing civil action or proceeding requiring a filing fee in district court, county court, statutory county court, or statutory probate court - \$30;
Fee for filing any civil action or proceeding requiring a filing fee in justice court - \$10;
Fee imposed on defendant convicted of a criminal offense in district court, county court, or statutory county court - \$5.

Controlled by: Commissioners Court

Purposes: Support a statewide electronic filing technology project for courts.

Interpretation:

GA-1046 (2014): The fee amounts mandated by Gov't Code §51.851 apply to fees that became payable on or after September 1, 2013.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

¹⁵ See also District Clerk.

D. CRIMINAL DISTRICT ATTORNEY

1. Forfeiture Fund^{16 17}

- Statute: Code Crim. Proc. Chapter 59; specific allocation and disposition described in Code Crim. Proc. art. 59.06
- Source: Contraband seized by law enforcement authorities, including property used in the commission of a crime, proceeds of a crime and property purchased with the proceeds of a crime.
- Controlled by: County Attorney, District Attorney or Criminal District Attorney, and Law Enforcement Agencies¹⁸
- Purposes: Prosecuting attorney's fund may only be used for official purposes of his or her office. Law enforcement agency's fund may only be used for law enforcement purposes.
- Limitations: If a local agreement between the attorney representing the state and law enforcement agencies allows proceeds to go to the sheriff's Department or local attorney representing the state, the sheriff or local attorney representing the state may allocate and spend the official's portion without commissioners court approval, but must submit a budget for expenditure of the money. If a local agreement is not executed, property must be sold and the proceeds distributed under Code Crim. Proc. art. 59.06(a).

Forfeiture funds may not be used to: offset or reduce the amount budgeted for the applicable agency; increase the salary of an employee whose salary is set by commissioners court without commissioners court approval; pay expenses related to the training or education of any member of the judiciary; contribute to a political campaign; make donations to any entity, except as provided by Code Crim. Proc. art.

¹⁶ See also Constable, County Attorney, District Attorney, and Sheriff.

¹⁷ The state auditor may at any time audit forfeiture funds or investigate their expenditure. Code Crim. Proc. art. 59.061.

¹⁸ "Law Enforcement Agency" is defined as an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. Code Crim. Proc. art. 59.01(5). At the county level, this would include the sheriff, constable, district attorney, criminal district attorney, and county attorney.

59.06(d)(2); pay expenses for travel or education seminars that would violate applicable restrictions established by commissioners court; or purchase alcoholic beverages.

A sheriff or local attorney representing the state who is not seeking re-election, failed to timely file an application for candidacy in the general primary, or lost his or her bid for re-election must seek commissioners court approval for any expenditure of forfeiture funds, as of the earliest triggering event described.

Money derived from the sale of property seized by a DPS peace officer in connection with a violation of the Texas Controlled Substances Act and forfeited pursuant to a judgment under Code Crim. Proc. art. 59.03 are allocated by local agreement between the attorney representing the state and DPS.



Interpretation:

KP-0126 (2017): A district attorney may spend forfeiture funds on carpet for a county owned building to the extent it serves an authorized purpose of the attorney's office. Commissioners court approval of expenditure is not required, provided it does not usurp or unreasonably interfere with court's authority related to county buildings.

KP-0088 (2016): The question of whether a criminal district attorney may expend forfeiture funds to hire a consultant to investigate operations of a juvenile detention center is a fact question, to be determined by whether or not the expenditure is for an official purpose of the attorney's office.

GA-1059 (2014): A court would be unlikely to conclude that a district attorney may use asset forfeiture funds to purchase land and a building for subsequent sale or lease to other entities as such use of the property would likely not be considered an official purpose of the district attorney's office under Code Crim. Proc. art. 59.06.

GA-0920 (2012): The district attorney for the 198th Judicial District may make expenditures from the attorney's asset forfeiture fund after the attorney fails to file for reelection and the filing deadline has passed when those expenditures were from the budget previously approved by the regional review committee. County commissioners courts and a regional review committee are among the entities that may approve expenditures from a district attorney's asset forfeiture fund. Cash is a kind of property subject to Code Crim. Proc. art. 59.06 requirements.

GA-0755 (2010): A district attorney is not authorized to use the forfeiture fund to pay for the district attorney's legal defense.

GA-0704 (2009): In a county without an auditor, the treasurer is required to examine the sheriff's forfeiture fund accounts.

GA-0613 (2008): A district attorney may not use the forfeiture fund to assist a county's purchase of a juvenile detention center.

DM-0247 (1993): Provides an overview of the management of forfeiture funds in a multi-county district.

DM-0162 (1992): Forfeiture fund monies must be given to the county treasurer to deposit in the county depository.

JM-1253 (1990): The use of forfeiture fund money for bonuses for assistants whose salary is set by commissioners court is subject to commissioners court approval.

2. Hot Check Fund¹⁹

Statute: Code Crim. Proc. art. 102.007

Ancillary funding statute:
Gov't Code §103.021(21)

Source: Fee paid by defendant convicted of an offense involving hot checks or similar sight orders; not to exceed various amounts up to \$75 depending on the amount of the hot check or sight order.

Controlled by: County Attorney, District Attorney or Criminal District Attorney²⁰

Purposes: Only to pay the salaries and defray the expenses of the prosecutor's office.

Limitations: May not use to supplement the county or district attorney's salary. The commissioners court may not reduce the budget of the county or district attorney's office because of the availability of the hot check funds.

¹⁹ See also County Attorney and District Attorney.

²⁰ Code Crim. Proc. art. 102.007(f) specifically provides that: "Expenditures from this fund shall be at the sole discretion of the attorney..."



Interpretation:

KP-0121 (2016): Funds received under Gov't Code §45.125 (authorizing donations to Brown County Attorney's Office) may not be comingled with hot-check fund established under Code Crim. Pro. art. 102.007.

GA-0475 (2006): The Gillespie County Attorney may use money in the attorney's hot check fund to sponsor a children's book (how to be a good citizen) if the book is related to the attorney's official business and no other law prohibits such an expenditure.

GA-0053 (2003): District Attorney's hot check fund is subject to audit by county auditor.

JC-0397 (2001): A district attorney may not require the county commissioners court to expend county money to pay the employer's share of employment taxes on the assistant district attorney salary supplements paid from the district attorney's hot check fund. The district attorney is responsible for compliance with tax laws.

JC-0084 (1999): A county auditor may require the county attorney to provide receipts for purchases of goods and services from the hot check fund, or for reimbursement out of this account for purchases.

JC-0062 (1999): Under Local Gov't Code §113.021(c), interest that accrues on the principal of a prosecutor's hot check fund must be severed from the principal. The interest accrues instead for the benefit of the county.

DM-0357 (1995): The county attorney's hot check fund is wholly outside of the county budgeting process. The county judge, or the county auditor on behalf of the county judge, may not require the county attorney to submit a budget for use of the county attorney's hot check fund for the upcoming fiscal year.

JM-1034 (1990): The Hot Check Fund is under exclusive control of County Attorney. See also JM-0738 (1987).

3. Pretrial Intervention Program Fund²¹

Statute: Code Crim. Proc. art. 102.0121

Source: Fee not to exceed \$500 paid by a defendant participating in pretrial intervention program administered by a district attorney, criminal district attorney or county attorney. Optional, collected by prosecuting attorney.

Controlled by: County Attorney, District Attorney or Criminal District Attorney

Purpose: To reimburse a county for expenses, including the expenses of the office of the prosecuting attorney, related to a defendant's participation in a pretrial intervention program offered in the county.

Limitations: Monies may only be used to administer pretrial intervention program.

The money in the fund may be expended only in accordance with a budget approved by the commissioners court.

Interpretation:



KP-0121 (2016): A court would likely conclude that the Brown County Attorney may not condition pretrial intervention agreements on payment of an amount in excess of the fee authorized by Code. Crim. Pro. art. 102.0121. The fee authorized by Code Crim. Pro. art. 102.0121 may only be used for expenses of a prosecuting attorney's office related to a defendant's participation in a pretrial intervention program offered by the county.

GA-1039 (2014): Pretrial intervention program funds may be used to refurbish courthouse facilities, train staff, and purchase office supplies only to the extent that the expenditures reimburse the county for expenses related to a defendant's participation in a pretrial intervention program and are used for administration of the program. The commissioners court determines the reimbursement amount, subject to judicial review.

E. DISTRICT ATTORNEY

²¹ See also County Attorney and District Attorney.

1. Forfeiture Fund^{22 23}

- Statute: Code Crim. Proc. Chapter 59; specific allocation and disposition described in Code Crim. Proc. art. 59.06
- Source: Contraband seized by law enforcement authorities, including property used in the commission of a crime, proceeds of a crime and property purchased with the proceeds of a crime.
- Controlled by: County Attorney, District Attorney or Criminal District Attorney, and Law Enforcement Agencies²⁴
- Purposes: Prosecuting attorney's fund may only be used for official purposes of his or her office. Law enforcement agency's fund may only be used for law enforcement purposes.
- Limitations: If a local agreement between the attorney representing the state and law enforcement agencies allows proceeds to go to the sheriff's Department or local attorney representing the state, the sheriff or local attorney representing the state may allocate and spend the official's portion without commissioners court approval, but must submit a budget for expenditure of the money. If a local agreement is not executed, property must be sold and the proceeds distributed under Code Crim. Proc. art. 59.06(a).

Forfeiture funds may not be used to: offset or reduce the amount budgeted for the applicable agency; increase the salary of an employee whose salary is set by commissioners court without commissioners court approval; pay expenses related to the training or education of any member of the judiciary; contribute to a political campaign; make donations to any entity, except as provided by Code Crim. Proc. art. 59.06(d)(2); pay expenses for travel or education seminars that would

²² See also Constable, County Attorney, Criminal District Attorney, and Sheriff.

²³ The state auditor may at any time audit forfeiture funds or investigate their expenditure. Code Crim. Proc. art. 59.061.

²⁴ "Law Enforcement Agency" is defined as an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. Code Crim. Proc. art. 59.01(5). At the county level, this would include the sheriff, constable, district attorney, criminal district attorney, and county attorney.

violate applicable restrictions established by commissioners court; or purchase alcoholic beverages.

A sheriff or local attorney representing the state who is not seeking re-election, failed to timely file an application for candidacy in the general primary, or lost his or her bid for re-election must seek commissioners court approval for any expenditure of forfeiture funds, as of the earliest triggering event described.

Money derived from the sale of property seized by a DPS peace officer in connection with a violation of the Texas Controlled Substances Act and forfeited pursuant to a judgment under Code Crim. Proc. art. 59.03 are allocated by local agreement between the attorney representing the state and DPS.



Interpretation:

KP-0126 (2017): A district attorney may spend forfeiture funds on carpet for a county owned building to the extent it serves an authorized purpose of the attorney's office. Commissioners court approval of expenditure is not required, provided it does not usurp or unreasonably interfere with court's authority related to county buildings.

KP-0088 (2016): The question of whether a criminal district attorney may expend forfeiture funds to hire a consultant to investigate operations of a juvenile detention center is a fact question, to be determined by whether or not the expenditure is for an official purpose of the attorney's office.

GA-1059 (2014): A court would be unlikely to conclude that a district attorney may use asset forfeiture funds to purchase land and a building for subsequent sale or lease to other entities as such use of the property would likely not be considered an official purpose of the district attorney's office under Code Crim. Proc. art. 59.06.

GA-0920 (2012): The district attorney for the 198th Judicial District may make expenditures from the attorney's asset forfeiture fund after the attorney fails to file for reelection and the filing deadline has passed when those expenditures were from the budget previously approved by the regional review committee. County commissioners courts and a regional review committee are among the entities that may approve expenditures from a district attorney's asset forfeiture fund. Cash is a kind of property subject to Code Crim. Proc. art. 59.06 requirements.

GA-0755 (2010): A district attorney is not authorized to use the forfeiture fund to pay for the district attorney's legal defense.

GA-0704 (2009): In a county without an auditor, the treasurer is required to examine the sheriff's forfeiture fund accounts.

GA-0613 (2008): A district attorney may not use the forfeiture fund to assist a county's purchase of a juvenile detention center.

DM-0247 (1993): Provides an overview of the management of forfeiture funds in a multi-county district.

DM-0162 (1992): Forfeiture fund monies must be given to the county treasurer to deposit in the county depository.

JM-1253 (1990): The use of forfeiture fund money for bonuses for assistants whose salary is set by commissioners court is subject to commissioners court approval.

2. Hot Check Fund²⁵

Statute: Code Crim. Proc. art. 102.007

Ancillary funding statute:
Gov't Code §103.021(21)

Source: Fee paid by defendant convicted of an offense involving hot checks or similar sight orders; not to exceed various amounts up to \$75 depending on the amount of the hot check or sight order.

Controlled by: County Attorney, District Attorney or Criminal District Attorney²⁶

Purposes: Only to pay the salaries and defray the expenses of the prosecutor's office.

Limitations: May not use to supplement the county or district attorney's salary. The commissioners court may not reduce the budget of the county or district attorney's office because of the availability of the hot check funds.

²⁵ See also County Attorney and Criminal District Attorney.

²⁶ Code Crim. Proc. §102.007(f) specifically provides that: "Expenditures from this fund shall be at the sole discretion of the attorney..."



Interpretation:

KP-0121 (2016): Funds received under Gov't Code §45.125 (authorizing donations to Brown County Attorney's Office) may not be comingled with hot-check fund established under Code Crim. Pro. art. 102.007.

GA-0475 (2006): The Gillespie County Attorney may use money in the attorney's hot check fund to sponsor a children's book (how to be a good citizen) if the book is related to the attorney's official business and no other law prohibits such an expenditure.

GA-0053 (2003): District Attorney's hot check fund is subject to audit by county auditor.

JC-0397 (2001): A district attorney may not require the county commissioners court to expend county money to pay the employer's share of employment taxes on the assistant district attorney salary supplements paid from the district attorney's hot check fund. The district attorney is responsible for compliance with tax laws.

JC-0084 (1999): A county auditor may require the county attorney to provide receipts for purchases of goods and services from the hot check fund, or for reimbursement out of this account for purchases.

JC-0062 (1999): Under Local Gov't Code §113.021(c), interest that accrues on the principal of a prosecutor's hot check fund must be severed from the principal. The interest accrues instead for the benefit of the county.

DM-0357 (1995): The county attorney's hot check fund is wholly outside of the county budgeting process. The county judge, or the county auditor on behalf of the county judge, may not require the county attorney to submit a budget for use of the county attorney's hot check fund for the upcoming fiscal year.

JM-1034 (1990): The Hot Check Fund is under exclusive control of County Attorney. See also JM-0738 (1987).

3. Pretrial Intervention Program Fund²⁷

Statute: Code Crim. Proc. §102.0121

Source: Fee not to exceed \$500 paid by a defendant participating in pretrial intervention program administered by a district attorney, criminal district attorney or county attorney. Optional, collected by prosecuting attorney.

Controlled by: County Attorney, District Attorney or Criminal District Attorney

Purpose: To reimburse a county for expenses, including the expenses of the office of the prosecuting attorney, related to a defendant's participation in a pretrial intervention program offered in the county.

Limitations: Monies may only be used to administer pretrial intervention program.

The money in the fund may be expended only in accordance with a budget approved by the commissioners court.



Interpretation:

KP-0121 (2016): A court would likely conclude that the Brown County Attorney may not condition pretrial intervention agreements on payment of an amount in excess of the fee authorized by Code. Crim. Pro. art. 102.0121. The fee authorized by Code Crim. Pro. art. 102.0121 may only be used for expenses of a prosecuting attorney's office related to a defendant's participation in a pretrial intervention program offered by the county.

GA-1039 (2014): Pretrial intervention program funds may be used to refurbish courthouse facilities, train staff, and purchase office supplies only to the extent that the expenditures reimburse the county for expenses related to a defendant's participation in a pretrial intervention program and are used for administration of the program. The commissioners court determines the reimbursement amount, subject to judicial review.

²⁷ See also County Attorney and Criminal District Attorney.

F. DISTRICT CLERK

1. County and District Court Technology Fund

Statute: Code Crim. Proc. art. 102.0169

Ancillary funding statutes:

Gov't Code §102.041(4) (District Court); Gov't Code §102.061(4) (Statutory County Court); Gov't Code §102.081(4) (County Court)

Source: Fee assessed against those convicted of a criminal offense in a county court, statutory county court, or district court - \$4.

Controlled by: Commissioners Court

Purposes: To pay the cost of continuing education and training for county court, statutory county court, or district court judges and clerks regarding technological enhancements; purchase and maintenance of technological enhancements including: computer systems, networks, hardware and software; imaging systems; electronic kiosks; and docket management systems.

2. District Clerk Records Management and Preservation Fund

Statutes: Gov't Code §51.317(b)(4) and (5); Code Crim. Proc. art. 102.005(f)(2)

Ancillary funding statute:

Gov't Code §§101.0611(7) and (7-a)

Source: Filing fees in civil cases – varying amounts: Gov't Code §51.317(b)(4) (\$10) and (b)(5) (not to exceed \$10)
Fee imposed on defendant convicted of an offense in district court - \$2.50.

Note: Effective September 1, 2019, the archiving fee is reduced from \$10 to \$5.

Controlled by: Commissioners Court

Purposes: To pay for specific records management and preservation, including for automation purposes, on approval by the commissioners court of a budget.

Interpretation:

GA-1063 (2014): The fee imposed under Code Crim. Proc. art. 102.005 applies to a defendant convicted of an offense in a county-level court.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.-3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

3. District Court Records Technology Fund

Statutes: Gov't Code §51.305(b)

Source: Optional district court records archive fee not to exceed \$10 for filing of a suit, including appeal from inferior court, or cross-action, counterclaim, intervention, contempt action, motion for new trial, or third party petition in any court in the county for which the district court accepts filings.

Note: *Effective September 1, 2019, the maximum archiving fee is reduced from \$10 to \$5.*

Controlled by: Commissioners Court

Purposes: For the preservation and restoration of the district court records archive.

Limitations: The district clerk in a county that adopts the fee must prepare an annual plan for preservation and restoration of the district court records archive. The commissioners court shall publish notice of a public hearing in a newspaper of general circulation in the county not less than 15 days before the hearing. After the hearing, the commissioners court shall decide whether or not to adopt the plan.

Interpretation:

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.-3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

4. District Clerk Errors and Omissions Contingency Fund

Statute: Gov't Code §51.302(e)

Ancillary funding statute:

Gov't Code §101.0611(3)(A)

Source: Civil court filing fee not to exceed \$5. Optional, may be set by commissioners court if the district clerk determines insurance coverage is unavailable at a reasonable cost.

Controlled by: Commissioners Court

Purpose: To provide insurance or similar coverage for district clerk's errors and omissions in an amount of at least \$20,000 but not to exceed \$700,000. The amount of coverage required within the statutory range is determined by reviewing the maximum amount of fees collected in any year during the term of office preceding the term for which the insurance is obtained.

Limitation: When the contingency fund reaches the required amount, the clerk shall stop collecting the additional fee.

5. Electronic Filing Fee²⁸

Statute: Gov't Code §51.851

Source: Fee for filing civil action or proceeding requiring a filing fee in district court, county court, statutory county court, or statutory probate court - \$30;
Fee for filing any civil action or proceeding requiring a filing fee in justice court - \$10;
Fee imposed on defendant convicted of a criminal offense in district court, county court, or statutory county court - \$5

Controlled by: Commissioners Court

²⁸ See also County Clerk.

Purposes: Mandatory fee to support a statewide electronic filing technology project for courts. Fee is deposited in local treasury and remitted to the Comptroller.

Interpretation:

GA-1046 (2014): The fee amounts mandated by Government Code §51.851 apply to fees that became payable on or after September 1, 2013.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

G. SHERIFF

1. Forfeiture Fund^{29 30}

Statute: Code Crim. Proc. Chapter 59; specific allocation and disposition described in Code Crim. Proc. art. 59.06

Source: Contraband seized by law enforcement authorities, including property used in the commission of a crime, proceeds of a crime and property purchased with the proceeds of a crime.

Controlled by: County Attorney, District Attorney or Criminal District Attorney, and Law Enforcement Agencies³¹

Purposes: Prosecuting attorney's fund may only be used for official purposes of his or her office. Law enforcement agency's fund may only be used for law enforcement purposes.

Limitations: If a local agreement between the attorney representing the state and law enforcement agencies allows proceeds to go to the sheriff's Department or local attorney representing the state, the sheriff or local attorney

²⁹ See also Constable, County Attorney, District Attorney or Criminal District Attorney.

³⁰ The state auditor may at any time audit forfeiture funds or investigate their expenditure. Code Crim. Proc. art. 59.061.

³¹ "Law Enforcement Agency" is defined as an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. Code Crim. Proc. art. 59.01(5). At the county level, this would include the sheriff, constable, district attorney, criminal district attorney, and county attorney.

representing the state may allocate and spend the official's portion without commissioners court approval, but must submit a budget for expenditure of the money. If a local agreement is not executed, property must be sold and the proceeds distributed under Code Crim. Proc. art. 59.06(a).

Forfeiture funds may not be used to: offset or reduce the amount budgeted for the department; increase the salary of an employee whose salary is set by commissioners court without commissioners court approval; pay expenses related to the training or education of any member of the judiciary; contribute to a political campaign; make donations to any entity, except as provided by Code Crim. Proc. art. 59.06(d)-(2); pay expenses for travel or education seminars that would violate applicable restrictions established by commissioners court; or purchase alcoholic beverages.

A sheriff or local attorney representing the state who is not seeking re-election, failed to timely file an application for candidacy in the general primary, or lost his or her bid for re-election must seek commissioners court approval for any expenditure of forfeiture funds, as of the earliest triggering event described.

Money derived from the sale of property seized by a DPS peace officer in connection with a violation of the Texas Controlled Substances Act and forfeited pursuant to a judgment under Code Crim. Proc. art. 59.03 is allocated by local agreement between the attorney representing the state and DPS.



Interpretation:

KP-0126 (2017): A district attorney may spend forfeiture funds on carpet for a county owned building to the extent it serves an authorized purpose of the attorney's office. Commissioners court approval of expenditure is not required, provided it does not usurp or unreasonably interfere with court's authority related to county buildings.



KP-0079 (2016): All funds held by the sheriff in his official capacity are subject to oversight and audit by the county auditor, whether or not they are county funds.

KP-0088 (2016): The question of whether a criminal district attorney may expend forfeiture funds to hire a consultant to investigate operations of a juvenile detention

center is a fact question, to be determined by whether or not the expenditure is for an official purpose of the attorney's office.

GA-1059 (2014): A court would be unlikely to conclude that a district attorney may use asset forfeiture funds to purchase land and a building for subsequent sale or lease to other entities as such use of the property would likely not be considered an official purpose of the district attorney's office under Code Crim. Proc. art. 59.06.

GA-0920 (2012): The district attorney for the 198th Judicial District may make expenditures from the attorney's asset forfeiture fund after the attorney fails to file for reelection and the filing deadline has passed when those expenditures were from the budget previously approved by the regional review committee. County commissioners courts and a regional review committee are among the entities that may approve expenditures from a district attorney's asset forfeiture fund. Cash is a kind of property subject to Code Crim. Proc. art. 59.06 requirements.

GA-0755 (2010): A district attorney is not authorized to use the forfeiture fund to pay for the district attorney's legal defense.

GA-0704 (2009): In a county without an auditor, the treasurer is required to examine the sheriff's forfeiture fund accounts.

GA-0613 (2008): A district attorney may not use the forfeiture fund to assist a county's purchase of a juvenile detention center.

DM-0247 (1993): Provides an overview of the management of forfeiture funds in a multi-county district.

DM-0162 (1992): Forfeiture fund monies must be given to the county treasurer to deposit in the county depository.

JM-1253 (1990): The use of forfeiture fund money for bonuses for assistants whose salary is set by commissioners court is subject to commissioners court approval.

2. Jail Commissary Fund

Statutes: Local Gov't Code §§351.0415, 351.04155

Source: Inmate purchases from commissary. Optional, as determined by the sheriff.

Controlled by: Sheriff³²

Purposes: To pay for, staff and equip a social program for county prisoners, including an educational or recreational program and religious or rehabilitative counseling; purchase clothing, writing materials, and hygiene supplies for county prisoners; establish, staff, and equip the commissary operation; pay for, staff and equip a prison library; or pay for jail improvements, technology, equipment, programs, services, and activities.

Limitations: Sheriff must maintain accounts showing the amount of proceeds from the commissary operation and the amount and purpose of disbursements made from the proceeds; accept new bids for commissary suppliers' contracts every 5 years.

Interpretation:



KP-0159 (2017): Because of the sheriff's exclusive authority over commissary proceeds, the propriety of an expenditure from those funds is a question for the sheriff to determine in the first instance subject to administrative review by the Commission on Jail Standards or judicial review for abuse of discretion.

KP-0079 (2016): All funds held by the sheriff in his official capacity are subject to oversight and audit by the county auditor, whether or not they are county funds. In a county with a population of less than 190,000, unless a statute provides otherwise, a court would have a basis to conclude that there is no authority to require an auditor's countersignature on sheriff's funds properly held outside the county treasury.

GA-1094 (2014): Equipment purchased with commissary funds that no longer has any use for inmates may be sold at auction. The proceeds from the sale must be deposited in the jail commissary fund. Equipment purchased with commissary funds may not be transferred to another office or department where the equipment will not be used for the social and education needs of inmates.

³² In Dallas and Tarrant counties, the sheriff does not have exclusive control of the commissary fund, may not disburse commissary funds without approval from commissioners court, and must obtain commissioners court approval of bids to renew a commissary contract.

GA-0814 (2010): Revenue from the sale of prepaid phone cards in the commissary should be credited to the sheriff for the use of inmates rather than being credited to the general fund.

GA-0791(2010): Sheriff has exclusive control of monies generated by the operation of a jail commissary, and must maintain commissary accounts. Commissary proceeds may be used only to benefit inmates of the county jail.

Commissary proceeds are not monies "belonging to the county" under Local Gov't Code §113.021(a), and the interest on the money remains with the commissary fund, under the control of the sheriff.

GA-0059(2003): Revenue from an inmate telephone contract is not part of commissary fund and must be deposited to the general fund. Modifying LO-97-030 (1997).

JC-0122 (1999): The sheriff may expend commissary proceeds without competitive bidding. (Overruling MW-0439). However, §351.0415(b)(3) provides that the sheriff must take bids for contracts for commissary suppliers every 5 years. (See LO-98-071 (1998).)

JM-1121 (1989): The sheriff may enter into a contract for operation of commissary without consulting county purchasing agent.

DM-67 (1991): Commissioners court may not interfere with sheriff's exercise of discretion in contracting for operation of jail commissary. Money must be used to benefit inmates. Auditor may audit commissary accounts maintained by third party operator.

DM-19 (1991): Proceeds from pay phones in county jails are not commissary funds and must be paid to county treasurer and deposited in general fund.

Mills v. State, 941 S.W.2d 204 (Tex. App—Corpus Christi 1996): Commissary fund is subject to county oversight, therefore books and records are subject to the Public Information Act.

3. Law Enforcement Officer Standards and Education Fund Account³³

Statute: Occupations Code §1701.157

³³ See also Constable.

Source: An equal share of the 20 percent of the state general revenue fund allocated by the Comptroller for local law enforcement agencies.

Controlled by: Law Enforcement Agency³⁴

Purposes: To pay for continuing education of licensed peace officer or training for full-time fully paid law enforcement support personnel.

Limitation: May not be used to replace money provided by county on recurrent basis for training law enforcement officers and support personnel.

Head of the law enforcement agency must maintain a complete record of money received and spent. Money received from the state is subject to audit by the comptroller and expenditures are subject to audit by the state auditor.



Interpretation:

GA -0869 (2011): The county auditor has oversight of funds allocated to a constable from the state law enforcement officer standards and education fund account, and the account must be maintained in an official county depository.

JC-0190 (2000): Money allocated to local law enforcement agency for continuing education may not be diverted to the general fund.

H. TAX ASSESSOR-COLLECTOR

1. Election Code Chapter 19 Fund³⁵

Statute: Election Code §19.002

Source: Paid by secretary of state to the voter registrar:
25 cents from state monies for each new registration;
40 cents for each canceled and updated registration
In each even-numbered year, 40 cents multiplied by the difference between the number of registered voters and the number of initial registrations certified for the two previous voting years.

³⁴ "Law Enforcement Agency" is not defined in §1701.157. The term has not been clarified by case law or through the opinion process. The text of 1701.157 suggests it refers to any county office or unit employing peace officers.

³⁵ See also Voter Registrar.

Controlled by: Voter Registrar

Purposes: Must be used to defray the cost of voter registration, and may be used to pay for any item or service designed to increase the number of registered voters in the state, maintain and report an accurate list of the number of registered voters, or increase the efficiency of the voter registration office, including hiring temporary voter registration personnel.

Limitations: May not be used to pay for the normal day-to-day operation of the office.

The commissioners court may not reduce voter registrar's budget in light of the availability of these monies.

Chapter 19 monies lapse to the state after the expiration of the two-year period in which they may be used. These lapsed monies are placed in a special fund administered by the secretary of state and distributed to counties with limited technological resources to upgrade voter registration technology.

Interpretation:

JC-0038 (1999): The secretary of state has authority to adopt rules prohibiting the use of state monies made available under Election Code Chapter 19 to pay costs associated with the normal operations of the county voter registrar's office. Chapter 19 monies are to be used to enhance the voter registration functions of the voter registrar's office.

1 Tex. Admin. Code §81.13: The secretary of state administrative rule defines allowable uses of Chapter 19 monies and requires expenditures to comply with "reasonable and necessary" criteria established under Uniform Grant Management Standards.

2. Motor Vehicle Inventory Tax Fund Interest³⁶

Statute: Tax Code §23.122

Source: Interest on prepayment of Motor Vehicle Inventory Tax by automobile dealers.

Controlled by: Tax Assessor-Collector

Purposes: Used to defray the cost of administering the prepayment procedure.

Limitation: The commissioners court may not reduce budget allocation for the assessor-collector based on the availability of the interest earned.

Local Gov't Code §111.095 prevents the Tax Assessor-Collector from using the monies to supplement the salary or cover the personal expenses of the tax assessor-collector.³⁷

Interpretation:

JC-0348 (2001): The tax assessor-collector must determine that use of the interest is a legitimate cost of administering the motor vehicle inventory tax prepayment program and serves a public purpose as required by Art. 3, §§51 and 52, Texas Constitution, subject to judicial review. The county auditor is authorized to audit the interest monies, to review expenditures from the fund and to make audit reports to the commissioners court.

JC-0149 (1999): If an item will be used both in the administration of the motor vehicle inventory tax prepayment program and in the general administration of the tax office, interest monies may be used to pay for only that portion of the cost of the item allocable to the motor vehicle inventory tax prepayment program. Purchases made with interest monies are not subject to competitive bidding requirements.

³⁶ Maintaining a segregated account for interest earned on escrow account set up on behalf of automobile dealers is not statutorily required; however, the assessor-collector retains the interest as his or her 'sole property.' Additionally, penalties collected under Tax Code §23.122 are the sole property of the assessor-collector, and may not be used to reduce or otherwise affect his or her annual appropriation.

³⁷ Local Gov't Code §111.095 overrules JC-0348 (2001) to the extent the opinion concluded that a tax assessor-collector could use interest earned on motor vehicle inventory tax escrow accounts to supplement the collector's own salary.

JC-0135 (1999): The interest that accrues on the Motor Vehicle Inventory Tax Fund may be used to supplement salaries of employees who administer the prepayment program if the assessor-collector determines that salary supplements are a legitimate cost of administering the prepayment program. A county auditor must audit the Motor Vehicle Inventory Tax Fund, as well as interest earned on that fund. Any equipment that a tax assessor-collector purchases with interest earned on the Motor Vehicle Inventory Tax Fund is under the sole control of the office of the assessor-collector.

DM-0398 (1996): The interest generated by the dealer's motor vehicle escrow account may be used at the discretion of the collector to defray the cost of administration of the prepayment procedure, and the collector does not need the approval of the commissioners court for their disbursement. However, the monies may only be used to defray the cost of administration of the prepayment procedure and not for general office expenses unrelated to administering the prepayment program.

3. Tax Assessor-Collector Motor Vehicle Registration Fee Account

Statute: Transp. Code §520.006

Source: Motor Vehicle Registration Fee: \$2.30 fee determined by Texas Department of Motor Vehicles (DMV); 43 Tex .Admin. Code §217.185

Controlled by: Commissioners Court

Purposes: Fee collected by tax assessor-collector is deposited in general fund as a commission for the assessor-collector and applied to the expense of issuing registration receipts and license plates, unless the county has been declared a disaster area or is closed for a protracted period of time as defined by the DMV, in which case the fees must be allocated to the county for general use.

Interpretation:

DM-199 (1993): The \$1.90 registration fee is dedicated to the Tax Assessor-Collector's Office for the administration of the motor vehicle laws.

I. VOTER REGISTRAR

1. Election Code Chapter 19 Fund³⁸

Statute: Election Code §19.002

Source: Paid by secretary of state to the voter registrar:
25 cents from state monies for each new registration
40 cents for each canceled and updated registration
In each even-numbered year, 40 cents multiplied by the difference between the number of registered voters and the number of initial registrations certified for the two previous voting years.

Controlled by: Voter Registrar

Purposes: Must be used to defray the cost of voter registration, and may be used to pay for any item or service designed to increase the number of registered voters in the state, maintain and report an accurate list of the number of registered voters, or increase the efficiency of the voter registration office, including hiring temporary voter registration personnel.

Limitations: May not be used to pay for the normal day-to-day operation of the office.

The commissioners court may not reduce voter registrar's budget in light of the availability of these monies.

Chapter 19 monies lapse to the state after the expiration of the two-year period in which they may be used. These lapsed monies are placed in a special fund administered by the secretary of state and distributed to counties with limited technological resources to upgrade voter registration technology.

Interpretation:

JC-0038 (1999): The secretary of state has authority to adopt rules prohibiting the use of state monies made available under Election Code Chapter 19 to pay costs associated with the normal operations of the county voter registrar's office. Chapter 19 monies are to be used to enhance the voter registration functions of the voter registrar's office.

³⁸ See also Tax Assessor-Collector.

1 Tex. Admin. Code §81.13: The secretary of state administrative rule defines allowable uses of Chapter 19 monies and requires expenditures to comply with “reasonable and necessary” criteria established under Uniform Grant Management Standards.

II. FUNDS DEDICATED TO CERTAIN PURPOSES

The funds discussed below are managed by the commissioners court, however, unlike most county monies, the commissioners court does not have the discretion to use the money in these funds as it deems appropriate because the Legislature specifically defines the only purposes for which they may be used.

A. ROAD AND BRIDGE FUNDS³⁹

1. County and Road District Highway Fund

Statutes: Transp. Code §§256.001, 256.002, 256.003; Local Gov’t Code §615.102



Source: State money allocated to county based on size, rural population, and lateral road mileage; Transp. Code §623.0172⁴⁰; Transp. Code §623.403⁴¹; Transp. Code §623.404⁴².

Controlled by: Commissioners Court

Purposes: Money may only be used for: purchasing right-of-way for lateral roads, farm-to-market roads, or state highways; constructing and maintaining lateral roads, including labor and materials; or paying debt incurred to pay for authorized uses.

2. County Special Road and Bridge Tax Fund

Statutes: Texas Const. art. 8, §9(c); Transp. Code §256.052

Source: Property Tax: \$0.15 on each \$100.00 valuation. Requires voter approval.

Controlled by: Commissioners Court

³⁹ County may also levy a tax and issue bonds for the construction, maintenance, and operation of roads under Texas Const. art. 3, §52(b)(3)&(c). These funds are not required to be held in the Road and Bridge Fund, but their use is limited to the purpose stated in the bond election.

⁴⁰ Transp. Code §623.0172. Added by [HB 2319](#), 85th Leg. Effective June 9, 2017.

⁴¹ Transp. Code §623.403. Added by [SB 1383](#), 85th Leg. Effective January 1, 2018.

⁴² Transp. Code §623.404. Added by [SB 1524](#), 85th Leg. Effective January 1, 2018.

Purposes: Used to maintain county roads.

Interpretation:

JC-0250 (2000): County that does not impose a constitutional road and bridge tax may transfer surplus motor vehicle registration fee monies from the county road and bridge fund to another fund, including the general fund, but may use the money only for the purposes authorized by the constitution, including acquiring right-of-way, constructing, maintaining, and policing public roadways and administration of traffic and safety laws.

M-1250 (1972): Special \$0.15 road and bridge tax fund may not be consolidated with general fund and must be used for road maintenance.

V-1349 (1951): Taxes collected may be expended for construction and maintenance of roads in the county as the commissioners court may determine in its sound discretion, based on consideration of the condition and necessity of roads of county.

- 3. a. Farm-to-Market and Lateral Road Fund; and**
- b. Flood Control Fund**

Statutes: Texas Const. art. 8, §1-a; Transp. Code §§256.004, 256.005, 256.006, 256.054

Source: Property Tax not to exceed \$0.30 on each \$100.00 valuation, less \$3,000 homestead exemption. Requires voter approval.

Controlled by: Commissioners Court

Purposes: Money in the farm-to-market and lateral road fund may be used only for the construction and maintenance of farm-to-market and lateral roads; may be used in cooperation with Texas Department of Transportation.

Money in flood control fund may only be used for flood control purposes in county and political subdivision of the county, including soil conservation activities and water control or conservation activities; may be used in cooperation with other state and federal programs and local political subdivisions.

Limitations: Must be equitably distributed based on taxable value of property in each county precinct.

Interpretation:

MW-27 (1979): Farm-to-Market tax revenue may be used to purchase capital road equipment so long as it is used only on farm-to-market roads.

H-530 (1975): Farm-to-Market tax revenue may not be transferred to the general fund and may only be spent on authorized purposes.

4. Motor Vehicle Registration Fees

Statutes: Texas Const. art. 8, §7-a; Transp. Code §§502.192, 502.198, 502.1981, 502.401

Source: Motor Vehicle Registration Fees, including optional fee adopted by commissioners court under Transp. Code §502.401, not to exceed \$10.

Controlled by: Commissioners Court

Purposes: Generally, money collected by a county under Transp. Code Chapter 502 may be used to: pay obligations issued in the construction or improvement of any roads, including state highways in the county; improve roads in the county road system; or construct new county roads.

Limitations: Money credited under Transp. Code §502.198 may only be used for construction and maintenance of lateral roads in a county, under the supervision of the county engineer or the Texas Department of Motor Vehicles' district engineer or resident engineer. It may not be used to pay the compensation of the county judge or a county commissioner.

Money credited under Transp. Code §502.1981 may only be used for county road construction maintenance, and repair; bridge construction, maintenance, and repair; the purchase of right-of-way for road or highway purposes; or the relocation of utilities for road or highway purposes.

Additional requirements:

Fee imposed under Transp. Code §502.401 may only take effect on January 1 and commissioners court must adopt order imposing fee by September 1 of the preceding year. Removal of fee requires rescinding order and notification to Department of Public Safety.

Interpretation:

JM-0250 (2000): Motor vehicle registration fees allocated to a county must be credited to the county road and bridge fund and the county must use the money for road and bridge construction, maintenance and repair.

5. County Energy Transportation Reinvestment Zone Account

Statute: Transp. Code §222.1071(h)

Source: Property tax; incremental revenues resulting from an increase in property valuations in years subsequent to the base year less any amounts allocated under previous agreements including agreements under Loc. Gov't Code §381.004 or Tax Code Chapter 312.

Controlled by: Commissioners Court

Purpose: To provide funding for one or more transportation infrastructure projects for counties located in areas affected by increased oil and gas production; to provide matching funds under Transp. Code §256.105; to apply for grants under Transp. Code Chapter 256, Subchapter C, subject to §222.1072; or to pledge money to a road utility district to assist the county in developing an infrastructure project.

Limitation: A county energy transportation investment zone terminates on December 31 of the 10th year after the year the zone was designated unless extended by the commissioners court for a term not to exceed an additional five years. Money remaining in the tax increment account must be transferred to the Transp. Code Chapter 256 road and bridge fund on expiration of the zone.

Interpretation:



KP-0004 (2015): Absent a constitutional amendment, a court would likely conclude a county may not form and operate a county energy transportation reinvestment zone to

the extent that doing so utilizes a captured increment of ad valorem taxes to fund a county created tax increment reinvestment zone.



GA-1076 (2014): Tax increment financing to fund transportation projects may violate the equal and uniform taxation provision of Art. 8, §1(a), Texas Constitution.

B. RECORDS MANAGEMENT AND PRESERVATION FUNDS

1. County Records Management and Preservation Fund

Statutes: Local Gov't Code §§118.052(3)(G), 118.0546, 118.0645; Gov't Code §§ 51.317(b)(4) and (c)(1); Code Crim. Proc. art. 102.005(f)(1); see also Local Gov't Code §203.003(6)

Ancillary funding statutes:

Gov't Code §101.0611(7) (District Court); Gov't Code §101.0814(4)(G) (Statutory County Court); Gov't Code §101.1013(4)(G) (Probate Court); Gov't Code §101.1214(4)(G)(County Court)

Source: Fee for filing civil case - \$5
Fee imposed on defendant convicted of an offense in county court, county court at law, or a district court - \$22.50.

Controlled by: Commissioners Court

Purposes: Records management preservation or automation purposes in the county.

Limitations: Expenditures from the fund require prior approval of the commissioner court.

Interpretation:

GA-1063 (2014): The fee imposed under Code Crim. Proc. art. 102.005 applies to a defendant convicted of an offense in a county-level court.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

2. Court Records Preservation Account

Statute: Gov't Code §51.708

Ancillary funding statutes:

Gov't Code §101.0611(3)(D) (District Court); Gov't Code §101.0811(7)(D) (Statutory County Court); Gov't Code §101.1212(4) (County Court)

Source: Filing fee in civil cases filed in county court, statutory county court, and district court, not to exceed \$10.

Controlled by: Commissioners Court

Purposes: Digitize court records and preserve the records from natural disasters.

Interpretation:

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

3. District Clerk Records Management and Preservation Fund and Court Records Archiving Fee

Statutes: Gov't Code §51.317(b)(4) and (5); Code Crim. Proc. art. 102.005(f)(2)

Ancillary funding statute:

Gov't Code §§101.0611(7) and (7-a)

Source: Filing fees in civil cases – varying amounts: Gov't Code §51.317(b)(4) (\$10) and (b)(5) (not to exceed \$10); fee imposed on defendant convicted of an offense in district court - \$2.50.

Note: Effective September 1, 2019, the archiving fee will revert back from \$10 to \$5.

Controlled by: Commissioners Court

Purposes: To pay for specific records management and preservation, including for automation purposes, on approval by the commissioners court of a budget.

Interpretation:

GA-1063 (2014): The fee imposed under Code Crim. Proc. art. 102.005 applies to a defendant convicted of an offense in a county-level court.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

4. County Records Technology and Infrastructure Fee

Statute: Local Gov't Code §118.026

Source: Fees for filing or recording services for non-court-related documents – \$2.00

Note: Limited to counties that border the United Mexican States and the Gulf of Mexico.

Controlled by: Commissioners Court

Purposes: For technology and infrastructure for the maintenance of county records and the operation of the county records system.

C. TAX ASSESSOR-COLLECTOR MOTOR VEHICLE REGISTRATION FEE ACCOUNT

Statute: Transp. Code §520.006

Source: Motor Vehicle Registration Fee: \$2.30 fee determined by Texas Department of Motor Vehicles (DMV); 43 Tex .Admin. Code §217.185

Note: The motor vehicle registration fee remains at \$1.90 until the effective date of rules adopted by the DMV regarding the fee under §502.1911 per House Bill 2202, 83rd Legislature, Chapter 1287, 2013, §43.

Controlled by: Commissioners Court

Purposes: Fee collected by tax assessor-collector is deposited in general fund as a commission for the assessor-collector and applied to the expense of issuing registration receipts and license plates, unless the county has been declared a disaster area or is closed for a protracted period of time

as defined by the DMV, in which case the fees must be allocated to the county for general use.

Interpretation:

DM-199 (1993): The \$1.90 registration fee is dedicated to the Tax Assessor-Collector's Office for the administration of the motor vehicle laws.

D. SECURITY FUNDS

1. Courthouse Security Fund

Statutes: Local Gov't Code §291.008; Code Crim. Proc. §102.017

Ancillary funding statutes:

Gov't Code §101.0615(2) and (3) (District Court Fees); Gov't Code §101.0814(7) and (8) (Statutory County Court Fees); Gov't Code §101.1214(6) and (7) (County Court Fees)

Source: Civil court fee not to exceed \$5 (optional, set by commissioners court); Criminal court fee upon conviction \$3 to \$5 depending on offense; \$1 filing fee on any document not otherwise subject to security fee (mandatory if civil fee set by commissioners court).

Controlled by: Commissioners Court

Purposes: To pay for security personnel, services, and items related to a building housing a court, including: x-ray machine (purchase and repair); handheld and walkthrough metal detectors; identification cards and systems; electronic locking and surveillance equipment; video teleconferencing systems; signage; confiscated weapons inventory and tracking systems; locks, chains, alarms or similar security devices; bulletproof glass (purchase and repair); continuing education on security issues for court and security personnel; and warrant officers and related equipment.

Interpretation:

JC-0476 (2002): Code of Crim. Proc. art. 102.017 authorizes commissioners court to expend monies to provide courthouse security, but it does not, either expressly or by necessary implication, provide authority for the commissioners court to establish a courthouse security force of licensed peace officers.

JC-0014 (1999): Code of Crim. Proc. art. 102.017(d)(9) does not authorize the commissioners court to expend monies from the courthouse security fund to purchase clip-on microphones for deputy sheriffs' portable radios.

DM-371 (1995): County clerk may collect the \$1 fee authorized under Local Gov't Code §291.008 only on documents filed with the county clerk as county clerk, unless a specific statute prohibits the imposition of such a fee. Fee may not be collected for birth, death, or fetal death records.

DM- 283 (1994): Under Local Gov't Code §291.008, the commissions court may choose whether to impose a security fee and must set the fee in an amount not to exceed \$5. The commissioners court may not delegate responsibility for setting the amount of the fee to the clerks of the courts.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

2. Justice Court Building Security Fund

Statute: Code Crim. Proc. art. 102.017(d-2)(2)

Source: One-fourth of \$4 fee paid by defendant convicted of misdemeanor offense in justice court under Code Crim. Proc. art. 102.017(b).

Controlled by: Commissioners Court

Purposes: To pay for security personnel, services, and items related to a building housing a court, including: x-ray machine (purchase and repair); handheld and walkthrough metal detectors; identification cards and systems; electronic locking and surveillance equipment; video teleconferencing systems; signage; confiscated weapons inventory and tracking systems; locks, chains, alarms or similar security devices; bulletproof glass (purchase and repair); continuing education on security issues for court and security personnel; and warrant officers and related equipment.

Limitations: Applies only to a justice court located in a county in which one or more justice courts are located in a building that is not in the county courthouse.

Interpretation:

JC-0476 (2002): Code Crim. Proc. art. 102.017 authorizes commissioners court to expend monies to provide courthouse security, but it does not, either expressly or by necessary implication, provide authority for the commissioners court to establish a courthouse security force of licensed peace officers.

JC-0014 (1999): Code Crim. Proc. art. 102.017(d)(9) does not authorize the commissioners court to expend monies from the courthouse security fund to purchase clip-on microphones for deputy sheriffs' portable radios.

E. TECHNOLOGY FUNDS

1. County and District Court Technology Fund

Statute: Code Crim. Proc. art. 102.0169

Ancillary funding statutes:

Gov't Code §102.041(4) (District Court); Gov't Code §102.061(4) (Statutory County Court); Gov't Code §102.081(4) (County Court)

Source: Fee assessed against those convicted of a criminal offense in a county court, statutory county court, or district court - \$4.

Controlled by: Commissioners Court

Purposes: To pay the cost of continuing education and training for county court, statutory county court, or district court judges and clerks regarding technological enhancements; purchase and maintenance of technological enhancements including: computer systems, networks, hardware and software; imaging systems; electronic kiosks; and docket management systems.

2. Justice Court Technology Fund

Statute: Code Crim. Proc. art. 102.0173

Ancillary funding statute:

Gov't Code §102.101(5)

Source: Fee assessed against those convicted of a misdemeanor offense in justice court - \$4.

Controlled by: Commissioners Court

Purposes: To pay for the cost of continuing education for justice court judges and clerks regarding technological enhancements for justice courts and purchase and maintenance of technological enhancements for a justice court, including: computer systems, networks, hardware, and software; imaging systems; electronic kiosks and ticket writers; and docket management systems.

Interpretation:

GA-0560 (2007): The Justice Court Technology Fund may be used only for technological enhancements for the justice court and continuing education and training for justice court judges and clerks regarding technological enhancements. Whether the purchase of a computer for a constable serves as a technological enhancement for the justice court is a fact question to be determined by the commissioners court in the first instance. The fund may not, however, be used to pay for continuing education and training for a constable.

F. COURT-RELATED FUNDS

1. County Child Abuse Prevention Fund

Statute: Code Crim. Proc. art. 102.0186.

Ancillary funding statute:
Gov't Code §102.021(12)

Source: Fine paid by defendant convicted of certain sexual offenses against a child - \$100.

Controlled by: Commissioners Court

Purpose: Used to pay for child abuse prevention programs in the county where the court is located.

2. Juvenile Case Manager Fund

Statute: Code Crim. Proc. art. 102.0174(c)

Ancillary funding statutes:

Gov't Code §§102.081(7) (county court); 102.101(6) (justice court);
102.061(7) (statutory county court)

Source: Fee not to exceed \$5 paid by defendant convicted of a fine-only misdemeanor in justice court, county court, or county court at law, if the court employs a juvenile case manager. Optional, set by commissioners court.

Controlled by: Commissioners Court

Purpose: Used to pay for the salary, benefits, training, travel expenses, office supplies, and other necessary expenses of the juvenile case manager position. If there is money in the fund after these costs are paid, on approval of the employing court the remaining money may be used to implement programs directly related to the duties of the juvenile case manager, which may include juvenile alcohol and substance abuse programs, educational and leadership programs, and other projects designed to prevent or reduce the number of juvenile referrals to the court.

Limitations: May not be used to supplement the income of a person whose primary role is not that of juvenile case manager.
Only applies in county that employs a juvenile case manager.

3. Juvenile Delinquency Prevention Fund

Statute: Code Crim. Proc. art. 102.0171

Ancillary funding statutes:

Gov't Code §§102.041(7) (district court); 102.061(6) (statutory county court); 102.081(6) (county court); Family Code §54.0461

Source: \$50 fee paid by defendant convicted in county court, county court at law or district court of a graffiti offense under Penal Code §28.08.

Controlled by: Commissioners Court

Purpose: Used only to repair damage cause by graffiti; provide educational materials to prevent graffiti attacks; provide money for rewards; teen

recognition and recreation programs; pay for teen courts; pay for juvenile probation department; educational and intervention programs designed to prevent juveniles from damaging property with graffiti.

4. Supplemental Court-Initiated Guardianship Fee

Statute: Local Gov't Code §118.067

Ancillary funding statute:

Local Gov't Code §118.052(2)(E)

Source: Fee for court-initiated guardianship proceedings, paid by person filing original probate action or adverse probate action - \$20.

Controlled by: Commissioners Court

Purposes: To supplement, not supplant, other money used to pay a guardian ad litem and attorney ad litem; and pay for guardianship programs for indigent incapacitated persons without family members suitable and willing to serve as guardians.

5. Supplemental Public Probate Administrator Fee

Statute: Local Gov't Code §§118.052, 118.068; Estates Code Chapter 455; Gov't Code §25.00251

Source: Supplemental Public Probate Administrator Fee, \$10.00

Controlled by: Commissioners Court

Purposes: To fund the expenses of the public probate administrator's office.

6. Judicial Donation Trust Fund

Statutes: Gov't Code §§36.001, 36.003

Source: Gifts, grants, donation, or other consideration from public or private sources designated for the fund.

Controlled by: The fund and terms of its use are created by the commissioners court. Individual disbursements from the fund are made by the judge before which an eligible child or family appears.

Purpose: To assist needy children or families that appear before a county or justice court for truancy or a criminal offense by providing money for resources and services that eliminate barriers to school attendance or seek to prevent criminal behavior.

Note: The fund is established as a separate account held outside the county treasury

7. Truancy Court Costs Fund

Statute: Family Code §65.107

Source: \$50 court cost collected by truancy court from child, parent, or other person responsible for child's support after child is found to have engaged in truant conduct.

Controlled by: Commissioners Court

Purpose: To offset cost of truancy court operations



8. Personal Bond Office Fund

Statute: Code Crim. Pro. art. 17.42

Ancillary funding statute:
Gov't Code §103.021(a)

Source: Personal bond fee of \$20 or three percent of amount of bail, whichever is greater.

Controlled by: Commissioners Court

Purpose: To defray expenses of personal bond office, including extradition expenses.

G. LIBRARY FUNDS

1. County Free Library Fund

Statute: Local Gov't Code §323.007

Ancillary funding statutes:

Local Gov't Code §§323.002, 323.008(b), 323.009(a)

Sources: Monies from the general fund or the permanent improvement fund, not to exceed 12 cents on the \$100 valuation of all property located in the county that is outside of a municipality that supports its own free public library and in a municipality that is in the county library system; Money paid by a municipality that joins the county system; Money paid by another county to extend library privileges to its residents.

Controlled by: Commissioners Court

Purposes: Library purposes.

Limitations: Library must be located in the county seat.
Money set aside under Local Gov't Code §323.002 must be used to maintain, make permanent improvements, or acquire land for the county library.

Interpretation:

O-3055 (1941): Commissioners court may spend library funds to establish, maintain, and operate a bookmobile library as a branch of the county library.

2. County Law Library Fund

Statute: Local Gov't Code §323.023

Ancillary funding statutes:

Gov't Code §101.0615(5) (District Court Fees); Gov't Code §101.0814(10) (Statutory County Court Fees); Gov't Code §101.1013(5) (Probate Court Fees); Gov't Code §101.1214(9) (County Court Fees)

Source: Filing fee in civil case, up to \$35, set by commissioners court.

Controlled by: Commissioners Court



Purposes: Establishing law library, purchasing or leasing library materials, maintaining the library, acquiring library furniture, shelving, equipment, or computers, software, or subscriptions to electronic research networks for judicial research, or establishing and maintaining a self-help center to provide resources to pro se county residents.⁴³

Limitations: Expenditures for library equipment for use by judges in the county, including computers, software, and subscriptions to obtain access to electronic research networks, may not exceed \$175,000 each year and require consultation and authorization from the county's law librarian or, if none, the county auditor.

Interpretation:

GA-0078 (2003): A commissioners court may use fee collected under this section to provide online legal research services for the general public, judges, and attorneys, and incidental benefit to private attorneys would not render the expenditure unconstitutional under Texas Constitution Art. 3, §52(a).

MW-0009 (1979): County Law Library Fund may be expended only for library purposes and for the needs of judges and litigants; the fund may not be used to buy books owned by the county that are transferred to the County Law Library.

Donaldson v. Texas Department of Criminal Justice Correctional Institutions Division, 355 S.W.3d 722 (Tex. App.-Tyler 2011, pet. denied): Court costs may be imposed against inmate whose affidavit of indigency is denied by the court.

H. HEALTH AND SAFETY FUNDS

1. County and Public Health District Fund

Statute: Health and Safety Code §437.012

Source: Fee not to exceed \$150, unless county adopts a variable scale, not to exceed \$300, for issuing or renewing permit to food service establishment, retail food store, mobile food unit or roadside food vendor. Optional, set by commissioners court.

Controlled by: Commissioners Court

⁴³ Gov't Code §323.023(b)(4). Added by [SB 1911](#), 85th Leg. Effective September 1, 2017.

Purposes: Conduct inspections of and issuing permits to food service establishment, retail food store, mobile food unit or roadside food vendor.

Limitations: Does not apply to county with a population of at least 2.8 million.⁴⁴

2. Dog Registration Fund

Statutes: Health and Safety Code §§822.028, 822.029

Source: Registration fee for dog, in an amount more than \$1 but not to exceed \$5. Optional, set by commissioners court.

Controlled by: Commissioners Court

Purposes: Defray the cost of administering state law on animal registration; reimbursement of owner of animal killed by a dog not owned by the person seeking reimbursement.

Limitation: Only applies to a county that adopts registration of and registration fee for dogs. Requires voter approval.

Does not apply to a county that enacts or has enacted regulation or restraint laws under the Rabies Control Act.

3. Fire Code Inspection and Permit Fund

Statute: Local Gov't Code §233.065

Source: Fee for inspection and issuance of building permit and certificate of compliance with county fire code to a commercial establishment, a public building or a multifamily residential dwelling of four or more units. Optional, set by commissioners court.

Controlled by: Commissioners Court

Purposes: Costs of administration and enforcement of county fire code.

⁴⁴ Currently, Harris County falls within this bracket.

Limitations: Only applies in unincorporated areas of a county with a population of over 250,000 or adjacent to a county with a population of over 250,000.

Fire code does not apply to industrial facility having a fire brigade that conforms to OSHA requirements.



4. County Health Care Provider Participation Fund in Certain Counties

Statutes: Health and Safety Code §§291.003, 291.103; 291A.003, 291A.103;⁴⁵ 292.003, 292.103; 292A.003, 292A.103;⁴⁶ 292B.003, 291B.103;⁴⁷ 293.003, 293.103; 293A.003, 293A.103;⁴⁸ 294.003, 294.103; 296.003, 296.103; 297.003, 297.103

Source: Mandatory payment collected from each institutional health care provider in the county. Optional, set by commissioners court.

Controlled by: Commissioners Court, subject to annual public hearing.

Purposes: Money collected under any of the authorized County Health Care Provider Participation Programs may be used to: subsidize indigent programs; refund to paying hospitals the proportional share of money received by the county from Health and Human Services Commission that is not used to fund the non-federal share of Medicaid supplemental payment program payments; refund a portion of a mandatory payment collected in error; pay administrative expenses of the county for activities under the program; and fund intergovernmental transfers from the county to the state to provide the non-federal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, Texas Healthcare Transformation and Quality Improvement Program waiver or a successor waiver program authorizing similar Medicaid supplemental payment programs, or payment to a Medicaid managed care organization that is dedicated to payment to hospitals.

⁴⁵ Health & Safety Code §§291A.003, 291A.103. Added by [HB 2995](#), 85th Leg. Effective June 15, 2017.

⁴⁶ Health & Safety Code §§292A.003, 292A.103. Added by [HB 2062](#), 85th Leg. Effective June 15, 2017.

⁴⁷ Health & Safety Code §§292B.003, 292B.103. Added by [HB 3954](#), 85th Leg. Effective May 26, 2017.

⁴⁸ Health & Safety Code §§293A.003, 293A.103. Added by [HB 3398](#), 85th Leg. Effective June 12, 2017.

Additionally, money collected under Chapters 291, 292, 293, 294, 296, or 297 may be used to refund a paying hospital the proportionate share of money that the county determines cannot be used to fund the non-federal share of Medicaid supplement payment program payments.⁴⁹

Limitations: Chapter 291, Health and Safety Code, only applies to a county not served by a hospital district or a public hospital, located in the Texas-Louisiana border region as defined by Gov't Code §2056.002, with a population of more than 50,000 but less than 65,000.⁵⁰

Chapter 291A, Health and Safety Code, only applies to a county not served by a hospital district or public hospital that borders or includes a portion of the Sam Rayburn Reservoir with a population of more than 75,000, and a county that has a population of more than 200,000 and less than 220,000.⁵¹

Chapter 292, Health and Safety Code only applies to a county not served by a hospital district, located in the Texas-Louisiana border region as defined by Gov't Code §2056.002, with a population of more than 90,000 but less than 200,000, or a county not served by a hospital district with a population less than 51,000 and adjacent to a county with a population of more than 200,000 but less than 220,000.⁵²

Chapter 292A, Health and Safety Code, only applies to a county not served by a hospital district or public hospital with a population of more than 100,000, containing at least two municipalities, each of which has a population of more than 15,000.⁵³

Chapter 292B, Health and Safety Code, only applies to a county not served by a hospital district or a public hospital with a population of more than 400,000 adjacent to Travis County.⁵⁴

⁴⁹ Health & Safety Code §§291, 292, 293, 294, 296 and 297, amended by [SB 1462](#), 85th Leg. Effective June 9, 2017.

⁵⁰ Currently Rusk County falls within this bracket.

⁵¹ Currently Angelina and Smith counties fall within this bracket.

⁵² Currently Bowie, Cherokee and Gregg counties fall within this bracket.

⁵³ Currently Grayson County falls within this bracket.

⁵⁴ Currently Williamson County falls within this bracket.

Chapter 293, Health and Safety Code, only applies to a county not served by a hospital district or public hospital with a population of more than 100,000 but less than 300,000 adjacent to Travis County.⁵⁵

Chapter 293A, Health and Safety Code, only applies to a county not served by a hospital district or a public hospital with a population of more than 1000,000 and that includes a portion of the Concho River.⁵⁶

Chapter 294, Health and Safety Code, only applies to a county not served by a hospital district or a public hospital, containing a private institution of higher learning with a student enrollment of more than 12,000, with a population of less than 250,000.⁵⁷

Chapter 296, Health and Safety Code, only applies to a county not served by a hospital district or a public hospital, with a population of less than 200,000 containing two municipalities both with populations of 75,000 or more.⁵⁸

Chapter 297, Health and Safety Code, only applies to a county not served by a hospital district or a public hospital with a population of more than 300,000 and on which a military base with more than 30,000 military personnel is partially located.⁵⁹

Maximum amount required of each paying hospital may not exceed amount that totals six percent of aggregate net patient revenue of all paying hospitals in the county.

5. Optional County Fee For Child Safety

Statute: Transportation Code §502.403

Source: Additional fee for registering vehicle. Optional, set by commissioners court within statutory limit. In a county with population greater than 1.3 million in which a municipality with a population over 1 million is primarily located, the additional fee may be between 50 cents and

⁵⁵ Currently Hays County falls within this bracket.

⁵⁶ Currently Tom Green County falls within this bracket.

⁵⁷ Currently McClennan County falls within this bracket.

⁵⁸ Currently Brazos County falls within this bracket.

⁵⁹ Currently Bell County falls within this bracket.

\$1.50.⁶⁰ In any other county, the commissioners court may impose additional fee of not more than \$1.50.

Controlled by: Commissioners Court

Purposes: To fund programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention or programs designed to enhance public safety and security.

Limitations: A county imposing the fee may deduct not more than 10% of the revenue as an administrative fee. The county may also deduct from fee revenue an amount proportional to the percentage of county residents living in unincorporated areas of the county. After the deductions, the county sends the remainder of the revenue to municipalities in the county according to their population.

Interpretation:

KP-0068 (2016): Transp. Code §502.403(e) imposes a duty on the county to send proportional fee revenue from the optional county fee for child safety to each municipality within the county according to their population.

I. DEVELOPMENT FUNDS

1. County Airport Fund

Statute: Transp. Code Chapter 22

Source: Revenue received from the ownership, control, or operation of an airport or air navigation facility, including proceeds from sale of property.

Controlled by: Commissioners Court

Purposes: Acquisition, operation and maintenance of county airport.

⁶⁰ Currently, Harris, Dallas, and Bexar counties fall within this bracket.

2. Land Use Restriction Fund

Statute: Prop. Code §203.004

Source: Administrative fee, not to exceed the costs incurred by county to enjoin or abate violation of land use restriction.

Controlled by: Commissioners Court

Purposes: Offset cost of litigation to enjoin or abate violation of land use restriction.

Limitation: Applies only in a county with a population of more than 200,000.

3. Special Improvement District Fund

Statutes: Local Gov't Code §§372.021, 372.022

Source: Tax, levied annually on property in district sufficient to meet annual cost of improvements, or bonds. Optional, set by commissioners court.

Controlled by: Commissioners Court

Purposes: To pay for costs of planning, administration and construction of authorized improvement; preparation of preliminary plans, studies, and engineering reports to determine feasibility of improvement; and initial costs of improvement until other financing source issued and sold.

J. ERRORS AND OMISSIONS CONTINGENCY FUNDS

1. County Clerk Errors and Omissions Contingency Fund

Statute: Local Gov't Code §82.003(c)

Ancillary funding statutes:

Gov't Code §101.0814(1) (Statutory County Court Fees); Gov't Code §101.1013(2) (Probate Court Fees); Gov't Code §101.1214(1) (County Court Fees)

Source: Civil court filing fee not to exceed \$5. Optional, may be set by commissioners court if the county clerk determines insurance coverage is unavailable at a reasonable cost.

Controlled by: Commissioners Court

Purpose: To provide insurance or similar coverage for county clerk's errors and omissions in an amount of at least \$10,000 but not to exceed \$500,000. The amount of coverage required within the statutory range is determined by reviewing the maximum amount of fees collected in any year during the term of office preceding the term for which the insurance is obtained.

Limitation: When the contingency fund reaches the required amount, the clerk shall stop collecting the additional fee

2. District Clerk Errors and Omissions Contingency Fund

Statute: Gov't Code §51.302(e)

Ancillary funding statute:
Gov't Code §101.0611(3)(A)

Source: Civil court filing fee not to exceed \$5. Optional, may be set by commissioners court if the district clerk determines insurance coverage is unavailable at a reasonable cost.

Controlled by: Commissioners Court

Purpose: To provide insurance or similar coverage for district clerk's errors and omissions in an amount of at least \$20,000 but not to exceed \$700,000. The amount of coverage required within the statutory range is determined by reviewing the maximum amount of fees collected in any year during the term of office preceding the term for which the insurance is obtained.

Limitation: When the contingency fund reaches the required amount, the clerk shall stop collecting the additional fee.

K. MOTOR VEHICLE SAFETY RESPONSIBILITY FUND

1. Motor Vehicle Safety and Responsibility Fund

Statute: Transp. Code §601.123

Source: Owner of a vehicle registered in the county - \$55,000 for each vehicle.

Controlled by: County Judge

Purpose: To establish financial responsibility for a motor vehicle registered in the county.

Interpretation:

GA-1068 (2014): In the absence of any other statutory or regulatory guidance, a court could conclude that a county judge may deposit funds received pursuant to Transp. Code §601.123 into a separate account in the county depository and use his or her discretion to decide whether that account should be interest-bearing. Interest earned on funds deposited under Transp. Code §601.123 belong to the person making the deposit; and the county may not collect an administrative fee in connection with the deposit of funds under this section.

L. ELECTION FUNDS

1. Election Code Chapter 19 Fund⁶¹

Statute: Election Code §19.002

Source: Paid by secretary of state to the voter registrar:
25 cents from state monies for each new registration;
40 cents for each canceled and updated registration;
In each even-numbered year, 40 cents multiplied by the difference between the number of registered voters and the number of initial registrations certified for the two previous voting years.

Controlled by: Voter Registrar

Purposes: Must be used to defray the cost of voter registration, and may be used to pay for any item or service designed to increase the number of registered voters in the state, maintain and report an accurate list of the number of registered voters, or increase the efficiency of the voter registration office, including hiring temporary voter registration personnel.

⁶¹ See also Tax Assessor-Collector.

Limitations: May not be used to pay for the normal day-to-day operation of the office.

The commissioners court may not reduce voter registrar's budget in light of the availability of these monies.

Chapter 19 monies lapse to the state after the expiration of the two-year period in which they may be used. These lapsed monies are placed in a special fund administered by the secretary of state and distributed to counties with limited technological resources to upgrade voter registration technology.

Interpretation:

JC-0038 (1999): The secretary of state has authority to adopt rules prohibiting the use of state monies made available under Election Code Chapter 19 to pay costs associated with the normal operations of the county voter registrar's office. Chapter 19 monies are to be used to enhance the voter registration functions of the voter registrar's office.

1 Tex. Admin. Code §81.13: The secretary of state administrative rule defines allowable uses of Chapter 19 monies and requires expenditures to comply with "reasonable and necessary" criteria established under Uniform Grant Management Standards.

2. Election Services Contract Fund

Statute: Elec. Code §31.100

Source: Money paid to the county elections officer under an election services contract.

Controlled by: County Elections Officer

Purpose: To defray expenses of the county elections officer in connection with election-related duties or functions.

Limitations: Commissioners court may not consider availability of the election services contract fund in adopting the county budget for the county election officer.

Interpretation:

1 Tex. Admin Code 81.161: Fund surplus may not be used to fund the day to day operation of the office of the county election officer, which includes duties required by statute, necessary administrative personnel, office space and equipment, ballots, election kits, poll lists, and early voting and election day workers. Examples of allowed expenses include polling place mail-outs, travel to election seminars, purchase of voting equipment changes or upgrades, or technology upgrades for the office (computers).

1 Tex. Admin Code 81.161: County election officer shall request expenditure from fund in writing to commissioners court, which shall handle the request following normal county purchasing policies and guidelines. The court may either approve or deny the request. The commissioners court may not approve use of surplus election contract funds without the written approval of the county election officer.

DM-0134 (1992): The making of election contracts and the use of proceeds from the contracts to fund the county elections administrator's office must conform to applicable Elec. Code Chapter 31 provisions notwithstanding the general contracting authority granted counties by the Interlocal Cooperation Act. Note: Opinion has been largely superseded by the creation of the joint elections administrator position under Elec. Code §§31.151-.171.