



# **AMERICAN RESCUE PLAN ACT OF 2021**

3/12/2022



## *American Rescue Plan*

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) of 2021 into law. The \$1.9 trillion package, based on President Biden's American Rescue Plan, is intended to combat the COVID-19 pandemic, including the public health and economic impacts. ARPA allocates hundreds of billions of dollars for public health and vaccines, assistance for vulnerable populations, education and housing stabilization, economic recovery assistance and direct assistance for families and individuals.

As part of the \$362 billion in federal fiscal recovery aid for state and local governments, Tyler County has been allocated \$4,209,532.00 through the Coronavirus State Federal Funding the CFSLS as referred to as ARPA funding. These funds are intended to provide support to our local government in responding to the impact of COVID-19 and to assist our local leaders' efforts to contain COVID-19 in our communities, residents, and businesses. The Tyler County Commissioners' Court have identified the following expense categories, as defined by the department of Treasury, as priority spending of the ARPA funds: Public Health, Negative Economic Impacts, Services to Disproportionately Impacted Communities, Premium Pay, Infrastructure, Revenue Replacement, and Administrative Cost.

# Who does the American Rescue Plan help?

## American families

**\$1,400 checks**

**\$424 billion**

**State and local aid  
(prevent layoffs and service cuts)**

**\$350 billion**

**Unemployment insurance**

**\$246 billion**

**Veterans**  
**\$17 billion**

**Restaurant and bars**  
**\$25 billion**

**Renters and homeowners**  
**\$40 billion**

**Other**  
**\$45 billion**

**FEMA disaster relief**  
**\$47 billion**

**Farmers, small businesses, and other vital industries**  
**\$109 billion**

**Vaccinations and health care**  
**\$176 billion**

**Reopen schools and higher education**  
**\$178 billion**

**Tax credits, aid, and child care for families**  
**\$219 billion**

Source: Congressional Budget Office, "Estimated Budget Effects of the American Rescue Plan Act of 2021" (2021).

**Monday, May 17, 2021**

A motion was made by **Commissioner Sturrock** to apply for the **American Rescue Plan Grant** for possible county projects. The motion was seconded by **Commissioner Marshall**. **Commissioner Blacksher** expressed reservations about the American Rescue Plan Act. **Commissioner Sturrock** said that the county doesn't have to accept it if there are concerns. All voted yes and none no.

A motion was made by **Commissioner Sturrock** and seconded by **Commissioner Blacksher** to adopt the Resolution concerning the **2021 American Rescue Plan**. All voted yes and none no. SEE ATTACHED

**Commissioner Sturrock** motioned to start the procurement process to seek a grant administrator for possible projects through the **American Rescue Plan**. **Commissioner Hudson** seconded the motion. All voted yes and none no.

**Commissioner Blacksher** motioned to start procurement and request for qualifications to select an engineer for possible projects through the **American Rescue Plan**. The motion was seconded by **Commissioner Hudson**. All voted yes and none no.

A motion was made by **Commissioner Sturrock** and seconded by **Commissioner Hudson** to appoint a rating committee to select engineering and administrator firms for possible projects through the **American Rescue Plan**: Jackie Skinner, Mike Marshall and Ken Jobe. All voted yes and none no.

# PUBLISHER'S AFFIDAVIT

THE STATE OF TEXAS  
COUNTY OF TYLER

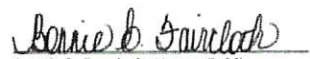
Before me, the undersigned, Notary Public in the County of Tyler, State of Texas, personally appeared Kelli Barnes, known to me, who after being duly sworn by me, on her oath, deposes and says that she is the *Publisher* of the *TYLER COUNTY BOOSTER*, a newspaper published in said county, that a Legal Notice, a copy of which is attached, was published in said newspaper for (2) weeks, the dates to wit:

May 20, 2021  
May 27, 2021



Kelli Barnes, Publisher

Subscribed and sworn to before me this the 27th DAY of MAY 2021



Bonnie E. Faircloth, Notary Public

My Commission Expires: 12-03-2023



## Grant Services Public Notice

The County of Tyler plans to apply for the American Rescue Plan passed by the 117th United States Congress and signed into law by President Joe Biden. These services are being solicited to assist the County in its application and administration of the American Rescue Plan, if awarded, to support eligible activities in the County of Tyler. Accordingly, the County is seeking to contract with a qualified Administration Service Provider (individual/firm) to prepare the application and/or administer the awarded contract(s). Please submit 3 copies of your proposal of services and a statement of qualifications for the proposed services to the address below: Attn: Jackie Skinner 507 N Pine St., Woodville, Texas 75979. Proposals shall be received by the County no later than 9:30 AM on Monday, June 14, 2021 to be considered. The County reserves the right to negotiate with any and all individuals or firms that submit proposals. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises and labor surplus firms are encouraged to submit proposals. The County of Tyler is an Affirmative Action/Equal Opportunity Employer. (20-21-b)

PUBLISHER'S AFFIDAVIT

THE STATE OF TEXAS  
COUNTY OF TYLER

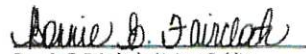
Before me, the undersigned, Notary Public in the County of Tyler, State of Texas, personally appeared Kelli Barnes, known to me, who after being duly sworn by me, on her oath, deposes and says that she is the *Publisher* of the *TYLER COUNTY BOOSTER*, a newspaper published in said county, that a Legal Notice, a copy of which is attached, was published in said newspaper for (2) weeks, the dates to wit:

May 20, 2021  
May 27, 2021



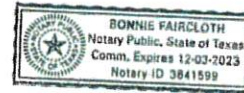
Kelli Barnes, Publisher

Subscribed and sworn to before me this the 27th DAY of MAY 2021



Bonnie E. Faircloth, Notary Public

My Commission Expires: 12-03-2023



**Engineering Services Public Notice**

The County of Tyler plans to apply for the American Rescue Plan passed by the 117th United States Congress and signed into law by President Joe Biden. These services are being solicited to assist the County in its application and engineering of the American Rescue Plan, if awarded, to support eligible activities in the County of Tyler. Accordingly, the County is seeking to contract with a qualified Engineering Service Provider (individual/firm) to prepare the application and/or prepare all preliminary and final design plans and specifications for the awarded contract(s). Please submit 3 copies of your proposal of services and a statement of qualifications for the proposed services to the address below: Attn: Jackie Skinner 607 N Pine St., Woodville, Texas 75979. Proposals shall be received by the County no later than 9:30 AM on Monday, June 14, 2021 to be considered. The County reserves the right to negotiate with any and all individuals or firms that submit proposals. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises and labor surplus firms are encouraged to submit proposals. The County of Tyler is an Affirmative Action Equal Opportunity Employer.(20-2x-b)

**Monday, June 14, 2021**

No bids were received for a **Grant Administrator for American Rescue Plan ("ARP") Act of 2021 Coronavirus Local Fiscal Recovery Fund ("CLFRF")**. No action was taken.

A motion was made by **Commissioner Sturrock** to table awarding an Engineering Firm for American Rescue Plan (ARP") Act of 2021 Coronavirus Local Fiscal Recovery Fund ("CLFRF"), as requested by Ken Jobe, for further study. The motion was seconded by **Commissioner Marshall**. All voted yes and none no.

**Monday, August 9, 2021**

**Commissioner Hudson** motioned to assist the **Tyler County Hospital** in COVID response with contract workers. **Commissioner Blacksher** seconded the motion. Sondra Williams made the court aware of needed response teams in the hospital to keep the hospital up and going; made aware by TDEM of grant money in care and custody of the County; requested money be ear marked for the hospital, Judge Blanchette added, "this was separate and apart from other monies that had been discussed". Commissioner Marshall asked if the county has received this money. The County Auditor answered in the affirmative and that it was a grant by another name but under the umbrella of the American Rescue Act. All voted yes and none no. SEE ATTACHED LETTER

**Monday, August 23, 2021**

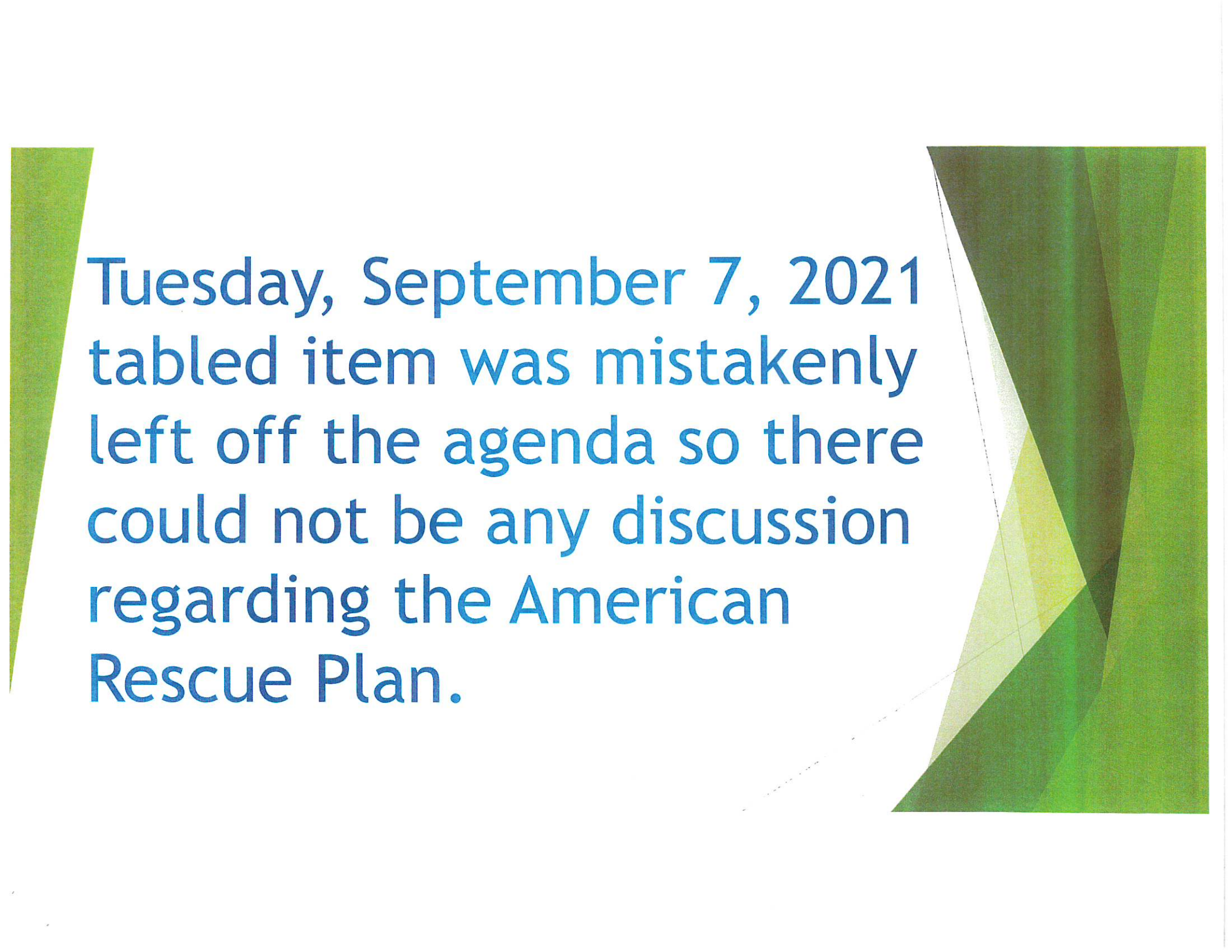
**Commissioner Blacksher** motioned to create a separate fund for the **American Rescue Act Money**. **Commissioner Sturrock** seconded the motion. All voted yes and none no. SEE ATTACHED

**Commissioner Blacksher** motioned to approve the maximum total amount allocated for the **Tyler County Hospital** out of the 1<sup>st</sup> round of **American Rescue Act Funds** and set a time for review. **Commissioner Marshall** seconded the motion. Calendar year 2021 - \$383,785 and calendar year 2022 - \$674,357; time of review will be February 2022. All voted yes and none no. SEE ATTACHED

**Monday, August 30, 2021**

**Commissioner Sturrock** motioned to begin discussion to deem which employees and officials are essential workers pertaining to the **American Rescue Plan Act**. The motion was seconded by **Commissioner Blacksher**. **Commissioner Sturrock** motioned that full-time employees, as defined as receiving benefits, and all Officials be deemed as "essential" pertaining to the **American Rescue Plan Act**. The motion was seconded by **Commissioner Blacksher**. All voted yes and none no.

A motion was made by **Commissioner Sturrock** to open for discussion consideration of the premium pay amount from the **American Rescue Plan Act** for county employees and Officials deemed essential pertaining to the ARPA; and when and how it will be distributed. The motion was seconded by **Commissioner Marshall**. **Commissioner Sturrock** stated different ways the amounts could be distributed such as a flat rate or a step program. **Judge Blanchette** motioned to table consideration of the premium pay amount until September 7<sup>th</sup> for further study. **Commissioner Marshall** seconded the motion to table. All voted yes and none no.

The background of the slide features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the left and right sides of the slide, framing the central text area.

Tuesday, September 7, 2021  
tabled item was mistakenly  
left off the agenda so there  
could not be any discussion  
regarding the American  
Rescue Plan.

**Monday, September 13, 2021**

**Commissioner Sturrock** motioned to remove from tabled items; and, to approve premium pay from the **American Plan Act** for county employees and officials deemed essential. **Commissioner Blacksher** seconded the motion. Commissioner Sturrock and Commissioner Hudson reported out of those polled, the employees preferred a flat rate. Commissioner Marshall stated his concern that some part-time employees had been essential also. Commissioner Sturrock voiced discussion for part-time employees would require a separate agenda item because action taken in a previous meeting was for full-time employees. Judge Blanchette contemplated there were a substantial number of part-time employees that are as essential to the functions of county government and should receive consideration of something as they have weathered through "these challenges with us". Commissioner Sturrock added the positions need to be considered and not the persons. The County Auditor and County Treasurer stated the time period designated by the Act is from March 30<sup>th</sup> 2020 to December 31, 2020. A motion was made by **Commissioner Sturrock** and seconded by **Commissioner Blacksher** to amend the motion to include payment to full-time employees at a flat rate of \$3500.00 across the board on September 30<sup>th</sup>, 2021[changed by amendment] that were employed from March 30<sup>th</sup> 2020 to December 31, 2020; and, are currently employed. A motion was made by Commissioner Sturrock and seconded by Commissioner Blacksher to amend the amended motion that the one-time payment be paid on September 21<sup>st</sup>. All voted yes. Judge Blanchette asked the sheriff if there were any of his employees that may have worked during the range of time designated but were no longer with the county, being "slighted out". Sheriff Weatherford replied there was an allotted amount (hazard pay) that was given to his employees. or other departments. Judge Blanchette called for the vote on the original motion. All voted yes and none no.

**Monday, September 20, 2021 7:36 PM**

**Jackie Skinner**

**From:** lmonk.cotreas@co.tyler.tx.us  
**Sent:** Monday, September 20, 2021 7:36 PM  
**To:** Buck Hudson; Mike Marshall; Jacques L. Blanchette; Stevan Starrock; weatherford.sheriff@co.tyler.tx.us; Renee Crews; 'Donna Gregory'; 'Lynnette Cruse'; sytford@co.tyler.tx.us; Ken Jobe; Tony Reynolds; Casey Whitworth; casey.whitworth@co.tyler.tx.us; jim\_77616@yahoo.com; Ronnie Ford; Jackie Skinner; terry allen; Lucas Babin; zach@woodville-tx.gov; moneal.cscd@co.tyler.tx.us  
**Subject:** Premium Pay

Good evening Officials –

In preparations for tomorrows pay out of the Premium Pay for all Court deemed, full – time, essential employees, I have found information that leads me to believe I do not have the authority to pay our officials this pay. Per local government code Sec. 152.013 which states the following:

Sec. 152.013. PROCEDURE FOR SETTING AMOUNTS FOR ELECTED OFFICERS. (a) Each year the commissioners court shall set the salary, expenses, and other allowances of elected county or precinct officers. The commissioners court shall set the items at a regular meeting of the court during the regular budget hearing and adoption proceedings.

(b) Before the 10th day before the date of the meeting, the commissioners court must publish in a newspaper of general circulation in the county a notice of:

- (1) any salaries, expenses, or allowances that are proposed to be increased, and
- (2) the amount of the proposed increases.

(c) Before filing the annual budget with the county clerk, the commissioners court shall give written notice to each elected county and precinct officer of the officer's salary and personal expenses to be included in the budget.

I understand the code to say that we, meaning the officials, are not eligible for the Premium Pay. I have contacted TAC, TAC Legal, CTAT, Cameron County (which was used as an example in Court, but did not pay their officials), and Eric McGee – all of which have stated that under the above mentioned code, the officials are not eligible and we cannot pay. I have asked each of the listed entities I contacted for other options for the officials to be eligible and as of right now I have not been able to find an alternative.

At this time, I will only be processing the premium pay checks for the full-time employees who have been employed with the county from 3/30/202 – 12/31/2020 and are currently still employed, who are not elected or appointed (I have questions still out on the ability to pay the monies to appointed officials and will let you know when that determination is made).

This is not the news I'd like to be giving you – as I sure would've like to have had a little extra as well – but I am bound to follow the Local Government Code and cannot do anything that will cause harm to the County. Should anything change or I receive information that gives us the "go ahead" I will definitely let you know.

Respectfully,

**Leann Monk**  
Tyler County Treasurer,  
HR/Payroll Administrator  
PO Box 2670  
100 W Bluff, Room 003  
Woodville, TX 75979  
409-283-3054, Office  
409-283-1866, Cell





**TYLER COUNTY TREASURER**

*Leann Monk*

100 W. Bluff Room 003 Woodville, Texas 75979  
409-283-3054 fax: 409-283-6306 lmonk@co.tyler.tx.us

September 22, 2021

**September 22, 2021**

RE: Officials Pay (ARPA)

Officials –

Please find enclosed your premium pay check. I want to say that I sincerely apologize for any concern that I might have caused you in reference to the payment of these funds based on the direction of our Commissioner's Court. That was never my intention. I want to make it clear that I only wanted take a minute to investigate what I had been told at conference – both the Legislative Update Conference and County Treasurer's Conference, as well as by TAC HR and TAC Legal. I never intended any disrespect to you, or to our court. I simply wanted to do my part in making sure all potential negative avenues were covered.

That being said, and after doing hours of research, the bottom line is that it falls on the court's *interpretation* of the law or the code. After speaking to the examples provided for our pattern to pay, no one answer is clear. Cameron County for example (which was used in Court) did not pay their officials based on their interpretation; however, Upshur County did. When I spoke with the Upshur County officials, they told me that they too had spoken with TAC Legal and they were given the green light – which differed from my conversation. They, Upshur County, have stated that this payment is a "stimulus" and does not fall under the local government code due to it being a "once in a lifetime" event and not on any repeating cycle.

Therefore, under the direction and authority of our Court, you will find your check enclosed. Again, my pause in sending the checks was only to err on the side of caution. I definitely wanted to find a way to issue the funds and am thankful for our Court's generosity. Should you have any questions, please do not hesitate in contacting me.

Respectfully,

*Leann Monk*  
Leann Monk

Encl.

Reference: Local Government Code 154.013; Local Government Code 113.041(d)

Friday, October 1, 2021 4:11 PM

Jackie Skinner

From: Jackie Skinner <jskinner.aud@co.tyler.tx.us>  
Sent: Friday, October 1, 2021 4:11 PM  
To: 'blacksher'; Stevan Sturrock; Mike Marshall; Buck Hudson  
Cc: Donece Gregory; 'delinda@tlwfence.com'  
Subject: Premium Pay for Officials  
Attachments: Highlights on Premium Pay and Excerpt from the Interim Final Rule.pdf; Local Government Code Sections.pdf; American Rescue Act Premium pay and matching benefits.pdf

Importance: High

Good afternoon,

I received a phone call yesterday from Judge Delinda Gibbs-Walker stating that Judge Blanchette had met with her and told her that I had allowed the county officials to receive premium pay from the American Rescue Act money illegally. He further stated that it was illegal based on what Eric Magee, Attorney at Law for the Commissioner's Court had told him. He said that it wasn't legal because it hadn't been published in the paper and because the county would have to fund the matching costs of taxes and retirement.

I want you to know, I will never knowingly give you advice or an opinion that I haven't researched out and if I do find out that my research was incorrect, I will be the first to let you know. To try and put your mind at ease, I am listing and attaching the documents that helped me conclude that it wasn't required to be advertised or county officials not being eligible.

1. I read and reviewed the American Rescue Act Plan also known as COVID-19 stimulus package. I needed to know what it was specifically intended for. I had heard the term "stimulus package". The word stimulus is defined as something that rouses activity or energy in someone or something, a spur or incentive. After reading it, this Rescue Act was to assist our country is recovering from all the services, wages and benefits to the American People that had ceased due to the pandemic.
2. I had heard about "premium pay" and wanted to see the requirements to be eligible for it. After consulting with counterparts and reading the Interim Final Rule, I concluded that it was intended for essential workers. The rule then gives specific descriptions of what were "essential" but then gave latitude to the local government to classify additional or all county employees as "essential". The specific authorization of the court is found on page 48 of the Interim Final Rule. It reads:  
"As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents. Premium pay was added to the act for the lowest paid workers of the county but after conferring with other

counties, our county is considered a low-income county for all workers. Officials pay is below average of other similar size counties in our area, so I felt they qualified.

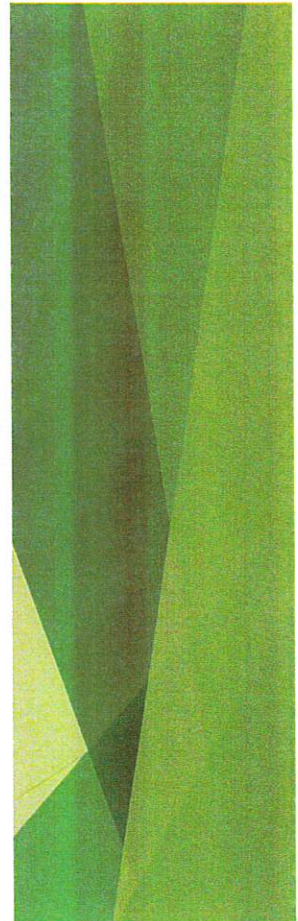
3. The county even though was shut down during the pandemic, employees were required to come into work to complete certain aspects of their jobs and keep the continuity of county business flowing even if they did not come in every single day. Mail was having to be handled and processed which heightened the exposure to the virus. The courts did not hold docket regularly, but paperwork was still required to be processed by mail or by appointment. This was another factor for me to justify this payment.
4. The local government code says that the elected officials' salaries are to be set once a year and any increase is to be published in the newspaper of general circulation. This payment did not fall under a "salary increase" or an "allowance". According to the act it was a "stimulus package or pay".
5. The money was received directly from the federal government and did not pass through the state. The act also states that could be retroactive. The financial reports that I am required to do are sent directly to the federal government. This act and the payments of premium pay conflict with our state laws however the supremacy clause of the US Constitution says that federal law supersedes state laws.
6. Judge Blanchette said that Eric stated, "the county would have to pay the matching funds therefore that was his reason behind it having to be published or advertised in the newspaper". I've attached the section of "Deposit into Pension Funds" from the interim final rule. It states that the money cannot be used to be deposited into pension funds to reduce the liability prior to COVID-19 but can be used to cover all regular benefits regularly paid by the county.

These are the reasons that I concluded that everything would be eligible and covered under the American Rescue Act money. I have reached out to Lucas Babin who is statutorily my legal counsel. I have asked him to look at the interim final ruling with the Department of the Treasury and give me his interpretation. When I receive that from him, I will forward it to you.

If I find out that how I interpreted everything was incorrect, I will let you know. I hope you know that I would never intentionally tell you to do something I believed to be wrong. I value our working relationship and want everything to be done correctly.

Jackie Skinner  
Tyler County Auditor  
507 N Pine Street

Woodville, Texas 75079  
(409) 283-3652 Office  
(409) 283-6305 Fax



Monday, October 4, 2021 8:56 AM

**Jackie Skinner**

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**From:** Jacques L. Blanchette <tylercountyjudge@gmail.com>  
**Sent:** Monday, October 4, 2021 8:56 AM  
**To:** jblacksher@co.tyler.tx.us; Stevan Sturrock; mikemarshall476@gmail.com; Buck Hudson  
**Cc:** Jackie Skinner; Donece Gregory  
**Subject:** ARPA Premium Pay Disbursements

Commissioners,

I have sought counsel from several sources to assure that the court's decision to distribute premium pay, to both full-time employees as well as officials, is in full compliance with any and all constitutional or statutory requirements. That was done out of an abundance of caution.

The sources that I've sought include legal as well as current and former county officials who are acquainted with the requirements of compensation disbursements.

Our legal counsel, Eric Magee, plans to attend a future court meeting and offer his opinion during executive session. We must be fully confident that we have addressed all possible concerns and potential ramifications associated with this decision.

This is a very bold step the court has taken and has become a topic of discussion among other counties. Although I may not agree with this decision, I am part of any consequences which may result from this action. As Eric stated to me, "you can't unring a bell".

Respectfully,

J. Blanchette

Monday, October 4, 2021 9:43 AM

Jackie Skinner

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**From:** Jacques L. Blanchette <tylercountyjudge@gmail.com>  
**Sent:** Monday, October 4, 2021 9:43 AM  
**To:** Jackie Skinner  
**Cc:** mikemarshall476@gmail.com; jblacksher@co.tyler.tx.us; Stevan Sturrock; Buck Hudson; delinda@tlwfence.com  
**Subject:** Discussion regarding compliance with LGC 152.013

Madam Auditor,

As you are aware, I reached out to Administrative District Judge Gibbs-Walker concerning the commissioners court's decision to distribute premium pay to officials. I did so after consulting with legal counsel for the court and learning that compliance with LGC 152.013 was not met under the "allowances" definition. I believe our discussion was appropriate and necessary given, what I believe to be, her oversight role of your position as financial officer for the county.

My understanding is you communicated my discussion with her to the commissioners. Additionally, I understand and believe your office is overseen by the District Judge(s) as part of the checks and balances in county government. If we have failed to comply with a local government code her guidance is imperative in determining a path of correction.

I further understand you believe the disbursement of ARPA funds are not subject to LGC requirements. Therein lies a conflict given the actions taken by the countys' governing body.

Although I am presiding judge over this administrative court I am not exempt from any actions which it may, by majority, "interpret" as legal should it be challenged. I sought counsel with both Eric Magee and Judge Gibbs-Walker as both are foundational in providing direction in this matter. That was, on my part, an exercise of due diligence to act in a prudent and fiscally responsible manner given my role on the court.

It is regrettable that my actions have been posed to my fellow court members as controversial and divisive verses corrective and administratively appropriate. I trust they will eventually see the truth once all the facts are understood.

Respectfully,

J. Blanchette

**Jackie Skinner**

**From:** Jackie Skinner <jskinner.aud@co.tyler.tx.us>  
**Sent:** Tuesday, October 5, 2021 10:31 AM  
**To:** 'Jacques L. Blanchette'; 'mikemarshal476@gmail.com'; jblacksher@co.tyler.tx.us; 'Stevan Sturrock'; 'Buck Hudson'; 'delinda@tlwfence.com'  
**Subject:** RE: Discussion regarding compliance with LGC 152.013  
**Attachments:** American Rescue Act Premium pay and matching benefits.pdf

Good Morning Jacques,

The American Rescue Act Plan was passed by the Federal Government on March 11, 2021. Tyler County received a portion of their total allotment on July 26, 2021, directly from the United States Treasury in the amount of \$ 2,104,766.00. When the money was received there were several questions as to how the money could be used by local governments. There were several webinars and information online from the United States Treasury as well as other entities. Information was provided to the court from all possible sources.

Commissioner's Court held on August 30<sup>th</sup> had two (2) action items. Item F was "Deem which county employees and officials are essential workers pertaining to the American Rescue Plan Act". The court voted that all employees and officials were "essential workers" and the item passed. Item G was "Premium Pay Amounts from the American Rescue Plan Act for County Employees and Officials deemed essential pertaining to the American Rescue Plan Act and how and when it will be distributed. Item G was tabled for further study.

Monday, September 13, 2021, Commissioner's Court was held, and item G from the previous court was back on the agenda. The court approved the amount of \$ 3,500.00 for employees and officials and for it to be paid by 9/23/2021 with other stipulations. I did not receive any communication from anyone that there were reservations or reasons not to make the payment prior to the court meeting. Only after the court had approved it did all the officials receive an email from the County Treasurer (September 20th) that she wasn't going to pay the elected and appointed officials because of local government code section 152.013. I only knew that you had a concern when I received a call from Judge Delinda Gibbs-Walker.

I did communicate with the commissioners to see if they had received anything stating that the payment was in violation of local government code section 152.013 other than the email from the County Treasurer. I understand only one commissioner received a call regarding any reservation.

We are experiencing several unprecedented firsts. This funding is the first of its kind. Due diligence was performed by trusted and accurate sources and provided to the court. The court is

**Tuesday, October 5, 2021 10:31 AM**

the ultimate authority on passing or adopting any policy or payment. I have requested a legal opinion from our Criminal District Attorney, Lucas Babin. I will notify you when I receive his answer.

Sincerely,

*Jackie Skinner*  
*Tyler County Auditor*  
*507 N Pine Street*  
*Woodville, Texas 75979*  
*(409) 283-3652 Office*  
*(409) 283-6305 Fax*



October 15, 2021



LUCAS BABIN  
TYLER COUNTY CRIMINAL DISTRICT ATTORNEY  
100 W. BLUFF ST. ANNEX BUILDING  
WOODVILLE, TEXAS 75979  
PAT HARDY  
1<sup>ST</sup> ASSISTANT DISTRICT ATTORNEY

October 15, 2021

Tyler County Auditor  
ATT: Jackie Skinner  
100 W. Bluff St.  
Woodville, Tx 75979

Re: *Applicability of Texas Local Government Code § 152.013 to one-time payments made from federal aid money to county officers*

Jackie,

You asked whether the notice requirements of section 152.013 of the Local Gov't Code apply when one-time payments are made to county officers from federal American Rescue Plan (ARP) funds.

Pursuant to section 152.013 of the Local Gov't Code, a commissioners court's ability to increase a county officer's salary is limited in both time and manner. Only during the regular budget hearing and adoption proceedings may a commissioners court increase an officer's salary. (Tex. Loc. Gov't Code Ann. § 152.013(a); See also, Tex. Att'y Gen. Op. JC-0147 (1999)). The court may not do so at any other time. (Tex. Att'y Gen. Op. KP-0012 (2015)).

Additionally, at least ten days prior to the meeting in which the court sets the official's salary, notice of an officer's proposed salary increase must be published in a newspaper of general circulation in the county. (Tex. Loc. Gov't Code Ann. § 152.013(b)).

If a commissioners court increases an official's salary at any time other than the regular budget hearing and adoption proceedings, the increase is invalid. Likewise, if a commissioners court increases a county officer's salary without following the notice requirements of subsection (b), the increase is invalid. (See e.g., Tex. Att'y Gen. Op. KP-0012 (2015)).

After final approval of the budget, a commissioners court may spend county funds only in strict compliance with the budget. (Tex. Loc. Gov't Code § 111.010).

After the current regular budget had already been adopted by the commissioners court, Tyler County received federal aid money via the American Rescue Plan Act (ARP). The funds were paid directly to Tyler County from the United States Department of the Treasury.

On or about September 13, 2021, the commissioners court voted to pay a small portion of these funds to county employees and county officers in the form of a one-time payment. The present issue is whether the requirements of section 152.013 apply to these one-time payments to county officers.

First, the notice requirements of section 152.013 require that notice of an officer's proposed salary increase be published *at least 10 days prior* to the budget meeting. Therefore, when a county receives/distributes aid money at some point *after* the regular budget proceedings have concluded, it is *impossible* to comply with the notice requirements of section 152.013. That is, even if the county had published notice of ARP payments prior to making those payments to county officers, it still would not have complied with section 152.013 because the notice was not published 10 days prior to the regular budget meeting.

It would seem, therefore, that if you can't comply, it doesn't apply.

Second, section 111.0106 of the Local Gov't Code contemplates a scenario in which counties may receive and spend aid money that is available for disbursement in a fiscal year *but not included in the budget*. This section instructs a commissioners court to create a *special budget* for the *limited purpose* of how the aid money will be spent. The implication of section 111.0106 is that (1) a commissioners court can receive and spend aid money *outside* the regular 152.013 budget proceedings, and (2) that sections 111.010 and 152.013 are *not* invoked by a county's receipt of said aid money. Such funds, it could be reasonably argued, which, by definition, are *not included in the budget*, would not be subject to the requirements of section 152.013 because said requirements pertain to the regular budget proceedings, which had already concluded by the time the aid money was received.

Third, the terms "salary" and "allowances" are undefined terms. Neither statute nor caselaw provide definitions. As a result, it cannot be conclusively stated that one-time payments of federal aid money to county officers constitute either of these terms, thereby implicating section 152.013. Even if they did, publishing notice of said payments would still not comply with 152.013(b) because such notice would not occur "ten days prior" to the regular budget meeting.

Fourth, the term "county funds" is not defined. It could be reasonably argued that ARP funds do not have the indicia of "county funds" which form the basis of the subchapter B obligations in chapter 152 of the Local Government Code. The funds are limited-purpose federal contributions, rather than those derived from local taxation, fees, or forfeitures. Even if they were to be considered county funds, however, it is doubtful whether section 152.013 is properly implicated because, as stated above, (1) the receipt of ARP funds was an unanticipated event occurring outside the "regular" budget hearing and adoption proceedings, and (2) having the use of a time machine, notice in compliance with subsection (b) would be impossible. Additionally, the funds may be spent only for purposes authorized by the U.S. Department of the Treasury.

October 15, 2021 Cont.

Page 3 of 3

Fifth, it is my understanding there has been concern that certain officials could be removed from office due to violations of section 152.013. This concern has no basis in statute or caselaw. (See e.g., Tex. Att'y Gen. Op. KP-0012 (2015) in which a county violated section 152.013 with the increase of a sheriff's salary, and the only consequence mentioned in the Opinion was that the sheriff's salary increase was deemed invalid. (Note: Unlike the present case, it was undisputed that the payments to the sheriff constituted a "salary" increase and that the requirements of section 152.013 were applicable).

No penalty is statutorily specified for violations of section 152.013. Moreover, one would think such an extreme penalty would likely require proof of some degree of mental culpability (e.g., intentionally or knowingly), which would be virtually impossible to prove under the present circumstances. And there is no reason to believe that strict liability, which requires no intent or mental state, applies to this issue.

It is possible that a disgruntled taxpayer might attempt to file a mandamus action against the county, or a declaratory judgment action in order to seek attorney's fees - which would likely be barred by governmental immunity. Even if such action occurred, likely a worst case scenario would be a requirement that county officers return their checks. Based on the arguments above, however, it is difficult to see how a judge could conclude that section 152.013 was violated - given that compliance with same was impossible.

While I do not think the notice of salary increase is required, I do think the commissioners court will need to adopt a special budget for the ARP funds under section 111.0106 of the Local Government Code.

Best regards,



Lucas Babin  
Criminal District Attorney  
Tyler County, Texas  
100 West Bluff, Courthouse Annex  
Woodville, Texas 75979  
Ph: 409-283-8136  
Fx: 409-283-6128  
l.babin@co.tyler.tx.us

**Monday, October 18, 2021**

After some discussion, a motion was made by **Commissioner Marshall** to table consideration to deem which part-time county employees are essential workers pertaining to the **American Rescue Plan Act**. **Commissioner Sturrock** seconded the motion. Commissioners Blacksher, Sturrock and Marshall voted yes and none no.

A motion was made by **Commissioner Marshall** to table consideration of premium pay amounts from the **American Rescue Plan Act** to part-time county employees deemed essential workers pertaining to the American Rescue Plan Act; and, how and when it will be distributed. **Commissioner Sturrock** seconded the motion. Commissioners Blacksher, Sturrock and Marshall voted yes and none no.

A motion was made by **Commissioner Blacksher** to approve the County Auditor's certification of the **American Rescue Act Funds and Budget** (pursuant to LGC 111.0106). The motion was seconded by **Commissioner Sturrock**. Commissioners Blacksher, Sturrock and Marshall voted yes and none no. SEE ATTACHED

**This is a letter addressed to Judge Blanchette**  
**October 1, 2021**  
**The court officials except for Judge Blanchette were not**  
**notified of this response by Attorney Eric Magee.**

ALLISON BAY & MAGEE, L.L.P.  
 Attorneys at Law  
 A. G. Warren Street  
 Suite 200  
 Austin, Texas 78701  
 Tel: 512.476.1111  
 Fax: 512.476.1112  
 Email: abay@abmllp.com  
 amagee@abmllp.com

October 1, 2021

YALAM  
 Honorable Judge L. Blanchette  
 Tarrant County Judge  
 100 W. Smith Street  
 Fort Worth, TX 76102  
 JudgeBlanchette@tcclerk.com

RE: Question Regarding the Commission Court Authority for Payment to General Officers from Alternative Salary Plan Act Funds

Dear Judge Blanchette:

In response to your request, the undersigned will address the statutory questions related to General Officers' salary and additional compensation from the Alternative Salary Plan Act.

Texas Local Government Code §152.013 provides, in part, the following:

Each year the commission court shall set the salary, expenses, and other allowances of elected county or precinct officers. The commission court shall set the salary as a regular meeting of the court during the regular budget hearing and adoption proceedings.

Before the 157th day before the date of the meeting, the commission court shall publish in a newspaper of general circulation in the county a notice of (1) any salary, expenses, or allowances that are proposed to be increased, and (2) the amount of the proposed increase.

Tex. Loc. Gov't Code §152.013(c) and §152.013(d) further, Attorney General Opinion addressed a similar question when discussing whether a commission court could pay general officers longevity pay that had not fulfilled the Texas Local Government Code, section 152.013 requirements. Specifically, General Opinion states that:

The commission court could provide longevity pay for officers pursuant to section 152.013 of the Local Government Code, but TEX. LOC. GOV'T CODE §152.013(b) regarding the notice of compensation for county officers. Using the notice, the commission court would set an officer's compensation.

Judge Blanchette  
 October 1, 2021  
 Page 12

"at a regular meeting of the court during the regular budget hearing and adoption proceedings" each year. Id. § 152.013(c). Section 152.013 would also require the commission court to publish "any salaries, expenses, or allowances" of officers "that are proposed to be increased" - and - the amount of the proposed increase" in a general circulation newspaper "30 days before the date of the meeting." Id. § 152.013(c). Finally, section 152.013 would require the commission court to notify county officers of their "salary and personal expenses to be included in the budget" before the annual budget is filed with the county clerk. Id. § 152.013(d). Longevity pay could not, however, be granted retroactively. This is because article III, section 53 of the Texas Constitution prohibits the commission court from paying "any extra compensation, fee or allowance to a public officer - after service has been rendered." TEX. CONST. art. III, § 53; see also Tex. ATT. GEN. OP. 000626 (1999) at 3 (concluding that while a commission court has the discretion to increase an officer's rate of longevity pay, it may not do so "for services already rendered" because of article III, section 53; TEX. CONST. (1999) at 3 (noting that if a commission court adopts a policy allowing unpaid leave to follow an employee if the employee becomes an officer, the policy "must operate prospectively, not retroactively" for the same reason).

Tex. Att. Gen. Op. 00060. Therefore, the Texas Attorney General and other authorities have held that the Commission Court cannot grant salary increases or other allowances to a county elected official without meeting the requirements of Texas Local Government Code §152.013.

Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,  
 J. Eric Magee  
 J. Eric Magee

JEM/ays

**Monday, November 15, 2021**

The County Treasurer stated she had received additional information that needed to be looked at and requested these items be tabled. A. Deem Which Part-Time County Employees are Essential Workers Pertaining to the American Rescue Plan Act.

B. **Premium** pay amounts from the American Rescue Plan Act to part-time county employees deemed essential workers pertaining to the American Rescue Plan Act; and, how and when it will be distributed. These will be left as tabled. No action was taken.

3/12/2022

## Assistance for Small Businesses

Jackie Skinner

**From:** Jackie Skinner <jskinner.aud@co.tyler.tx.us>  
**Sent:** Wednesday, December 1, 2021 10:30 AM  
**To:** 'TSilas@detcog.gov'  
**Subject:** Economic Assistance/Rescue Act Money

Good morning,

I was wondering if DETCOG has resources to assist our county with helping give the small businesses some of our Rescue monies. I have reached out to see how other counties are doing it and what their criteria is. One of the counties said they were developing their program through the local area council. They are letting the council set up and run the program with the SBA office, with reports to the county, he said we can "prove" to the Treasury that we have spent the money. The program will provide a percentage of the deposit the small business needs to get an SBA loan.

Could or would DETCOG be able to do something like this? The Commissioner's court hasn't made a final decision on exactly how they want to use their funds so I'm exploring options on their behalf.

Any help or information that you could provide would be greatly appreciated.

*Jackie Skinner*

*Tyler County Auditor  
P.O. Box 2039/100 West Bluff St., Room 110  
Woodville, Texas 75979  
(409) 283-3652 Office  
(409) 283-6305 Fax*



## Response from DETCOG

Jackie Skinner

---

**From:** Tyson Silas <tsilas@detcog.org>  
**Sent:** Thursday, December 2, 2021 9:42 AM  
**To:** Jackie Skinner  
**Subject:** Re: Economic Assistance/Rescue Act Money

Good Morning Jackie,

I am not sure of an approach or information, other than what little we already know, that would be helpful, but I will definitely research it a little more to see if there is anything new and will send it to you if it might be helpful. Unfortunately, something of this nature would require expertise in the Recovery Act Program that we just do not have and would require assistance from a professional grant administrator with knowledge in dealing with these types of federal funding allocations and requirements.

Thanks,

On Wed, Dec 1, 2021 at 10:29 AM Jackie Skinner <[jskinner.aud@co.tyler.tx.us](mailto:jskinner.aud@co.tyler.tx.us)> wrote:

Good morning,

I was wondering if DETCOG has resources to assist our county with helping give the small businesses some of our Rescue monies. I have reached out to see how other counties are doing it and what their criteria is. One of the counties said they were developing their program through the local area council. They are letting the council set up and run the program with the SBA office, with reports to the county, he said we can "prove" to the Treasury that we have spent the money. The program will provide a percentage of the deposit the small business needs to get an SBA loan.

Could or would DETCOG be able to do something like this? The Commissioner's court hasn't made a final decision on exactly how they want to use their funds so I'm exploring options on their behalf.

Any help or information that you could provide would be greatly appreciated.

## Assistance for Small Businesses

Jackie Skinner

---

**From:** Randall Rice - Galveston County (Texas Association of Counties)  
<randall.rice@members.county.org>  
**Sent:** Wednesday, December 1, 2021 9:02 AM  
**To:** Jackie Skinner Tyler County  
**Cc:** Auditors-Community  
**Subject:** [TAC-Auditors] Re: ARPA Money

Jackie

We are developing out program through the local area council and the University of Houston SBA Office. By funding the Houston-Galveston Area Council for this, and then letting them set up and run the program with the SBA office, with reports to us, we can "prove" to the Treasury that we have spent the money. The program will provide a percentage of the deposit the small business needs to get an SBA loan. This lets us leverage and continue the program long after the Treasury deadline.

Randall

[View full conversation](#)

### ARPA Money

Good morning to my fellow Auditors,

I have been asked by one of our commissioners to see if any counties have used the ARPA money to assist small businesses and if so, what criteria did you use. I have read that it says you can and some of the conditions, but I don't know what they would have to submit to prove up their business or how the decision on how much money to give them. I really don't want to be the keeper of that gate.

Any information and insight you could provide would be greatly appreciated.

3/12/2022

Monday, December 7, 2021

COMMENTS BY COURT MEMBERS PERTAINING TO MATTERS OF COUNTY  
GOVERNMENT:

Jackie Skinner presented a report, to the commissioners, of money that has been spent year-to-date of the American Rescue funds and the balance.

**Monday, December 13, 2021**

**TABLED ITEMS FROM PREVIOUS MEETING(S):**

II.(A) Deem which Part-time County Employees are Essential Workers Pertaining to the American Rescue Plan Act.

II.(B) Premium Pay Amounts from the American Rescue Plan Act to Part-time Employees Deemed Essential Workers Pertaining to the American Rescue Plan Act; and, How and When It Will Be Distributed *The County Auditor made Commissioner Marshall aware that Mr. Babin is "tied up" at this time. Commissioner Marshall stated he wanted to skip over these items until Lucas Babin was able to meet with the court.*

**Commissioner Marshall** motioned and a second by **Commissioner Sturrock** to request Proposals for a grant administrator for the **American Rescue Act Funds**. The County Auditor recalled the county had gone out for proposals for an administrator when first learned the county was eligible for the funds. None were received. Now with more information, she requested the advertisement again for an administrator to "make sure we are in compliance with everything that they require". All commissioners voted yes and none no. SEE ATTACHED

*The County Auditor stated that Lucas Babin had not responded at this point. Judge Pro-Tem Marshall stated items II.(A) and (B) would remain tabled. Clerk's note: see below action*

### **COMMENTS BY COURT MEMBERS PERTAINING TO MATTERS OF COUNTY**

**GOVERNMENT:** Commissioner Blacksher stated the court would need to call a special meeting to discuss the conditions of the subdivision application.

Commissioner Marshall stated he was ready to discuss "doing something on the American Rescue Act for part-time employees". He motioned to deem which Part-time County Employees are Essential Workers Pertaining to the American Rescue Plan Act. Commissioner Sturrock seconded the motion. The County Treasurer reported the committee had looked at a variation of possibilities. She had checked with some other counties that had paid their part-time people. The committee recommend \$1500 "flat fee" for part-time employees and those hired after the March 30th date that are still employed by the county. It was mentioned full-time employees that were hired after March 30<sup>th</sup>, worked through December 31 and still employed with the county receive funds. Commissioner Blacksher asked "how much is this going to cost"? She responded she didn't have those figures but there were about 20 persons affected. Mrs. Monk stated she would like to see those that worked during that period of March 30th through December 31<sup>st</sup> and retired to receive the funds. She wants those included: "Any full-time employee that retired after that

date, worked through the 31<sup>st</sup>, currently employed, full-time/part-time and a retiree, for 2020. Seasonal employees would not qualify". **Commissioner Sturrock** motioned to amend the main motion by inserting the words: deem part-time employees as essential workers who actually worked during the period, not just "on the list"; and, include full-time employees hired after March 30<sup>th</sup> but before December 31<sup>st</sup> of that year (2020); and, any employee that worked that worked through till December 31<sup>st</sup> (2020) and retired (actually drawing a retirement). Full-time and part-time employees must still be employed today. **Commissioner Hudson** seconded the motion. All commissioners voted yes and none no. The amendment passed. The vote was taken on the main motion. All commissioners voted yes and none no.

**Commissioner Marshall** motioned to grant "premium pay" amounts from the American Rescue Plan Act to part-time employees deemed "essential workers" pertaining to the American Rescue Plan Act; and, How and When It Will Be Distributed: Part-time \$1500 to be paid "tomorrow" with payroll, but not a part of payroll, as recommended by the County Treasurer; and, retirees to get \$3500; and, full-time employees hired after March 30<sup>th</sup> but before December 31<sup>st</sup> will receive \$1500. The motion was seconded by **Commissioner Blacksher**. All commissioners voted yes and none no.

### PUBLISHER'S AFFIDAVIT

THE STATE OF TEXAS  
COUNTY OF TYLER

Before me, the undersigned, Notary Public in the County of Tyler, State of Texas, personally appeared Kelli Barnes, known to me, who after being duly sworn by me, on her oath, deposes and says that she is the **Publisher** of the **TYLER COUNTY BOOSTER**, a newspaper published in said county, that a Legal Notice, a copy of which is attached, was published in said newspaper for (2) weeks, the dates to wit:

January 13, 2022

January 20, 2022



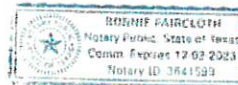
Kelli Barnes, Publisher

Subscribed and sworn to before me this the 31st day of January 2022



Bonnie E. Faircloth, Notary Public

My Commission Expires: 12-03-2023



### Tyler County applies for grant

**GRANT SERVICES PUBLIC NOTICE** The County of Tyler has applied for the American Rescue Plan passed by the 117th United States Congress and signed into law by President Joe Biden. These services are being solicited to assist the County in administration of the American Rescue Plan, if awarded, to support eligible activities in the County of Tyler. Accordingly, the County is seeking to contract with a qualified Administration Service Provider (individual/firm) to administer the awarded contract(s). Please submit 3 copies of your proposal of services and a statement of qualifications for the proposed services to the address below: Attn: Jackie Skinner 100 W Bluff St., Rm. 110, Woodville, Texas 75979. Proposals shall be received by the County no later than 4:30 PM on Monday, January 31, 2022 to be considered. The County reserves the right to negotiate with any and all individuals or firms that submit proposals. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises and labor surplus firms are encouraged to submit proposals. The County of Tyler is an Affirmative Action/Equal Opportunity Employer.  
(2-21-b-TCB)



TYLER COUNTY AUDITOR  
*Jackie Skinner*

100 W. Bluff Room 110 Woodville, Texas 75979  
409.283.3852 fax: 409.283.6305 jackie.aud@tyler.tx.us

**RECEIVED**

By Opinion Committee at 1:14 pm, Feb 11, 2022

February 11, 2022

February 11, 2022

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0446-KP**

**FILE# ML-49081-22**

**I.D.# 49081**

Re: American Rescue Act Funds for Local Governments (ARPA)

Dear Committee:

I am writing to request an Attorney General Opinion regarding state law Section 152.013 of the local government code applying to Premium Pay in the ARPA interim ruling by the United States Treasury for elected officials.

The ARPA money the county received came directly from the United States Treasury and did not pass through the state. The supremacy clause of the Constitution of the United States (Article VI, Clause 2) established that the Constitution, federal laws made pursuant to it, and treaties made under its authority, continue the "supreme Law of the Land" and thus take priority over any conflicting state laws.

Since it did not pass through the state, our county did not feel section 152.03 of the local government code applied as it was not money within the adopted budget. This funding is the first of its kind and with it came a lot of uncertainty. We felt these funds complied with Section 111.016 of the local government code regarding aid money that is available for disbursement but not included in the budget.

I requested from our Criminal District Attorney his opinion which is attached. He concluded that this money was not part of the local budget process and did not apply. I have searched to find a ruling regarding section 152.013 applying to federal aid that has not passed through the state and have not been able to find any case law. The final ruling that becomes effective April 1, 2022, does clarify the question about the elected officials and premium pay but the interim ruling did not.

My request is for you to render an opinion whether by paying the elected and appointed officials the same stipend all full-time employees received from ARPA funds under the interim ruling violated Section 152.013 of the local government code. If it is found to be in violation of the local government code what is the remedy.

Respectfully Submitted,

*Jackie Skinner*  
Jackie Skinner  
County Auditor

3/12/2022

February 14, 2022



February 14, 2022

Ms. Jackie Skinner  
Tyler County Auditor  
Post Office Box 2039  
Woodville, Texas 75979

Via E-Mail

Re: Whether a payment to county officials from funds received under the American Rescue Plan Act requires notice as set forth in the Local Government Code (RQ-0446-KP)

Dear Ms. Skinner:

We received your request for an attorney general opinion and have designated it as Request No. 0446-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180th day after the date that an opinion request is received, unless before that deadline the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on February 11, 2022, setting a due date for your opinion of August 10, 2022.

By copy of this letter we are notifying those listed below of your request and inviting them to submit briefing on your questions if they have a special interest or expertise in the subject matter. The Office of the Attorney General accepts briefing from any interested party. If you are aware of other individuals or entities with an interest in this issue, please forward this invitation for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by March 16, 2022, to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/sam

Ms. Jackie Skinner – Page 2

Attachment: Request No. 0446-KP

cc: The Honorable Glenn Hegar, Comptroller  
Ms. Victoria North, General Counsel, Comptroller of Public Accounts  
Mr. James Allison, General Counsel, County Judges and Commissioners Association  
Ms. Susan M. Redford, Executive Director, Texas Association of Counties  
Mr. Michael Pickinson, General Counsel, Texas Association of Counties  
Ms. Amy Cresap, General Counsel Division, Office of the Governor

March 4, 2022

**COUNTY JUDGES & COMMISSIONERS  
ASSOCIATION OF TEXAS**  
402 WEST 12TH STREET  
AUSTIN, TEXAS 78701



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Johnson County Commissioner  
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Cleburne, Texas 76033  
(817) 648-1306

**First Vice President:**  
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100 East Weatherford, Room 502  
Fort Worth, Texas 76106-0001  
(817) 684-1041  
(817) 684-2759 - Fax

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190 Main Plaza, 2nd Floor  
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(830) 241-1104

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Victoria, Texas 77901  
(361) 582-5871  
(361) 673-7889 - Fax

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**GENERAL COUNSEL:**

JAMES P. ALLEGAN  
Allison, Davis & Magee, L.L.P.  
402 W. 12th Street  
Austin, Texas 78701  
(512) 723-0020  
(512) 482-0701  
(512) 480-0202 Fax  
jall@allisondavis.com

**EDUCATION COMMITTEE:**

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Brewster County Commissioner  
111 E. San Antonio Street, Suite 304  
San Marcos, Texas 76906  
(512) 393-2143  
(512) 393-7716 - Fax

**LEGISLATIVE COMMITTEE:**

**Chairman:**  
ROBERT JOHNSTON  
Anderson County Judge  
703 North Midland Street, Suite 101  
Palestine, Texas 75801  
(936) 723-7405  
(936) 723-7494 - Fax

March 4, 2022

Office of the Attorney General, State of Texas  
Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

RE: Whether a payment to county officials from funds received under the American Rescue Plan Act requires notice as set forth in the Local Government Code (RQ-0446-KP)

Dear General Paxton:

In response to the aforementioned request for an attorney general opinion, the County Judges and Commissioners Association of Texas submits this letter brief as requested by your office on February 14, 2022. The Honorable Jackie Skinner, Tyler County Auditor, asks for an opinion, specifically whether payments to Tyler County elected officials from American Rescue Plan Act funding received directly from the U.S. Treasury violated Local Government Code § 152.013. The request further asks what remedy is available if the payments violated this section.

The requestor states that the funds at issue "did not pass through the State", and references an opinion letter from the Honorable Lucas Babin, Tyler County Criminal District Attorney, stating that the funds were received after the regular budget had been adopted by the Tyler County Commissioners Court. RQ-0446-KP, p. 1 and Attachment, p. 2. The requestor asserts that the Department of Treasury's "interim ruling" was unclear as to the propriety of such payment under provisions for "Premium Pay",

but that the "final ruling does clarify the question". *Id.*, p. 2.

The rule defines premium pay as "an amount of up to \$13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency". *Final Rule*, CFR Part 35 RIN '505-AC77, p. 230. Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic. Premium pay can be thought of as hazard pay by another name. *Id.*, p. 219. Requestor characterizes the payment as a "stipend". However, such a lump sum payment operates as an increase in salary.

Section 152.013(a) of the Local Government Code requires a county commissioners court to set elected county officers' salaries, expenses, and other allowances "at a regular meeting of the court during the regular budget hearing and adoption proceedings". Tex. Loc. Gov't Code § 152.013(a). Subsection (b) requires a commissioners court to publish newspaper notice of any salaries, expenses, or allowances that are proposed to be increased and the amount of the proposed increases prior to the meeting. *Id.* § 152.013(b).

The Attorney General has opined that elected county officers' salaries may be changed "only once a year." Tex. Att'y Gen. Op. No. JC-0147 (1999) at 1. Based on section 152.013(a)'s plain language, the Attorney General "has repeatedly concluded" that a county commissioners court may consider and adopt elected county officers' salaries only during "the regular, annual budget hearing and adoption proceedings." Tex. Att'y Gen. LO-95-018, at 2; see, e.g., Tex. Att'y Gen. Op. Nos. JM-839 (1988) at 6, JM-326 (1985) at 4, H-11 (1973) at 4. A county commissioners court may not change elected county officers' salaries "at any other time." See Tex. Att'y Gen. Op. GA-0162 (2004), quoting Tex. Att'y Gen. LO-95-018, at 2.

The Attorney General has further concluded that, "Because a commissioners court may not adopt salaries at a meeting outside of the 'regular, annual budget hearing and adoption proceedings,' a commissioners court that failed to publish proper notice has 'no legal mechanism' by which to remedy an error after the budget has been finally adopted." Tex. Att'y Gen. LO-95-018, at 2. "As a result, county officers' salaries . . . must remain at last year's level until the next budget cycle."

See Tex. Att'y Gen. Op. GA-0162 (2004), quoting Tex. Att'y Gen. LO-95-018, at 2.

Attorney General Paxton addressed a similar question when discussing whether a commissioners court could pay elected official longevity pay that had not been included in the Texas Local Government Code, section 152.013 requirements. Specifically, General Paxton states that:

<sup>1</sup> Though not relevant to the discussion, Premium Pay does not include payments to elected officials. See "Final Rule", 31 CFR Part 35 RIN '505-AC77 at p. 233 ("[...] as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) that: is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 C.F.R. § 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay."). Emphasis added.

## March 4, 2022 Cont.

the commissioners court could provide longevity pay for officers pursuant to section 152.013 of the Local Government Code. See TEX. LOC. GOV'T CODE § 152.013 (governing the setting of compensation for county officers). Under that section, the commissioners court would set an officer's compensation "at a regular meeting of the court during the regular budget hearing and adoption proceedings" each year. *Id.* § 152.013(a). Section 152.013 would also require the commissioners court to publish "any salaries, expenses, or allowances" of officers "that are proposed to be increased ... and ... the amount of the proposed increases" in a general circulation newspaper "[b]efore the 10th day before the date of the meeting." *Id.* § 152.013(b). Finally, section 152.013 would require the commissioners court to notify county officers of their "salary and personal expenses to be included in the budget" before the annual budget is filed with the county clerk. *Id.* § 152.013(c). Longevity pay could not, however, be granted retroactively. This is because article III, section 53 of the Texas Constitution prohibits the commissioners court from paying "any extra compensation, fee or allowance to a public officer ... after service has been rendered." TEX. CONST. art. III, § 53; see also Tex. Atty. Gen. Op. Nos. JC-0026 (1999) at 2 (concluding that while a commissioners court has the discretion to increase an officer's rate of longevity pay, it may not do so "for services already rendered" because of article III, section 53); JC-0123 (1999) at 2 (noting that if a commissioners court adopts a policy allowing unused leave to follow an employee if the employee becomes an officer, the policy "must operate prospectively, not retrospectively" for the same reason).

County authority to expend county funds in the absence of a budget is restricted. See Tex. Loc. Gov't Code § 111.003 (requiring a budget for each fiscal year). Tex. Atty. Gen. Op. JC-0147 (1999). After final approval of the budget, the commissioners court may spend county funds only in strict compliance with the budget, except in an emergency. Tex. Loc. Gov't Code § 111.010(b) (emphasis added). An "emergency" requires "a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention." *Id.* § 111.010(c).

Requestor suggests that Tex. Loc. Gov't Code § 111.0106 contemplates this situation by providing authority for special budgeting upon "...the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year". Upon certification, the commissioners court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose. *Id.*

Instructive here is the Attorney General's opinion in GA-0470 which clarified whether a conflict existed between Sec. 152.013 and a statute permitting overtime payments from JAG grant funds.<sup>2</sup> There, the distinction between county employees and elected officials was highlighted. While these funds may be used to compensate county employees, Sec. 152.013 prevails in regard to elected officials. *Id.*, p. 3-4. Sec. 152.013 mandates when and how elected officials' salaries and other allowances are set, and it does not contain any exception related to special budgets for grant/aid money received after the regular budget process.

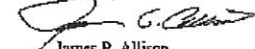
<sup>2</sup> JAG funds are not subject to county budgeting requirements. Cf. Tex. Atty. Gen. Op. No. DM-337 (1993) at 6 (concluding that the county attorney's hot-check fund is "wholly outside of the county budgeting process"). No exception was carved based on the source or origin of the funds.

Courts must "harmonize statutes to give effect to each unless the statutes are irreconcilable. See Tex. Gov't Code Ann. §§ 311.025(b), .026(a) (Vernon 2005); see also *In re Univ. of Tex. Health Ctr.*, 198 S.W.3d 392, 397 (Tex. App.—Tyler 2005, no pet.) (stating that two rules of civil procedure governing the same subject matter should be harmonized so that both may be effectuated). Mere difference does not constitute an irreconcilable conflict. See *Garcia v. State*, 669 S.W.2d 169, 171 (Tex. App.—Dallas 1984, pet. ref'd). Irreconcilable conflict involves a direct conflict such that a person cannot comply with both provisions at the same time. See Tex. Atty. Gen. Op. No. GA-0411 (2006) at 2; see also *State v. Jackson*, 370 S.W.2d 797, 800 (Tex. Civ. App.—Houston [1st Dist.] 1963), *aff'd*, 376 S.W.2d 341 (Tex. 1964) (stating that statutes cannot be harmonized "only when" they are "directly and irreconcilably in conflict").

It appears that these two statutes are not "irreconcilably in conflict". The authority to create special budgets to spend grant/aid funds for their intended purpose does not conflict on its face with the notice requirements of 152.013, because both provisions can be complied with at the same time. A commissioners court may create a special budget for lawful disposition of the funds, e.g. to pay employees, while simultaneously refraining from raising elected officials' salaries (including their own) until the next budget period.

Regarding the remedy for any violation, the Attorney General has held that where the notice requirements of Vernon's Ann.Civ.St. art. 3912k (repealed; now, Sec. 152.013) were not met, salary raises incorporated in the budget for county officers were invalid. Tex. Atty. Gen. Op., No. MW-516 (1982). A claim bill or account may not be allowed or paid until it has been examined and approved by the county auditor. See Tex. Loc. Gov't Code Sec. 113.064(a). The county auditor may not audit or approve a claim unless the claim was incurred as provided by law. See Tex. Loc. Gov't Code Sec. 113.065. The county auditor should refuse to approve any compensation claims that exceed the amounts authorized by Tex. Loc. Gov't Code Sec. 152.013.

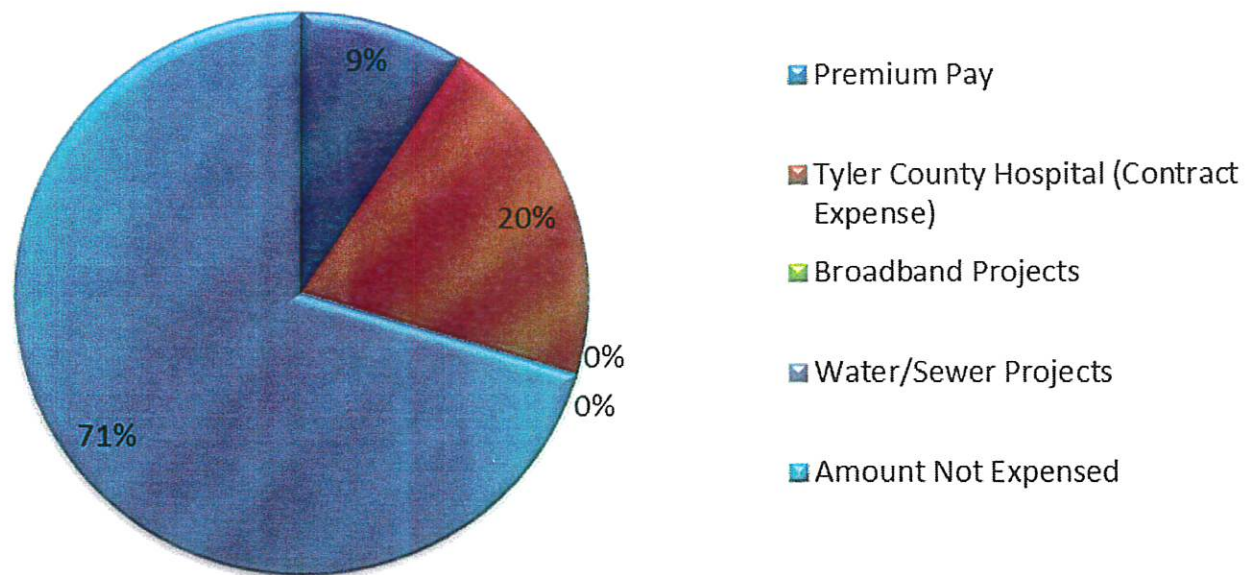
Sincerely,

  
James P. Allison  
General Counsel

cc: Tyler County Commissioners Court, Members  
Jackie Skinner, Tyler County Auditor

# Tyler County

## ARPA Funds



3/12/2022