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May 20, 2011

RQ-0973-GA

FILE # ML-46753-11
I.D. # 46753

The Honorable Gregg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Opinion regarding salaries to be paid to the County Court at Law and Probate judges in Galveston County Texas

Dear General Abbott:

Galveston County has three county courts at law and one statutory probate court. TEX. GOV'T CODE §25.0861. Questions have arisen regarding the proper level of compensation to be given the judge of each of those courts. Pursuant to TEX. GOV'T CODE § 402.043, I write to request your opinion regarding the salaries to be paid to the County Court at Law and statutory Probate judges in Galveston County.

There are three specific questions:

- 1) Should the salary paid the County Court at Law judges in Galveston County reflect the amount paid to the local administrative district judge?
- 2) Should the salary paid the statutory Probate Court judge in Galveston reflect the amount paid to the local administrative district judge?
- 3) Should the Galveston County statutory Probate Court judge receive additional funds by reason of her designation as the local administrative probate judge?

The answer to these questions necessarily entails examination of the salary structure of district judges in Galveston County.

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Salary structures of district judges

TEX. GOV'T CODE §659.012 sets the base salary of district judges as follows:

- (a)(1) a judge of a district court is entitled to an annual salary from the state of at least \$125,000, except that the combined salary of a district judge from the state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the sum that is \$5,000 less than the salary provided for a justice of a court of appeals other than a chief justice.

Additional compensation may be paid by a county to the district judges under TEX. GOV'T CODE §32.001.

- (a) The commissioners court of a county may pay the judges of the district courts having jurisdiction in the county additional compensation in an amount that does not exceed the limitations of Section 659.012 for extrajudicial services performed by the district judges.
- (c) The compensation is in addition to the salary paid by the state and any other compensation authorized by law.

The restriction contained in TEX. GOV'T CODE §659.012 limits the supplement paid to a district judge by a county under TEX. GOV'T CODE §32.001 to \$15,000. The maximum salary payable to a district judge is \$140,000 per year. TEX. ATTY. GEN'L OPIN. GA-0437.

Therefore, in Galveston County each district judge receives the \$125,000 base salary and a \$15,000 supplement from the County.

Local administrative judge supplements

A local administrative judge is required to perform additional duties which are defined in TEX. GOV'T CODE §74.092. An additional sum of \$5000 is paid to the local administrative district judge on account of those duties. This sum is authorized under TEX. GOV'T CODE §659.012(d), which provides:

[I]n a county with more than five district courts, a district judge who serves as a local administrative district judge under [TEX. GOV'T CODE] §74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled under Subsection (a)(1).

There are six district courts in Galveston County and therefore this statute is applicable to Galveston County.

In addition to the \$125,000 base salary and a \$15,000 supplement from the County given each district judge, the local administrative district judge receives the additional \$5,000 provided by TEX. GOV'T CODE §652.012.

Although there is a local administrative county court at law judge created by TEX. GOV'T CODE §74.0911, no additional compensation flows to this position under TEX. GOV'T CODE §659.012(d).

County Court at law judicial salaries generally

There is a general statute relating to the salaries of the County Court at Law judicial salaries in Texas set forth in TEX. GOV'T CODE §25.005(a), which provides:

A statutory county court judge . . . shall be paid a total annual salary set by the commissioners court at an amount that is not less than \$1000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total salary includes contributions and supplements, paid by the state or a county, other than contributions received as compensation under section 74.051.

The "contributions received as compensation under section 74.051" refers to the supplement of \$5,000 fixed by TEX. GOV'T CODE §695.012 paid for the performance of the duties of the local administrative district judge. Thus, in counties where the compensation paid to county court at law judges is governed by TEX. GOV'T CODE §25.0005, the \$5,000 supplement paid to the local administrative judge is specifically excluded from the calculation of their salary. OPINION NO. GA-0462 (2006).

Galveston County Court at Law judicial salaries

The salaries to be paid to the county court at law judges are prescribed in TEX. GOV'T CODE §25.0862(g) as follows:

The judges a statutory county court shall be paid an annual salary that is not less than the total annual salary, *including supplements and contributions*, paid a district judge in the county. The salary shall be paid out of the general fund of the county by warrants drawn on the county treasury on order of the commissioners court. (Emphasis added)

The Galveston County Court at Law judges receive a salary at least equal to the \$125,000 given district judges by the state under TEX. GOV'T CODE §659.012 plus the \$15,000 supplement given district judges by the county under TEX. GOV'T CODE §32.001.

The issue is whether the county court at law judicial salaries should reflect the \$5,000 supplement given the local administrative district judge. TEX. GOV'T CODE §§ 74.051 & 659.012(d). There are two interpretations:

On one hand, it has been suggested that the county court judicial salaries should include the supplement given the local administrative district judge. The rationale behind this reasoning is that the general statute, TEX. GOV'T CODE §25.005, specifically excludes the supplement given to the local presiding district judge from the salary to be given a county court at law judge. However, the statute relating to the Galveston County Court at Law judges, TEX. GOV'T CODE §25.0862(g), does not similarly exclude the supplement given to the local presiding district judge from the salary to be given a county court at law judge.

Because the salary paid to county court at law judges under the general statute specifically excludes the amount paid to the local administrative district judge, and under the statute specific to Galveston County there is no such specific exclusion, the doctrine of *inclusio unius est exclusio alterius* would suggest that the Galveston County Court at Law judges are entitled to a salary that is 100% of the amounts given to the local presiding district judge in Galveston County.

On the other hand, TEX. GOV'T CODE §25.0862(g) does not tie the salaries of the County Court at Law judges to that paid the local administrative district judge; rather the statute ties their salary to that paid a district judge in the county. The supplement paid under TEX. GOV'T CODE §659.012(d) is not paid to every district judge in the county; rather, that supplement is paid only to the local administrative district judge.

By including the amount paid to the local administrative judge in the salaries paid the county court judges, the result would be that the county court at law judges are paid more than the salary paid to five district judges in this county.

Accordingly, your opinion is requested on this issue.

Galveston County Probate Judge salary

The salary of the Probate Judge of Galveston County is mandated by TEX. GOV'T CODE § 25.0023(a). That statute sets the salary to a sum at least equal to the total annual salary received by a district judge in the county, but provides "[a] district judge's or statutory probate court judge's total annual salary includes contributions and supplements paid by the state or a county, other than contributions received as compensation under Section 25.0022(e)".

The compensation under TEX. GOV'T CODE §25.0022(e) refers to the extra compensation paid to the presiding Probate Judge selected from all the probate judges of the state under the procedure set forth in TEX. GOV'T CODE §25.0022(b).

As with the County Court at Law judges, the same two arguments exist as to whether the supplement paid to the local administrative district judge should apply to the Probate judge of Galveston County. There is no explicit exclusion of the supplement given the local administrative district judge in the calculation of the Probate Judge salary, but neither does the statute tie the probate judge's salary to that of the administrative district judge.

Accordingly, your opinion on this issue is requested.

Galveston County administrative probate judge supplement

The final question is whether the Probate Judge of Galveston County should receive additional compensation by virtue of having been designated by the State Probate Judge as the local administrative probate judge.

There is no statutorily created position for the Galveston County local administrative probate judge. The Administrative Probate Judge for the state had designated the prior probate judge of Galveston County as the local administrative probate judge; a copy of that order is attached.

As noted above, although there is a local administrative county court at law judge, TEX. GOV'T CODE §74.0911, no additional compensation flows to this position under TEX. GOV'T CODE §659.012(d).

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We are unable to locate any statutory authority to allow the compensation provided under TEX. GOV'T CODE §659.012(d) to be given to a local presiding probate judge in Galveston County.

Accordingly, your opinion on this issue is requested.

Conclusion

The statutes relating to the salaries of the County Court at Law and statutory Probate Judges can be read so as to reach opposite conclusions. Your opinion on the correct interpretation would be appreciated. If you require any further information, please let me know.

Respectfully,



Jack Rody