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LISA L. PETERSON
COUNTY ATTORNEY

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OPINION COMMITTEE

COUNTY ATTORNEY

NOLAN COUNTY
100 E. 3RD STREET, SUITE 106A
SWEETWATER, TEXAS 79556
325/235-5469

FILE # ML-48203-17

ID. # 48203
lisa.peterson@co.nolan.tx.us
325/236-9416 Fax

RQ-0179-KP

September 15, 2017

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

In re: Section 25.2702, Texas Government Code, as amended by HB 4281

Dear Sir:

This request is being made by the Office of the County Attorney for Nolan County at the request of the Nolan County Judge and Commissioners Court. The facts and history of the matter are as follows:

- 1) The Nolan County Court at Law was created in the late 1970s / early 1980s. From a part time criminal court, the jurisdiction was expanded to full time including family law in 1991. The "Multicounty Court At Law" was created by act of legislature in 2013. Nolan County was designated the "Administrative County" for the Court.
- 2) The statutes concerning the Nolan County Court At Law, where provision was made for a court coordinator, indicated that the "judge of a County Court at Law may appoint a Court Coordinator or Administrative Assistant... The Court Coordinator or Administrative Assistant is entitled to be paid from county funds the compensation, fees and allowances that are set by the Commissioners Court or provided by law." (§ 25.1791, Gov Code (repealed) V.A.C.S. Art. 1970-347)
- 3) Nolan County is part of the 32nd Judicial District, along with Mitchell County and Fisher County. Section 75.401 of the Government Code provides that the Coordinator or Administrator for the District Court(s) shall be paid by the Commissioners Court of the county / counties served. The wording, including that of HB 4101 from the recent session, seems to indicate that the Commissioners set a "maximum" budgeted amount, from which the Judge, as the supervisor, may determine the appropriate salary. There is not an intergovernmental agreement, formal or otherwise, for the compensation of the Court Coordinator for the 32nd Judicial District Court. Each of the three counties sets an independent budget for that salary.

This is unlike the procedure set by law for the salary of the court reporter, who also works at the behest of the District Judge (§ 152.905, Texas Government Code).

- 4) HB 4281 was passed by the recent Legislature. It states in part, that the court administrator and court reporter are entitled to receive "the same salary and to be paid in the same manner as ...the official court reporter and court administrator...of the district court in the administrative county for the court."

Issue and Question

The interpretation of the new statute is open to question. It can be read that the administrative county is to pay the designated positions the same salary and in the same manner as it pays the same positions for the district court (the reporter by annual order of the District Judge, the administrator by the discretion of the Commissioners Court). In the alternative, it can be read that the administrative county is responsible for paying the positions amounts equal to the *sum* received by the district court personnel from the three counties. As this is the first multicounty court at law in the state, this seems to be a question of first impression.

This is not a situation in which a commissioners court is attempting to underfund a position or office as a prelude to abolishing it; rather, the simple question is – does the Commissioners Court of the Administrative County have the authority to set the salary for the Multicounty Court At Law Court Administrator or must that body rely on salaries set by other commissioners courts for another position for guidance? Secondly, does the Commissioners Court of the Administrative County pay the Multicounty Court At Law Court Reporter the same amount it is ordered to pay the Court Reporter of the District Court, or is it required to obtain copies of the District Court order to the other counties in the district and pay the sum of the orders?

Section 25.2607 of the Government Code states that the Commissioners Courts of the counties participating in the court *may* enter into an agreement to provide for its support. No such agreement(s) are in place with regard to this court. It is interesting to note that no similar agreements are required by statute for the support of multicounty district courts. Rather, each court in the district is ordered by the District Judge to pay a stated amount for the Court Reporter, but the budget for the administrator is left to the respective Commissioners Courts. If the responsibility for these salaries is wholly on the administrative county, there is no incentive for the other counties to enter into an agreement to assist with the funding.

Texas Government Code Section 74.104 provides in part that "The judges shall determine reasonable compensation for the court coordinators *subject to approval of the commissioners court.*" (Emphasis added). The phrase "subject to approval of the commissioners court" has not been interpreted for court personnel, but has been for prosecutors. (See Commissioners Court of Caldwell County v Criminal District Attorney 690 SW2nd 932 (Tex. App.-Austin 1985, writ ref'd n.r.e.) Based on this, the county sets the compensation it will provide for the Court Administrator of the District Court. The other counties served as part of the district also set compensation for the Administrator, without order, contract, or discussion with the budgetary authorities of other counties. The Court Administrator for the 32nd Judicial District is compensated by three counties, from three budgets, in separate pay vouchers. Presumably, each Commissioners Court, in the setting of their budget, has determined the reasonable amount that they can afford for the position.

The history of the 32nd Judicial District court personnel is one of independent county action. If one of the three counties gives a raise to its employees, the portion of the Administrator's salary which originates in that county is also increased. Conversely, if the employees of one county receive a pay cut due to budget shortfalls, the Administrator's pay from that county is also reduced.

The statute, as amended in this past session, calls for compensation of the Multicounty Court personnel to be the "same salary" and in the "same manner" as the District Court personnel. The Nolan County budget for 2017/2018 calls for the salary and benefits for the two Administrator positions and two court reporter positions to be identical; same dollar amount, paid in the same manner, and with the same benefits. To read this that Nolan County is responsible to pay an amount equal to the sum that the

District personnel receive from the three counties would be to allow two other Commissioners Courts control over the Nolan County Budget.

It was stated earlier that this is a question of first impression, in many ways. A search of the Texas Statutes shows no other situation in which one county commissioners court may directly influence the budget of another without an intergovernmental agreement setting the parameters. This statute, as amended, offers no such parameters. When counties in a district "cooperate" on the compensation of the court reporter for the district, it is not through agreement of the Commissioners Courts, but rather by order of the District Judge directed to each of the three counties, as set forth in the Government Code.

For these reasons, it would seem that the most reasonable interpretation of the statute as amended, based on the rules of construction, would be to read it in a manner which maintains the integrity of the counties involved. That is, with each county in full control of its own budget, and the Administrative County for the Multicounty Court At Law paying the position of Court Administrator and Court Reporter the same amounts, and in the same manner, that said county pays the corresponding District Court personnel.

Respectfully submitted,

A handwritten signature in black ink, appearing to be the initials 'M.A.' followed by a long horizontal flourish.