

COLLIN COUNTY, TEXAS,	§	THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	
	§	
COLLIN COUNTY AUDITOR,	§	
	§	
Defendant	§	
	§	
_____	§	COLLIN COUNTY, TEXAS
	§	
COLLIN COUNTY AUDITOR,	§	
	§	
Counter-Plaintiff	§	
	§	
--and--	§	
	§	
DONALD W. COZAD, individually,	§	
	§	
Intervenor	§	
	§	
v.	§	
	§	
COLLIN COUNTY, TEXAS,	§	
	§	
Counter-Defendant	§	219th JUDICIAL DISTRICT

COLLIN COUNTY’S RESPONSE TO THE AUDITOR’S AND INTERVENOR’S FIRST TRADITIONAL MOTION FOR PARTIAL SUMMARY JUDGMENT

The Collin County Auditor (“Auditor”) asked the Texas Attorney General nine suggestive questions (“Auditor’s Questions”) about his office’s legal right to monitor and have access to the computer systems of Collin County, Texas (“Collin County”). The Auditor’s Questions are proposals for radical change to Collin County’s computer systems masquerading as an innocent effort to clarify his statutory duties as the county auditor. The radical changes go beyond the Auditor’s statutory authority and stand in stark contrast to explicit statutes giving **exclusive** authority over a county’s computer systems to the commissioners’ court. Moreover, the Auditor’s proposed changes would cost the taxpayers of Collin County **millions** of dollars in

vendor modifications to computer software and hardware and lost man-hours for county employees.

Why is the Auditor seeking such upheaval for Collin County's computer systems? The Auditor seeks to vastly increase his influence and power in the Collin County government. In response to this attempted power grab, Collin County filed this lawsuit seeking an adjudication on the merits of the nine questions. The Attorney General acting in his discretion abstained from offering an opinion on the Auditor's Questions pending the outcome of this litigation.

The Auditor's and Intervenor's motion for partial summary judgment ("Auditor's Motion") should be denied because 1) Collin County has standing to sue the Auditor; 2) the Auditor does not possess the statutory authority to monitor Collin County's computer systems; and 3) the additional powers the Auditor seeks would have disastrous consequences for Collin County's taxpayers. It should be noted that the Auditor refused to answer no less than 19 questions at his deposition and produce documents concerning the basis for his claim that he possesses the statutory authority to monitor Collin County's computer systems. Collin County will be filing a separate motion on the Auditor's abuse of the discovery process.

I. BACKGROUND

A. How is the Collin County government structured?

There are 49 departments in the Collin County government. Each department manages a different aspect of the county's business. For instance, the District Attorney prosecutes crimes committed in the county, the Human Resources ("HR") handles the personnel records and payroll for county employees, and the District Clerk and County Clerk are responsible for filings in various courts and collecting fees. Elected officials are in charge of some these departments, and others are appointed. The Collin County Commissioners' Court ("Commissioners' Court")

oversees others and appoints people to run them. Finally, the county's District Judges oversee the County Auditor department and appoint employees to run County Auditor's operations.

The Information Technology Department ("IT Department") is one of the departments in the Collin County government under the direction of the Commissioners' Court. (Affidavit of Caren Skipworth at ¶ 2 attached as Ex. A.) In the 1980's, the Commissioners' Court decided that the maintenance and operation of the computer systems for all the county's departments would be vested in one central department—the IT Department. (*Id.*) So, the IT Department maintains and operates the computer systems for all of the departments in the Collin County government. (*Id.* at ¶ 3.) Approximately 150 vendors supply computer hardware and software to Collin County. (*Id.*) Importantly, however, each individual department decides who has the access—which the Auditor now seeks for himself—to each department's computer systems. (Ex. A at ¶ 4.)

Caren Skipworth is Collin County's Information Technology Director. (Ex. A at ¶ 5.) The Commissioners' Court appointed Ms. Skipworth to run the IT Department in 2000. (*Id.*) Ms. Skipworth supervises the 62 employees in the IT Department. (*Id.*)

The Auditor is another department in the Collin County government. (*Id.* at ¶ 6.) Unlike the IT Department, the Auditor does not report to the Commissioners' Court. Instead, the District Judges appointed Mr. Cozad as the Auditor. (Ex. A at ¶ 6.)

B. The Auditor Attempts to Gain Access to the County's Computer Systems.

1. What is "view inquiry access"?

This dispute arose from the Auditor's unsuccessful attempts to expand his reach into the Collin County government. Specifically, the Auditor for various reasons could not gain something called "view inquiry access" to three different Collin County computer systems: the

court system's Odyssey application, HR's PeopleSoft program, and the County Clerk's Land Deeds and Vitals System. View inquiry access allows the user of a computer program to view data but alter not it.

Typically, vendors design computer programs to allow access to all of the data, security configurations, and other features of the system. (*Id.* at ¶ 13.) This full access allows a user to modify or alter the data, security configuration, and other features of the system. (*Id.*) Moreover, it is highly unusual for a vendor to be willing or able to alter an application to allow for something like view inquiry access after the program's development. (*Id.*) In other words, vendors usually sell applications "as is" with no ability to tailor access to the program for specific scenarios and conditions. (Ex. A at ¶ 13.)

2. *Odyssey.*

a. Collin County selects Odyssey to run its court system.

In 2004, the Conference of Urban Counties ("CUC") began a process of soliciting proposals for and, ultimately, selecting a software application to run the court systems in their member counties. (*Id.* at ¶ 7.) The CUC is an organization of the 37 Texas counties with the largest populations in the state. (*Id.*) Collin County is a CUC member county. (*Id.*) The CUC eventually chose a software application called Odyssey. (Ex. A at ¶ 7.) Odyssey tracks court filings, scheduling, bond payments, and fees. (*Id.*)

At the beginning of the CUC's effort to select a software program to run the court systems, Mr. Cozad personally asked Ms. Skipworth if he could be involved. (*Id.* at ¶ 8.) Ms. Skipworth welcomed Mr. Cozad and the Office of the Auditor to the process. (*Id.*) The Auditor, in fact, became a member of the CUC's selection committee ("Selection Committee") that reviewed the vendor proposals for the new system. (Ex. A at ¶ 8.)

The Selection Committee chose the Odyssey software application from a vendor called Tyler. (*Id.* at ¶ 9) Odyssey is comprised of two “modules” or parts that perform different functions. (*Id.*) The first module is the Odyssey Financial Manager which tracks fee schedules and payments into the court system, (*Id.*) and the second module is the Odyssey Case Manager which tracks case docketing, filings, scheduling, and fee tables and codes. (Ex. A at ¶ 9.)

b. The Auditor’s asks for view inquiry access to Odyssey.

On September 14, 2007, Mr. Cozad asked Ms. Skipworth if the Auditor could be granted view inquiry access for all the financial transactions in Odyssey Case Manager. (*Id.* at ¶ 10.) View inquiry access allows a user to monitor—but not alter—the transactions in Odyssey. (*Id.*) Ms. Skipworth inquired into whether the vendor could modify Odyssey to allow such access. (*Id.*) The vendor could not modify Odyssey Case Manager to allow view inquiry access. (Ex. A at ¶ 10.)

Because the Auditor was part of the CUC selection committee for Odyssey, Mr. Cozad and members of the Auditor’s staff participated in the drafting of the Selection Committee’s requirements documentation (“Requirements Documentation”). The Requirement Documentation specified what features the committee expected Odyssey to have. (*Id.* at ¶ 11.) The final version of the Requirements Documentation did not state that Odyssey needed to have view inquiry access. (*Id.*)

c. The Auditor rejects a solution to his request for view inquiry access.

Ms. Skipworth suggested to Mr. Cozad that he and members of his staff meet with their counterparts at the Dallas County auditor’s office to view a custom generated report from Odyssey that Dallas County. (*Id.* at ¶ 12.) Dallas County paid the Odyssey vendor \$45,000 for the report. (Ex. A at ¶ 12.) Ms. Skipworth thought that the report would satisfy Mr. Cozad’s

desire for view inquiry access into Odyssey. (*Id.*) Mr. Cozad and member of his staff visited the Dallas County auditor and viewed the report. (*Id.*) Nevertheless, the Auditor was not interested in the report as a solution to his request for view inquiry access to Odyssey Case Manager.

3. *PeopleSoft.*

In the fall of 2006, the Collin County HR department (“HR Department”) selected, and the IT Department installed, the PeopleSoft application to run the HR Department’s computer systems. (*Id.* at ¶ 16.) PeopleSoft tracks HR Department functions like salary payments and withholding for taxes and insurance. (Ex. A at ¶ 16.)

Similar to the Odyssey installation process, Mr. Cozad personally asked to be involved with the implementation of PeopleSoft. (*Id.* at ¶ 17.) Just like with the Odyssey implementation, Mr. Cozad asked for view inquiry access to the system’s financial transactions. (*Id.* at ¶ 17.) On this occasion, the vendor was able to modify the program to grant the Auditor view inquiry access which allowed Mr. Cozad and his employees to view but not configure data in PeopleSoft. (*Id.*)

In addition to view inquiry access, the Auditor also receives on a bi-weekly basis a paper and electronic report of ***all*** payroll transactions for every county employee in that pay period (“Bi-Weekly Report”). (Ex. A at ¶ 18.) A software license for the use of a database called Microsoft Access is available to the Auditor. (*Id.*) Access is capable of storing and manipulating the data that the Auditor receives in the Bi-Weekly Report. (*Id.* at ¶ 18.)

3. *Land Deed and Vitals System.*

In 2005, Collin County implemented the Land Deeds and Vitals System to operate the County Clerk’s office. (*Id.* at ¶ 19.) The Land Deeds and Vitals System manages the property records and marriage, death, and birth certificates for the county. (Ex. A at ¶ 19.) Mr. Cozad

and/or members of the Auditor's staff participated in the implementation of the Land Deeds and Vitals System. (*Id.*)

Currently, the Land Deeds and Vitals System does not provide view inquiry access for financial data within the application. (*Id.* at ¶ 19.) The Auditor was aware of the lack of view inquiry access into the Land Deeds and Vitals System because Mr. Cozad and/or members of the Auditor's staff participated in the selection and implementation of the system. (*Id.*) Nevertheless, Mr. Cozad personally approved the "go live" implementation of the Land Deeds and Vitals System. (Ex. A at ¶ 19.)

After the implementation of the Land Deeds and Vitals System, Mr. Cozad personally asked the County Clerk, the elected official responsible for the Land Deeds and Vitals System, for view inquiry access into the Land Deeds and Vitals System. (*Id.* at ¶ 20.) The County Clerk asked for a quote from the vendor that designed the Land Deeds and Vitals System, AMCAD, to modify the program to allow for view inquiry access into the financial data. (*Id.*) AMCAD provided a quote of \$5,000 for the modification to allow for view inquiry access into the financial data. (*Id.*) Mr. Cozad initially asked the County Clerk to pay for the modification from the County Clerk's budget. (Ex. A at ¶ 20.) The County Clerk refused, and Mr. Cozad responded that the Auditor did not have the funds to pay for the modification either. (*Id.*)

C. Mr. Cozad Seeks Access to All of Collin County's Computer Systems.

Mr. Cozad is not satisfied with limited access to PeopleSoft and Odyssey's financial transactions. Mr. Cozad now wants access to all functions of all the county's computer systems. In other words, Mr. Cozad wants to be able to monitor everything that happened within all the computer programs in the county. This includes financial transactions, modifications to the hardware and software itself and the calculations they performed, and the security

configurations. It is this wide ranging authority and more the Auditor now seeks through his request for an opinion to the Attorney General. (The Auditor's Motion at ¶ 13.)

1. Mr. Cozad asks the Commissioners' Court to Fund a Certified Information Systems Auditor.

So, starting in 2005, Mr. Cozad lobbied the Commissioners' Court for funds to create a position of a Certified Information Systems Auditor ("CISA") within the Auditor's office. (Ex. A at ¶ 27.) The Commissioners' Court denied Mr. Cozad in 2005. (*Id.*) He asked again in 2006 and 2007 for the funding, and the Commissioners' Court denied him for a second and third time. (*Id.*)

2. Mr. Cozad asks the Collin County District Judges to fund a CISA.

In response to the Commissioners' Court's three-time rejection of his request for a CISA, Mr. Cozad took his case to the Collin County district judges ("District Judges"). In an August 18, 2007, public meeting, the Auditor argued before certain District Judges, county court judges, members of the Commissioners' Court, and other public officers for the creation of a CISA. (*See* August 18, 2007, hearing transcript as Ex. B at 14:11-13). The CISA, according to Mr. Cozad, would have promoted someone within the Auditor's office to do "a continuous audit and annual audit cycling through each of the [public office] systems." (*Id.* at 26:13-15.) The district judges refused to give in to Mr. Cozad and, instead, sent him back to the Commissioners' Court.

At a hearing before the Commissioners' Court, the Commissioners' Court requested that Ms. Skipworth meet with Mr. Cozad to determine the parameters for an outside audit of Collin County's computer systems. (Ex. A at ¶ 28.) The outside audit would eliminate the need for a full time CISA. (*Id.*)

Mr. Cozad and Ms. Skipworth made progress on agreeing on a scope of work for the outside audit. (*Id.* at ¶ 29) The District Judges held a second public hearing on the issue on or

about December 14, 2007. (*Id.*) At the hearing Ms. Skipworth reported that she and Mr. Cozad were making progress toward an agreement. (Ex. A at ¶ 29.) Curiously, after this hearing, Mr. Cozad stopped responding to Ms. Skipworth's requests for meetings. (*Id.*)

During December of 2007 and once before in 2006, Mr. Cozad had expressed to Ms. Skipworth that the IT Department should be a part of the Office of the Auditor and report to him. (*Id.* at ¶ 30.)

D. The District Attorney and the Attorney General Refuse to Give an Opinion to the Auditor.

Instead of working with Ms. Skipworth to reach an agreement, Mr. Cozad instead decided on January 25, 2008, to ask the Collin County District Attorney for an opinion concerning his ability to access the county's computer systems. (The Auditor's Motion at Ex. A, ¶ 6.) The District Attorney refused to issue an opinion recommending the Auditor go straight to the Attorney General instead. (*Id.* at Ex. A-5.) So, on April 3, 2008, the Auditor wrote his Auditor's Questions to the Attorney General. (*Id.*) On May 22, 2008, Collin County filed this suit against the Auditor. (*Id.* at Ex. A, ¶ 9.) The Attorney General exercised his own discretion and decided not to issue a response to the Auditor's request for an opinion. (*Id.*)

II. ARGUMENT AND AUTHORITIES

A party is entitled to summary judgment against a claim only when there is no genuine issue of material fact. TEX. R. CIV. P. 166a. In evaluating a motion for summary judgment, the trial court must (1) assume all the non-movant's proof is true, (2) make every reasonable inference in favor of the non-movant, and (3) resolve all doubts about the existence of a genuine issue of material fact against the movant. *See M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W. 3d 22-23 (Tex. 2002) (holding that on a motion for summary judgment, trial court must assume all of non-movant's proof is true, make every reasonable inference in favor of non-

movant, and resolve all doubts regarding existence of genuine issue of material fact against non-movant) The Auditor has not met this standard.

A. Collin County Has Standing.

1. *Collin County had a right to bring its declaratory judgment action.*

a. Declaratory judgments can resolve disputes involving public officers.

A declaratory judgment is the proper procedural vehicle to determine the legal duties of a public officer. *See Industr. Accident Bd. v. Texas Workmen's Comp. Assigned Risk Pool*, 490 S.W. 2d 956, 958 (Tex. App.—Austin 1973, no writ.) (holding that legal duties of public officers should be determined by declaratory judgment). “Public officers are entitled to have their legal duties determined by declaratory judgment for only in this manner may well intentioned, but unlawful acts, be avoided with certainty.” *Id.* (citing *Board of Health v. Board of Comm'rs.*, 16 S.E. 3d 677 (N.C. 1941)). “To this end public officer and boards have frequently resorted to declaratory relief.” *Id.*

This is precisely what Collin County seeks here—a ruling on the scope of the Auditor’s duties with regard to the county’s IT Department. Collin County brought its declaratory judgment action in order to get that ruling. A declaratory judgment on this subject matter is proper pursuant to *Industrial Accident Board*.

b. Collin County was entitled to file a declaratory judgment while Auditor’s Questions were pending.

Texas courts have approved of a party filing a declaratory judgment against a defendant while a request for opinion was *pending*. *See In re: South Texas College of Law*, 4 S.W.3d 219 (Tex. 1999). In *South Texas*, the Texas Higher Education Coordinating Board requested the Attorney General’s opinion on the validity of an agreement between South Texas College of Law and Texas A&M University. *Id.* While that request for opinion was pending, South Texas

College of Law filed suit for judicial declaration on the issue. *Id.* The declaratory judgment action proceeded. *Id.*

The Auditor claims that the filing of this action improperly “interferes” with his right to seek an opinion from the Attorney General. (The Auditor’s Motion at ¶ 29.) The Auditor bases this claim on the fact that Government Code § 402.042 (“Section 402.042”) allows the Auditor—but not Collin County—to request an advisory opinion from the Attorney General. Section 402.042(c)(2), however, expressly provides that, in lieu of providing an advisory opinion, the Attorney General may instead notify the requesting party in writing that the opinion will be delayed or not rendered.

Here, that is precisely what happened. The Attorney General realized that suit was pending and exercised his discretion and declined to offer an opinion. (The Auditor’s Motion at Ex A-11.) Collin County had nothing to do with that decision and, thus, did not interfere with the Auditor’s right.

2. *The Auditor’s reliance on the Civil Practice and Remedies Code is misplaced.*

The Auditor argues that Collin County has not satisfied the Civil Practice and Remedies Code’s standard for bringing a declaratory judgment action. (*Id.* at ¶ 34.) The Civil Practice and Remedies Code, however, allows a plaintiff to bring a declaratory judgment action when its “rights, status, or other legal relations are affected by a statute.” [emphasis added] (*Id.* (citing TEX. CIV. PRAC. REM. CODE § 37.004)). That is precisely the issue in the instant lawsuit. The parties have a fundamental disagreement about their rights, status, and legal relations under the Local Government Code as will be explained in full below. Collin County satisfies the standing requirement under the Texas Civil Practice and Remedies Code.

B. As a Matter of Law, the Auditor Is Not Entitled to Monitor Collin County’s Computer Systems.

1. *Collin County has the sole, statutory authority over the establishment, operation, maintenance, and access to its computer systems.*

Texas law states that the *Commissioners’ Court* of a county—*not the auditor*—has the authority to establish, maintain, and operate “a computerized information system through which it may provide on a contractual basis direct access to information that relates to all or some county and precinct records and records of the district courts and courts of appeals having jurisdiction in the county, that is public information,¹ and that is stored or processed in the system.” LOCAL GOV’T CODE § 191.008. The statute further provides that the Commissioners’ Court may “(1) provide procedures for the establishment, maintenance, and operation of the information system; (2) establish eligibility criteria for users; (3) delineate the public information to be available through the system; (4) set a reasonable fee, charged under a contract, for use of the system; and (5) consolidate billing and collection of fees and payments under one county department or office.” [emphasis added.] *Id.*

The Auditor, however, relies on his:

- “general oversight authority of the books and records”;
- duty to “keep a general set of records to show all the transactions of the county”;
- his right to “continual access to” the books, accounts, reports, vouchers, and other records of any officer;
- duty to “examine and report on all reports that about the collection of money” on a quarterly basis;
- duty to require a proper accounting from any of those persons if he “unable to obtain proper reports”;

¹ Under Government Code § 552.002, “public information” consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.

- duty to examine “the accounts, dockets, and records of each clerk, justice of the peace, and constable and of the sheriff and county tax assessor-collector to determine if money belonging to the county...has not been accounted for and paid over according to the law.”

LOCAL GOV'T CODE §§ 112.006; 112.007; 115.001; 115.002; 115.004; 115.901.

Based upon these statutes, the Auditor seeks access to all facets of all the computer systems in Collin County potentially involving him in areas completely unrelated to the county's books and records. Among other things, the Auditor wants to:

- Examine and audit any County Computer system (hardware and/or software) that affects, generates, contains, or reports on financial records, including any related controls, processes, policies configurations [sic], user access and security;
- Examine and audit the records (both paper and electronic) of administrative or elective offices, including any records created, managed, and/or stored electronically;
- Examine and audit the electronic backup and recovery processes for maintaining and producing historical financial data;
- Examine and audit the rules and rights that govern calculation of a transaction and the access to the maintenance and changes to the calculations;
- Have unrestricted view only access to internal controls within a system or use of monitor software that reports changes to internal controls; and
- Have access to any data and/or tables used to create or support financial transaction.

(The Auditor's Motion at ¶ 13.) These questions go directly to the issues explicitly addressed in Local Government Code § 191.008 giving Collin County Commissioners' Court the explicit authority over the maintenance and operation of its computer systems.

Further, the Texas Constitution and the rules of statutory interpretation hold that Local Government Code § 191.008 is the overriding authority on the authority of a county's computer systems. Unless the relevant statute grants a county officer the “exclusive power to perform specific functions,” a county's Commissioners' Court “may delegate the responsibilities to an

appropriate county official” pursuant to Article II, § 1 of the Texas Constitution. *See Commissioners Court of Titus County v. Agan*, 940 S.W. 2d 77, 80-81 (Tex. 1997). Under the rules of statutory construction, “where one statute deals with a subject in ***general*** terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible. However, if there is any conflict the latter will prevail, regardless of whether it was passed prior or subsequent to the general statute.” [emphasis added] *Commissioners Court of Harris County v. Fullerton*, 596 S.W. 2d 572, 577 (Tex. App.—Houston [1st Dist.] 1980, pet. denied) (*quoting Culver v. Miears*, 220 S.W. 2d 200 (Tex. App.—Eastland 1949, writ ref’d). Here, as shown above, Local Government Code § 191.008 is specific and explicit, providing in detail the powers and authority given Collin County Commissioners’ Court in establishing, maintaining, and operating its computer systems. By contrast, the Auditor’s seeks additional authority arising from nothing more than his “general oversight authority.” Local Government Code § 191.008 controls the question of who has authority over the establishment, operation, maintenance, and access to a county’s computer systems.

2. *Collin County has the authority to insure the integrity of government data.*

A Commissioners’ Court may prescribe “standards and procedures that the commission considers necessary to ensure the ***availability, readability, or integrity*** of the local government record data.” LOCAL GOV’T CODE § 191.008(b)(5). One of the Auditor’s primary reasons for expanded authority is the “integrity” of the data stored in the county’s computer systems. (The Auditor’s Motion at ¶¶ 7, 9.) Indeed, several of the Auditor’s Questions presumably go to this issue:

- “May the County Auditor examine and audit any County computer system...including any related controls...user access and security associated with those systems?”

- “May the County Auditor examine and audit the rules and rights that govern the calculation of a transaction and the access to the maintenance and changes to the calculations?”
- “May permission to provide the County Auditor with either view [inquiry] access to internal controls with a system or use of monitor software that reports changes to internal controls be arbitrarily withheld?”
- “May permission to provide the County Auditor with access to any data and/or tables used to create or support financial transactions...be arbitrarily withheld?”

(The Auditor’s Motion at ¶ 13.) Yet, Local Government Code Section 191.008(b)(5) expressly gives the county Commissioners’ Courts the authority over the “integrity” of the information on a county’s computer systems. In the absence of competing authority from the Auditor, Collin County Commissioners’ Court has such authority due to the specificity of this statute. *See Agan*, 940 S.W. 2d at 80-81; *Fullerton* 596 S.W. 2d 577. Such authority for the Auditor is outside the express scope of his duties.

3. *County officers must only provide “reports” not continual access.*

County officers are only obligated to provide a county Auditor with reports regarding collections, disbursements, and financial transactions. *See* LOCAL GOV’T CODE § 114.001(a). “Each report required under this subtitle must be made in writing and must be sworn to by the officer making the report before an officer authorized to administer oaths.” Succeeding chapters also refer to the reports that the county officers are to provide to Auditor and on which Auditor is to rely. *See e.g.* LOCAL GOV’T CODE § 115.002 (“The county auditor shall carefully examine and report on all reports that are about the collection of money for the county and that are required to be made to the commissioners court.”). Moreover, the statutes provide that the Auditor may only seek a full audit if he is not provided with proper reports from the county offices. *See* LOCAL GOV’T. CODE § 115.004(c) (“*If the county auditor is unable to obtain proper reports or an adequate accounting from any of those persons, either during or after the person's term of office,*

the auditor may require an accounting and may proceed at the county's expense as the auditor considers necessary to protect the interest of the county or of the person entitled to any funds.”) (emphasis added). Interestingly, a Texas Attorney General stated in JM-1275 that the Local Government Code’s requirement that county auditors be given “continual access” to a county’s books and records ***is not*** and ***never*** has been meant to be taken ***literally***. *Id.* at 4 (interpreting Local Government Code § 115.001).

4. *A County Commissioners’ court and the individual department heads of the county government are responsible for county records.*

The Attorney General in JM-1224 identifies three agents of county government with delineated responsibilities for the preservation and maintenance of county records: (1) the Commissioners’ Court, (2) records management officers, and (3) custodians. *See* JM-1224 at 10 (interpreting Local Government Code §§ 203.001 *et seq.* and 205.001 *et seq.*) As discussed above, a Commissioners’ Court is responsible for establishing records management programs. *See* JM-1275. Elected county officers and appointed officials are the “records management officers” for their respective offices and are given preeminent authority to administer the records management programs for their offices. *Id.* A “custodian” is the appointed or elected officer who is, by law, in charge of an office that creates or receives local government records. *Id.* Under these statutes and definitions, JM-1224 holds that elected county officers “are charged by statute with the control, management, and preservation of information created or received by their offices pursuant to law or in the transaction of public business, including information that is stored in the [county] compute system.” JM-1224 further holds that “the duty to observe and comply with relevant laws governing access and dissemination” of such information rests with elected county officers. *Id.*

The Auditor seeks expanded authority in direct conflict with JM-1224. The Auditor's requests to be able to insure the "integrity" of the County's data and for "view inquiry access" would effectively invest the Auditor with the powers of a custodian and records management officer over departments with elected officers and appointed officials already charged with that duty. For example, the Collin County District Attorney is an elected official—who, according to JM-1224—has authority over his office's records. The Auditor seeks to wrongfully encroach upon the explicit responsibilities of Collin County and its elected officials.

C. Increased Power for the Auditor over Collin County's Computer Systems Puts Collin County at Risk for Serious Injury.

The expanded powers the Auditor seeks could easily require modifications to or elimination of computer software applications for which the county has spent millions of dollars.

A few examples of the possible required modifications are:

- **Odyssey**. As explained above, the Odyssey computer software system manages the court systems. (Ex. A at ¶ 7.) Currently, the Auditor has view inquiry access into the financial transactions of Odyssey Financial Manager. (*Id.* at ¶ 10.) The vendor that designed Odyssey did not allow for view inquiry access into Odyssey Case Manager. (*Id.*) To date Collin County has spent \$7 million installing and maintaining Odyssey. (*Id.* at ¶ 15.) It also took three and a half years to implement the Odyssey. (Ex. A at ¶ 15.) Collin County would face the possibility of having to do away with Odyssey—after millions of dollars and years of effort—and implement another program if the Auditor is granted the level of access into the program he seeks.
- **Firewalls**. Firewalls are computer systems that act as a traffic cop providing security for computer systems against viruses, spyware (the ability of outside

unauthorized user to use of the programs), and “hackers.” (*Id.* at ¶ 24.) Firewalls consist of computer software and hardware. (*Id.*) All of Collin County’s computer systems are vulnerable if the firewall is compromised. (*Id.*) So, all the computer systems in the county need to be deactivated if Collin County’s firewall is compromised and until the breach is fixed. (Ex. A at ¶ 24.)

Collin County uses Cisco computer software and hardware for its firewalls. (*Id.* at ¶ 25.) Collin County has used Cisco software and hardware since 1998. (*Id.*) The Cisco firewall for the Collin County computer systems consists of \$6 million of software and hardware and about 4800 devices. (*Id.*)

The Auditor is not qualified to undertake the complex task of auditing the Collin County firewall. Collin County hires independent auditors who are highly trained engineers with professional certifications and at least five years of experience. (*Id.* at ¶ 26.) A firewall audit requires multiple engineers who specialize in different facets of the firewall’s operation. (*Id.*) Outside engineers are necessary for the audit because authorized users, i.e. estimates are that employees commit 80% of computer crime. (Ex. A at ¶ 26.)

Allowing the Auditor the ability to access Collin County’s firewall would wreak havoc on the county’s ability to protect itself from intrusions into its computer systems. The county would potentially have to end a ten year relationship with Cisco and lose millions of dollars in software, hardware, and man-hours. The county would have to find another firewall vendor willing to provide products to meet the specifications of view inquiry access needed for the Auditor. In the alternative, Collin County would have to somehow modify the

present Cisco firewall to accommodate the Auditor at an unknown expense in money and man-hours.

- **Land Deeds and Records**. Collin County paid \$375,000 for the Land Deeds and Vitals System. (*Id.* at ¶ 21.) Collin County paid an additional \$250,000 for the computer hardware to support the Land Deeds and Vitals System. (*Id.*) AMCAD also charges Collin County annual maintenance fees. (*Id.*) To date, Collin County has paid AMCAD approximately \$180,000 in these annual maintenance fees. (Ex. A at ¶ 21.)

Ms. Skipworth has been impressed with the Land Deeds and Vitals System from AMCAD. (*Id.* at ¶ 22.) She has not received any complaints from the County Clerk about the Land Deeds and Vitals System. (*Id.*) AMCAD guarantees that the Land Deeds and Vitals System complies with all state statutory requirements. (*Id.* at ¶ 23.) To date, she is not aware of any violations of state statutory violations on the part of the Land Deeds and Vitals System. (Ex. A at ¶ 23.) Again, the Auditor's efforts at increased power potentially jeopardize another beneficial relationship a county department has with a vendor.

These are but a few of the examples of injury that Collin County stands to suffer should the Auditor gain the power and influence he desires.

D. Collin County Would Prevail on the Merits in Spite of the Auditor's Abuse of the Discovery Process.

The Auditor claims "it is clear from the supervisory control and oversight authority expressly placed on the Collin County Auditor by statute" that the Auditor's Questions "relate to the scope" of his "official duties." (The Auditor's Motion at ¶ 48.) In fact, the Auditor's ability to supervise the county's computer systems is far from clear. What is clear is the explicit

authority the Local Government Code grants Collin County in the maintenance and operation of its computer systems. LOCAL GOV'T CODE §§ 114.001(a), 115.002, 115.004(c), 191.008. Further, the Local Government Code expressly grants each county officer with the right to control access to the information contained in their own department. 205.001 *et seq.*, and 203.001 *et seq.* Thus, it is likely that Collin County would prevail on the question of whether the Auditor's Questions are within the scope of his statutory responsibilities.

In the alternative, the Auditor has obstructed Collin County's investigation of the merits through his refusal to participate in discovery. At his deposition, on 19 separate occasions, the Auditor refused to answer questions going to the merits of the lawsuit. The Auditor also refused to produce documents in response to a duces tecum accompanying his notice of deposition. (Collin County will be filing a motion to compel responses to these deposition questions and production of documents.) Collin County would prevail on any decision on the merits of the Auditor's Questions or, at the very least, the Court should order that the Auditor submit to further discovery.

The Court should deny the Collin County Auditor and Donald Cozad's First Traditional Motion for Partial Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the provisions of TEX. R. CIV. P. 21, I hereby certify that on this 4th day of August 2008, a true and correct copy of the foregoing instrument was served on counsel of record via electronic mail and facsimile:

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