Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1994

Mr. Joaquin Gutierrez
Starr County Auditor
Starr County Courthouse, Room 207
Rio Grande City, Texas 78582

Letter Opinion No. 94-031

Re: Procedures applicable to county salary grievance committee established pursuant to section 152.015 of the Local Government Code (ID# 23083)

Dear Mr. Gutierrez:

You request advice about a recommendation made by the Salary Grievance Committee of Starr County to the commissioners court. After the commissioners court set salaries for county officers, *see* Local Gov't Code § 152.011, some of the officers requested a hearing before the county salary grievance committee. The grievance committee, established by section 152.014 of the Local Government Code, must hold a public hearing pursuant to section 152.016 of the Local Government Code. The committee has the following authority to take action:

> If, after the hearing, six or more of the members vote to recommend an increase in the officer's salary or personal expenses, the committee shall submit its recommendation to the commissioners court in writing. If six to eight members vote to recommend the increase, the commissioners court shall consider the recommendation at its next meeting. If nine members vote to recommend the increase and sign the recommendation, the commissioners court shall include the increase in the budget before the budget is filed and the increase takes effect in the next budget year.

Id. § 152.016(c).

The salary grievance committee sent to the commissioners court a recommendation signed by all nine committee members that several officers receive a pay increase. The commissioners court rejected the recommendation because it questioned the committee's proceedings for the following reasons:

(1) No notice of the committee's meeting was posted;

(2) One of the members of the committee was not present at the meeting, and participated and voted by telephone.

(3) The three public members of the committee were not notified of their selection as committee members for the year.[1]

When these alleged discrepancies were brought up before the commissioners court, the court authorized you, as county auditor, to reach a decision, and you have requested our advice on this matter. Your first ask about the correctness of the procedure followed by the grievance committee.

A county salary grievance committee is subject to the Open Meetings Act, Gov't Code ch. 551. Attorney General Opinion H-1281 (1978); *see also* Attorney General Opinion JM-1007 (1989). Accordingly, it must give written notice of the date, hour, place, and subject of each meeting it holds. Gov't Code § 551.041. Action taken in violation of the Open Meetings Act may be invalidated by a court. *See id. Ferris v. Texas Bd. of Chiropractic Examiners*, 808 S.W.2d 514, 517 (Tex. App.--Austin 1991, writ denied). We cannot determine in the opinion process whether a court would invalidate any particular action taken in violation of the Open Meetings Act.

This office has concluded that the Open Meetings Act assumes that members of a governmental body will be physically present at a meeting. Attorney General Opinions DM-207 (1993); JM-584 (1986). Members of a governmental body may not meet by telephone conference call without express legislative authorization. Attorney General Opinions DM-207; JM-584; *see* Agric. Code § 62.0021; Gov't Code ch. 551, §§ 551.121 - 551.124 (provisions authorizing specific governmental bodies to meet by telephone conference call under limited circumstances). Accordingly, the committee member who participated by telephone may not be considered to have been present at the meeting and his vote may not be counted.

Section 152.016(c) of the Local Government Code provides that the commissioners court shall include in the budget a salary increase recommended by the salary grievance committee "[i]f nine members *vote* to recommend the increase and *sign* the recommendation." (Emphasis added.) You have sent us a recommendation signed by nine members of the committee, but according to the facts you have presented, no more than eight committee members were present at the meeting to vote in favor of a salary increase. Since this was not a case where nine members voted to recommend the increase

[1]The salary grievance committee consists of the county judge, several public officers and "the number of public members necessary to provide nine voting members," unless the commissioners court votes to have nine public members. Local Gov't Code § 152.014. A person chosen as a public member of the committee becomes a member of the committee "on submitting written acceptance to the clerk." *Id.* § 152.015.

and signed the recommendation, the commissioners court had authority to reject the recommendation.[2]

In view of the rejection of the grievance committee's recommendation, we need not address the status and authority of the three public members who did not submit to the county clerk a written acceptance of appointment to the committee. *But see Odem v. Sinton Indep. Sch. Dist.*, 234 S.W. 1090 (Tex. Comm'n App. 1921, judgm't adopted); Attorney General Opinions V-743 (1948) at 6; V-269 (1947) (stating doctrine of de facto officer).

You next ask who the commissioners court should have authorized to decide on the compensation in this matter. The commissioners court is required by statute to set the amount of compensation, expenses, and allowances for county and precinct officers paid wholly from county funds, subject to the grievance procedure under discussion. Local Gov't Code §§ 152.011, 152.016. A commissioners court may not delegate its duty to set compensation to another officer, in the absence of statutory authority. *See Smith v. Flack*, 728 S.W.2d 784, 790 (Tex. Crim. App. 1987); *Guerra v. Rodriguez*, 239 S.W.2d 915, 919-20 (Tex. Civ. App.--San Antonio 1951, no writ).[3] Since the commissioners court rejected the recommendation of the salary grievance committee, the salaries that it set initially remain in effect.

SUMMARY

A county salary grievance committee established by section 152.014 of the Local Government Code is subject to the Open Meetings Act. A committee member may not participate in a meeting of the committee or record his vote by telephone call. When one member of the committee voted by telephone call in favor of recommending a salary increase for county officers, his vote could not be counted in determining whether nine members of the committee voted to recommend salary increases for the officers. When the commissioners court validly rejects a recommendation of

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[2]You have referred us to *Jackson v. Leonard*, 578 S.W.2d 879 (Tex. Civ. App.--Houston [14th Dist.] 1979, writ ref'd n.r.e.), which concluded that the county auditor could not go behind the unanimous action taken by the salary grievance committee under the predecessor of Local Government Code section 52.016(c) and withhold a salary increase on the ground that it was actually an improper subsidy for renting office and courtroom facilities. The court stated that the auditor was not empowered "to go behind the action of the salary grievance committee and question the mental processes behind such action." *Leonard*, 578 S.W.2d at 881. In the present case, the facts provided us do not show a unanimous action of the salary grievance committee. The defect in the committee's proceedings is a matter of public record, and there is no need to question the mental processes of committee members.

[3]The commissioners court may seek advice and information from other officers. *See* Gov't Code § 41.007 (opinions of district or county attorney).

the salary grievance committee pursuant to section 152.016, the salary initially set by the commissioners court remains in effect.

Yours very truly,

Susan L. Garrison
Assistant Attorney General
Opinion Committee