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OPEN RECORDS DIVISION

**HALE COUNTY ATTORNEY**

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JAMES M. TIREY  
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RECEIVED

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OCT 05 2010

OPINION COMMITTEE

September 29, 2010

The Hon. Greg Abbott  
Attorney General of Texas  
Opinion Committee Division  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-46598-10  
I.D. # 46598

VIA CMRRR# 7008 1140 0002 4527 6210

**RQ-0922-GA**

Re: Request for Opinion

Dear Sir:

I respectfully request, pursuant to TEX. GOV'T CODE §402.043, your opinion as to the following questions:

(1) Did Opinions Nos. GA-0620 and GA-0051 correctly construe Section 152.013 and 152.016 of the Texas Local Government Code in light of the plain language of those statutes, as well as the budgeting process provided in Chapter 111 of the Texas Local Government Code and the discretion of a commissioners court to establish the salaries of county and precinct officers?

(2) Under the facts presented below, and assuming that the above-referenced Opinions were correctly decided, which event triggered the running of the deadline for the filing of a salary grievance by a county or precinct officer?

For your convenience, I have included my brief in this matter within this letter.

***Factual Background***

The Hale County Commissioners Court, pursuant to TEX. LOCAL GOV'T CODE §111.006, filed a proposed budget for the 2011 fiscal year<sup>1</sup> with the Hale County Clerk on August 9, 2010. On the same date, the Hale County Auditor sent a packet to all county and precinct officers and department heads containing the proposed budget for their respective offices or departments as well as a memorandum summarizing the entire proposed county budget. The memorandum stated, "Salaries and part-time employees, as currently budgeted will remain the same." The memorandum also extended an invitation to further discuss the proposed budge with the Commissioners Court beginning after August 16, 2010.

<sup>1</sup>Hale County's fiscal year runs from January 1 to December 31. Hale County has a population of under 225,000 people.

On or about August 16, 2010, during additional budget hearings, the Commissioners Court directed the Auditor to calculate the cost of a three percent increase in all salaries, including those of county and precinct officers, and a three percent increase in employees' salaries only, excluding county and precinct officers.

On or about September 10, 2010, the Auditor, under the direction of the Commissioners Court, published a notice in the Plainview Daily Herald pursuant to TEX. LOCAL GOV'T CODE §152.013(b). The notice listed the proposed 2011 salaries for all county and precinct officers and a proposed increase in salary of three percent for each of those officers except the Constable for Precinct Three.<sup>2</sup> The Commissioners Court held a hearing on September 20, 2010, to establish the salaries of county and precinct officers; to adopt the 2011 budget; and to set the tax rate for 2011.

At the September 20 hearing, the Auditor presented a proposed budget to the Commissioners Court that included a three percent increase in the salaries of all employees and county and precinct officers. A proposed budget containing those figures was not filed with the County Clerk.<sup>3</sup> At the September 20 hearing, the Commissioners Court voted not to give a raise of any kind to the county and precinct officers (except the Constable for Precinct Three, see note 2, below). The Commissioners Court approved a budget for 2011 that kept county and precinct officers' salaries at their previous amounts. The annual budget was filed with the County Clerk on September 22, 2010. The Hale County District Clerk filed a request for a hearing with the salary grievance committee on September 27, 2010. The Auditor delivered a copy of the annual budget to officers and department heads on September 28, 2010.

***1. Did Opinions GA-0620 and GA-0051 correctly construe Sections 152.013 and 152.016?***

Your office itself has noted the confusion surrounding this area of the law. Op. Tex. Att'y Gen. No. GA-0620 (2008) at 5 ("On the other hand the Commissioners Court might point to the significant number of attorney general opinions on county budget matters in recent years to conclude that even 'reasonably diligent thought and attention' could not have prevented the current situation").

In Opinion No. GA-0051 (2003), you declared Opinion No. JC-0471 (2002) "incorrect to the extent it construes section 152.013(c) to require a commissioners court to notify elected officers of the 'salary and personal expenses to be included in the budget' only after the court has adopted the budget." *Id.*, at 3. Opinion No. JC-0471 was based on Opinion No. DM-405 (1996), which stated that "a county's salary grievance committee may operate only in a brief, specified window of time, after the county commissioners court adopts a budget for the succeeding fiscal year and prior to the time the county commissioners court files the final budget with the county clerk. The statutes do not contemplate that a grievance committee will operate at any time other than during the county's regular budget process." *Id.*, at 4. The overruling of Opinion Nos. JC-0471 and DM-405 was based in part on the addition to Section 152.016(a)<sup>4</sup>, following the rendition of those opinions, of the requirement that an aggrieved officer request a hearing concerning his or her salary before the approval of the county's annual budget.

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<sup>2</sup>The Constable for Precinct Three's proposed increase was much greater than three percent, in order to raise his salary to the same level as the other officers. That particular increase, which was included in the final budget, is not at issue here.

<sup>3</sup>No further written notice regarding proposed salaries was given to officers or department heads after the August 9, 2010, memorandum. The Auditor followed the guidance of your office via the Opinions discussed herein in giving notice with the filing of the proposed budget. This letter intends no suggestion of incorrect behavior by the Auditor or Commissioners Court in this matter; the undersigned believes that the law, such as it exists, was followed.

<sup>4</sup>All statutory references herein are to the Texas Local Government Code, unless otherwise noted.

Op. Tex. Att’y Gen. GA-0051 at 4.

A commissioners court has wide discretion regarding setting the budget, including establishing salaries for county and precinct officers. Section 152.011; *Ector County v. Stringer*, 843 S.W.2d 477, 479 (Tex. 1992); *Ware v. Miller*, 82 S.W.3d 795, 800 (Tex.App.—Amarillo 2002, pet. den.); *Randall County Commissioners Court v. Sherrod*, 854 S.W.2d 914 (Tex.App.—Amarillo 1993, no pet.). Until the budget is finally approved and filed with the county clerk, the commissioners court may change it in nearly any way the court sees fit.<sup>5</sup> Section 111.008(b) (the court “may make any changes in the proposed budget that it considers warranted by the law and required by the interest of the taxpayers”).

In Opinion No. GA-0051, it appears that the phrase “annual budget” in Section 152.013(c) was construed to mean the proposed budget filed with the county clerk pursuant to Section 111.006(a). Section 111.006(a) uses the phrase “proposed budget” rather than “annual budget.” Section 152.013 as a whole appears to refer to the procedure surrounding the adoption of the final budget. Section 152.013(a) provides that the salaries of county and precinct officers shall be set at the hearing on the adoption of the final budget. Section 152.013(b) requires publication of notice of the proposed salaries 10 days prior to that hearing. Finally, Section 152.013(c) requires giving notice to officers of their salary amounts prior to filing the “annual budget.” Opinion No. GA-0051 correctly construes the phrase “annual budget” as used in Section 152.016(a) to mean the final adopted budget. *Id.*, at 3 and 4.

Section 152.013(c) also says that notice shall be given of the amount of salary “to be included” in the annual budget. The construction of the statutes in question by Opinions Nos. GA-0051 and GA-0620 disregards the discretion of the commissioners court in setting a county budget. The construction set up by those opinions also disregards the fact that any amount “to be included” in the budget is not known with certainty until the commissioners court approves the annual budget at the final budget hearing. *See, Canales v. Laughlin*, 214 S.W.2d 451, 455 (Tex. 1948); *Alexander v. Wood*, 142 S.W.2d 1084, 1085 (Tex. 1941) (Commissioners court acts through majority vote of a quorum of its members). The shift in language between the “proposed” salary increases in Section 152.013(b) and the salary “to be included” in the budget in Section 152.013(c) recognizes the practical reality of the county budgeting process. Opinions Nos. GA-0051 and GA-0620 do not seem to take that reality into account in arriving at their conclusions.

“Annual budget” in Section 152.013(c) should be understood to mean the final adopted budget for the succeeding fiscal year. That is the construction given the phrase in Opinion No. DM-405, and that construction has not itself been overturned. Additionally, Opinion No. GA-0620 seems to drift back toward the timetable set forth Opinion No. DM-405 when it makes statements such as:

The commissioners court’s duty to notify the officer continues [from the time the proposed budget is filed with the county clerk] until the commissioners court has filed the final budget with the county clerk. *Id.*, at 3.

and

We emphasize, however that the recommendations of the grievance committee *must* be presented to the commissioners court *before* the court files its final budget with the county clerk. *Id.*, at 4 (emphasis in original).

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<sup>5</sup>The court may not, for example, act arbitrarily or capriciously, *Ector County v. Stringer* and *Ware v. Miller*, *supra*, and the court may not set the salary of a county or precinct officer higher than the amount published in the newspaper as required by Section 152.013(b). Op. Tex. Att’y Gen. No. JC-0255 (2000) at 5.

The latter quoted statement came after a discussion of the required or preferred timing of giving notice to county or precinct officers prior of their proposed salaries prior to the final budget hearing. Opinion No. GA-0620 does not require presentation of grievance committee recommendations before the court acts on the proposed budget. Section 152.013(c) contemplates a lapse between adopting the budget and filing it with the county clerk, as does Section 152.016(c). The former quoted statement indicates that any change in the proposed salary must be reported to the officer during the budgeting process. Neither statement refers to the adoption of the annual budget, only its filing with the county clerk.

As noted above, the commissioners court has discretion whether to increase salaries. Under the construction adopted by Opinions Nos. GA-0051 and GA-0620, the salary grievance process could become meaningless. A proposed budget containing a proposed increase in an officer's salary would most likely prevent the filing of a grievance at that time. When the commissioners court adopted the annual budget at the final budget hearing and did not include the proposed increase in salary, the officer would have no recourse to the grievance process.

Furthermore, any other construction of these statutes than that suggested herein would appear to bind the commissioners court to the salaries published in the notice required by Section 152.013(b) and included in the proposed budget. Such a result is contrary to all other law regarding the authority and operation of the commissioners court. The only solution to that result would be to require a separate hearing of the court to adopt salaries and expenses for precinct officers at least six days prior to the final budget hearing. That result is not sanctioned by the statutes regarding the county budget process, and it is contrary to the plain language of Section 152.013(a) (commissioners court shall set salaries "at a regular meeting of the court *during the regular budget hearing* and adoption proceedings [emphasis added]").

Even considering the addition to Section 152.016(a) of the requirement to file a grievance "before the approval of the county's annual budget," the two statutes may be harmonized under a return to the construction given them by Opinion No. DM-405. The grievance committee may only consider increases in the salaries or personal expenses of county and precinct officers; the committee may not otherwise change the budget. Section 152.016(d). Section 152.016(c) appears to contemplate that the grievance committee will make recommendations after adoption of the budget, and provides that any recommendation of the committee adopted by the commissioners court will be included in the budget "before the budget is filed." Section 152.016(c). Again, Section 152.013(c), which requires giving notice of salary and expense amounts before filing the annual budget with the clerk, supports this construction.

Please consider revisiting your Opinions Nos. GA-0051 and GA-0620 in light of these arguments.

***2. Assuming that the existing construction of Section 152.013 and 152.016 is correct, what event constitutes notice to determine the deadline for filing a request for a hearing with the salary grievance committee?***

If you do not choose to revisit your prior opinions, then I would respectfully request your advice on which event in the above-stated facts triggered the start of the grievance process. Section 152.016(a)(2) requires an officer to request a hearing with the grievance committee, among other things,

“within five days after the date the officer receives notice of the salary or personal expenses.”<sup>6</sup>

As stated above, the Auditor sent a memorandum to all elected officers and department heads stating that all salaries would remain at “currently budgeted” amounts. The Auditor sent that memo on August 9, 2010. The memo also, however, stated that the officers or department heads could request a meeting with the Commissioners Court to discuss the proposed budget. During those subsequent hearings, which began August 16, 2010, the Commissioners Court began discussing the possibility of raises for all employees, department heads, and officers. The publication of officers’ proposed salaries listed a three percent increase in salary for all officers except the Constable for Precinct Three (see note 2, *supra*). The notice was published on September 10, 2010. Finally, the Commissioners Court considered, and rejected, the raise in salaries for county and precinct officers on September 20, 2010, in the same hearing in which the court approved the budget.

Under your Opinions Nos. GA-0051 and GA-0620, which event started the clock on the deadline to file a request for a hearing with the grievance committee? As noted above, if the rejection of the raises on September 20 is the trigger, then the grievance process is unavailable and meaningless under your office’s current construction of Sections 152.013 and 152.016. The August 9 memorandum seems at first glance to provide notice of salary and expense amounts, but it indicates a willingness by the Commissioners Court to further discuss those matters outside of the grievance process. In the midst of those further discussions, the Commissioners Court gave some notice of a proposed raise in salaries.

Please provide guidance regarding what would constitute a timely grievance in the factual situation described herein.

#### *Conclusion*

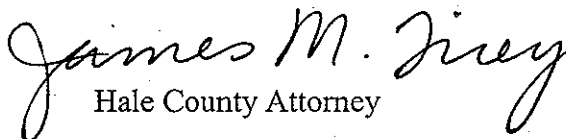
As your office has noted, this area is in a state of confusion. I would respectfully request your serious consideration of revisiting your prior opinions concerning the salary grievance process. Doing so would help to mitigate at least some of the confusion. At the very least, we would appreciate any guidance that you can provide.

I am enclosing copies of the August 9, 2010, memo, the text of the September 10, 2010, newspaper notice, and a copy of the grievance filed by the Hale County District Clerk. If you need any further documents concerning this request, please do not hesitate to let me know.

Thank you for your attention to this matter. We will await your opinion. With best regards, I am,

Sincerely yours,

JAMES M. TIREY

  
Hale County Attorney

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<sup>6</sup> Section 152.016(a) also requires filing a grievance before approval of the annual budget, which in this case seems impossible to do in light of the current construction given the statute. This requirement also seems to have caused most of the confusion surrounding this area of the law. Perhaps in the next session, the Legislature can be persuaded to amend Section 152.016 to clarify its confusing language.

Enclosures

cc: The Hon. Dwain Dodson, Hale County Judge  
Mr. Michael Carroll, Commissioner, Precinct One  
Mr. Mario Martinez, Commissioner, Precinct Two  
Mr. Kenny Kernell, Commissioner, Precinct Three  
Mr. Benny Cantwell, Commissioner, Precinct Four  
Ms. Maretta Smithson, Hale County Auditor  
Ms. Ida Tyler, Hale County Treasurer  
Attorney General Opinion Request File

# Memo

**To:** Elected Officials & Department Heads

**From:** Maretta Smithson  
County Auditor

**Date:** August 09, 2010

**Re:** 2011 Approved Budget Worksheets

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The Commissioners' Court has carefully considered all budget requests for the year 2011. The budget has been tentatively approved, but is subject to change until it is adopted. Your department's Annual Budget for 2011, as recommended by the Commissioners' Court, is enclosed.

Some line items have been reduced by 5%. Every department has been affected by the 5% reduction.

Salaries and part-time employees, as currently budgeted, will remain the same. Requests for additional employees were not granted for 2011.

If you wish to meet with the Commissioners' Court concerning these or any other changes in your budget requests, please let me know by **Monday, August 16, 2010**, so that I may schedule a time for you to meet.

I sincerely appreciate your cooperation during the budget process. If you have any questions or need additional information, please feel free to contact me.

**NOTICE OF PUBLIC HEARING  
ON THE HALE COUNTY BUDGET**

**NOTICE IS HEREBY GIVEN** by order of the Hale County Commissioners Court that a Public Hearing on the 2011 Budget of Hale County, Texas, which includes elected officials' salaries as shown below will be held on the 20th of September, 2010, at 11:00 a.m., in the Hale County Commissioners Courtroom, First Floor, Hale County Courthouse, Plainview, Texas.

<u>County Official</u>	<u>Proposed Increase</u>	<u>Proposed 2011 Salary</u>
COUNTY JUDGE	\$ 1,592.48	\$ 52,198.00
Longevity	\$ -	\$ 72.00
Juvenile Board	\$ -	\$ 4,400.00
State Supplements	\$ -	\$ 15,000.00
COUNTY COMMISSIONERS		
Precinct #1	\$ 1,245.66	\$ 42,768.70
Longevity	\$ -	\$ 180.00
Cell Phone Allowance	\$ -	\$ 600.00
Precinct #2	\$ 1,245.66	\$ 42,768.70
Longevity	\$ -	\$ 2,400.00
Cell Phone Allowance	\$ -	\$ 600.00
Precinct #3	\$ 1,245.66	\$ 42,768.70
Longevity	\$ -	\$ 108.00
Cell Phone Allowance	\$ -	\$ 600.00
Precinct #4	\$ 1,245.66	\$ 42,768.70
Longevity	\$ 120.00	\$ 2,040.00
Cell Phone Allowance	\$ -	\$ 600.00
COUNTY CLERK	\$ 1,245.66	\$ 42,768.70
Longevity	\$ 120.00	\$ 1,900.00
Cell Phone Allowance	\$ -	\$ 600.00
DISTRICT CLERK	\$ 1,245.66	\$ 42,768.70
Longevity	\$ -	\$ 2,400.00
Cell Phone Allowance	\$ -	\$ 600.00
JUSTICE of the PEACE #1	\$ 1,245.66	\$ 42,768.70
Longevity	\$ -	\$ 2,400.00
Cell Phone Allowance	\$ -	\$ 600.00
JUSTICE of the PEACE #3	\$ 1,245.66	\$ 42,768.70
Longevity	\$ -	\$ 2,400.00
Cell Phone Allowance	\$ -	\$ 600.00
COUNTY TREASURER	\$ 1,245.66	\$ 42,768.70
Longevity	\$ 120.00	\$ 2,280.00
Cell Phone Allowance	\$ -	\$ 600.00
TAX/ASSESSOR COLLECTOR	\$ 1,245.66	\$ 42,768.70
Longevity	\$ 120.00	\$ 2,280.00
COUNTY SHERIFF	\$ 1,692.86	\$ 58,116.24
Longevity	\$ 120.00	\$ 1,800.00
Cell Phone Allowance	\$ -	\$ 600.00
COUNTY CONSTABLE #1	\$ 1,245.66	\$ 42,768.70
Longevity	\$ 96.00	\$ 864.00
Cell Phone Allowance	\$ -	\$ 600.00
COUNTY CONSTABLE #3	\$ 12,558.52	\$ 42,768.70
Longevity	\$ -	\$ 72.00
Cell Phone Allowance	\$ -	\$ 600.00
COUNTY ATTORNEY	\$ 1,289.60	\$ 44,274.36
Longevity	\$ 96.00	\$ 672.00
State Supplement	\$ -	\$ 62,500.00
Cell Phone Allowance	\$ -	\$ 600.00

Officials are reimbursed for mileage used on personal vehicles while conducting County Business at \$.50 per mile to be adjusted accordingly with the official Texas State Mileage Rate.

**NOTICE** is hereby given that immediately following the adoption of the 2011 budget, Hale County Commissioners Court will **ADOPT THE 2011 TAX RATE**.

Members of the Public are encouraged to attend the hearings and express their views. A copy of the proposed budget is available for inspection in the office of the County Clerk.



**D. Dodson**

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**From:** carla cannon [carla\_cannon@hotmail.com]  
**Sent:** Monday, September 27, 2010 11:10 AM  
**To:** dwain dodson  
**Subject:** Grievance hearing

Carla Cannon  
Hale County District Clerk  
225 Broadway, Suite 4  
Plainview, Texas 79072  
September 27, 2010

Honorable Dwain Dodson  
500 Broadway  
Plainview, Texas 79072

Dear Judge Dodson,

After much thought and prayer and lots of encouragement, I am requesting a grievance hearing regarding my salary. I feel the time I spend on the computers has been a great savings to the county and to taxpayers, but now I would like to be compensated for some of the extra responsibilities that I do.

After checking with counties our size that have IT departments, I feel that I will still be saving taxpayers and the county a great amount of money if my salary is raised. I have had the training and I have the knowledge of our system and I feel it would be very costly to the county to bring outside people in to try to learn and manage it or to even create an IT department. I love doing both jobs, district clerking and computering, but with the technology advancing in the county and the web page on the horizon, I know the county would pay anyone else to do the job... so why not me?

According to section 152.016 of the Texas Local Government Code I need to inform you of the salary I will be requesting at the grievance hearing. After much thought and discussion with other counties and encouragement from my district judges and other elected officials, I will be requesting my salary to be \$54,768.73. That has been the hardest part of requesting this grievance. That is an increase of \$13,245.69 and I still feel it is a bargain for an in house IT department.

I wait to hear from you when the hearing will be set and if you have any questions, please feel free to contact me. Thank you for any support you can give me.

Sincerely,

Carla Cannon

9/27/2010