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OPEN RELATIONS DIVISION

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MAR 17 2004

OPINION COMMITTEE

March 8, 2004

FILE # ML-43580-04
I.D. # 43580

The Honorable Greg Abbott
% Office of the Attorney General
300 West 15th Street
Austin, Texas 78701

Attention: Opinions Committee

Re: Attorney General opinion request.

Dear General Abbott:

Kerr County, Texas is served by two county courts, one being a constitutional County Court and the other being a County Court at Law with jurisdiction as specified in §25.1352, Texas Government Code¹.

Kerrville State Hospital, an M.H.M.R. facility, is located within Kerr County and receives patients from a catchment area of approximately 27 counties. Occasionally, patients from other counties outside of the primary catchment area are transported to Kerrville State Hospital and treated and confined therein in accordance with mental health commitment orders. Approximately 80% of the patients committed to Kerrville State Hospital are from counties other than Kerr County.

¹ § 25.1352. Kerr County Court at Law Provisions

(a) Repealed by Acts 1993, 73rd Leg., ch. 72, § 2, eff. Sept. 1, 1993.

(b) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Kerr County has:

(1) concurrent jurisdiction with the district court in proceedings under the Family Code; and

(2) concurrent with the county court, the jurisdiction of a probate court in proceedings under Chapter

462, Health and Safety Code, and Subtitle C, Title 7, Health and Safety Code.

(c) Repealed by Acts 1993, 73rd Leg., ch. 72, § 2, eff. Sept. 1, 1993.

(d) A county court at law has a term of court that begins January 1 and ends December 31 of each year.

(e) Repealed by Acts 1991, 72nd Leg., ch. 746, § 70, eff. Oct. 1, 1991.

(f), (g) Repealed by Acts 1993, 73rd Leg., ch. 72, § 2, eff. Sept. 1, 1993.

(h) The judge of a county court at law may not engage in the private practice of law.

(i) to (j) Repealed by Acts 1993, 73rd Leg., ch. 72, § 2, eff. Sept. 1, 1993.

Added by Acts 1987, 70th Leg., ch. 148, § 4.01, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 76, § 11, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 746, §§ 33, 70, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 72, §§ 1, 2, eff. Sept. 1, 1993.

Traditionally, the Constitutional Court of Kerr County has heard the mental health commitment hearings for all cases at Kerrville State Hospital. As indicated, approximately 80% of these cases originate from counties other than Kerr County. These cases are heard in a conference room facility at the Kerrville State Hospital which is away from the county courthouse where the County Court customarily holds hearings.

On September 27, 1999, the Kerr County Commissioners Court, by Order Number 26048, approved certain fees to be charged in mental health cases. Among the fees adopted by the Kerr County Commissioners Court under such order was a judicial or judge "salary supplement fee" in the amount of \$10.00 per case, such fee being adopted pursuant to §574.031(i), Texas Health and Safety Code which provides that "A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court."

In preparing the proposed county budget for the budget year 2003-04, the new judge of the County Court, who was sworn into office on January 1, 2003, added a line item in the County Court budget to provide for funding to pay a judicial salary supplement to the judge of said court in an amount equal to the estimated number of mental health hearings to be held away from the courthouse multiplied by the \$10.00 judge or judicial salary supplement fee. The additional budget provision was added to provide for funds to make the additional payment to the judge holding such hearings away from the courthouse as specified in §571.018(g), Texas Health and Safety Code which provides that "A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i)."

The Commissioners Court, upon reviewing the County Court budget, indicated a desire to continue to charge for the judicial or judge salary supplement fee because approximately 80% of such funds were derived from counties other than Kerr County. Based upon verbal statements from the County Attorney that if such judicial or judge salary supplement fee were charged by Kerr County, the plain provisions of the two cited Health and Safety Code sections required that the same be paid to the judge as a "salary supplement" and as "additional compensation" as provided by the statutory provisions. The Commissioners Court approved payment of such judicial or judge salary supplement to the judge in the budget; however, such approval was on the express condition that the judge's salary to be paid by Kerr County should be reduced by an amount equal to such approved salary supplement in the County Court budget, and reduced the judge's salary accordingly.

QUESTIONS PRESENTED

1. Is the judge of the Constitutional County Court of Kerr County required by the Constitution or state statutes to hear all of the mental health commitment hearings held at Kerrville State Hospital, including those from counties other than Kerr County?
2. Because Kerr County has adopted a salary supplement under the provisions of §574.031(i) and such mental health hearings are held at locations other than the county courthouse, must the salary supplement as imposed be paid to the judge holding such hearings at locations other than the county courthouse as directed by §571.018(g), or may the county withhold payment of such funds to such judge?
3. If the county is required to pay such salary supplement to the judge and further because §574.031(i) provides that the same is a “supplement” and §571.018(g) provides that the judge is entitled to the same as “additional compensation,” is it improper for the Commissioners Court to reduce or offset the judge’s salary in an amount equal to such salary supplement as a condition of approving the payment of such salary supplement?

I maintain that question 1 is resolved by reading §574.008(a) with §574.008(c), Texas Health and Safety Code and the logic expressed therein. The Kerr County Judge is not required to hear extended mental health commitment hearings unless some sort of prior arrangement has been made with the court that entered the temporary order. If not required to hear even one extended mental health commitment hearing in a case where the proposed patient was committed by another court in another county that initiated the court-ordered inpatient mental health services, then certainly, the Kerr County Judge would not be required to hear all extended cases of out-of-county proposed patients resident at the Kerrville State Hospital, that being some 26 other counties besides Kerr County.

The same must be said of ordinary commitment hearings. There is no provision of the Texas Health and Safety Code which would require the Kerr County Judge to exercise exclusive jurisdiction over a proposed patient to the exclusion of the proposed patient’s home county, that being the county of the court that initiated the mental health commitment or entered the temporary order, to include an order of protective custody or an emergency detention order. §574.008(c) contemplates that the committing county may make arrangements with the county where the treating facility is located for the transportation of the proposed patient back to his or her home county for an extended hearing unless some sort of alternate arrangement is made. It is not reasonable that a different rule should apply to the conduct of an ordinary commitment hearing than to an extended mental health commitment hearing.

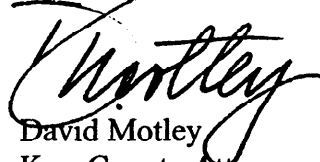
Finding no authority on point regarding questions 2 and 3, it appears as if these questions should be decided by referring to the Code Construction Act. Specifically, §311.011(a) provides:

“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”

By any common dictionary definition, the word "supplement" connotes "something additional." Plainly, the word "supplement as used in §574.031(i), Texas Health and Safety Code means that the judge shall receive supplemental salary over and above his regular salary. "Additional" provides the same concept of something added to something else to provide a greater result.² To offset the judge's regular salary is an amount equal to the salary supplement would make the supplement of no consequence and would defeat the purposes expressed in the statute. The same may be said for "additional" as used in §571.018(g), Texas Health and Safety Code.

I submit that the judge of the Constitutional Court of Kerr County is not required by the Constitution or state statutes to hear all mental health commitment hearings held at Kerrville State Hospital, especially those from counties other than Kerr County. It is also clear that the salary supplement as set by the Kerr County Commissioners Court must be paid to the County Judge without corresponding offset. Please advise should you require any further information.

Sincerely,



David Motley
Kerr County Attorney

DM/s

² Webster's 9th New Collegiate Dictionary, Merriam-Webster, 1984 defines "supplement" as "something that completes or makes an addition" and "addition" as "the result of adding: INCREASE." Merriam-Webster Online Dictionary's definition is identical. MSN Encarta Dictionary defines "supplement" as "an addition to something to increase its size or make up for a deficiency" and "addition" as "putting in or on: the act of onto or into something else" and "something added: something or somebody that is added." Cambridge Advanced Learner's Dictionary provides the following definition for "supplement": "something which is added to something else in order to improve it or complete it; something extra." and for "add" the same dictionary provides the following definition: "to put something with something else to increase the number or amount or to improve the whole."