



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 5, 1994

Honorable David W. Wallace
Sutton County Attorney
P.O. Box 1508
Sonora, Texas 76950-1508

Letter Opinion No. 94-082

Re: Whether the commissioners court may reduce the salaries the district and county clerk and clerk's deputies receive and related question (ID# 24862)

Dear Mr. Wallace:

You state that the district and county clerk¹ of Sutton County shortened the work day from eight to seven hours for the clerk and the clerk's deputies. Previously, you inform us, the district and county clerk's office was open on weekdays from 8 a.m. to 5 p.m.; now, the clerk's office is open on weekdays from 8:30 a.m. to 4:30 p.m. with no closure for the noon hour. You therefore ask whether the Sutton County Commissioners Court may reduce the clerk's and the deputies' pay in proportion to the shortened work day. You also ask whether the commissioners court may set the hours that the district and county clerk's office is open.

A county commissioners court is a court of limited jurisdiction; it may exercise only those powers that the state constitution and statutes confer upon it, either explicitly or implicitly. Attorney General Opinion V-1162 (1951) at 2 (and sources cited therein); see Attorney General Opinion MW-473 (1982) at 1 (and sources cited therein). Thus, we must resolve your questions by examining relevant constitutional and statutory provisions.

The commissioners court of a county must set the amount of compensation that a county officer and a county employee paid wholly from county funds is to receive, and the court must set the amount above the salary in effect for that particular position on January 1, 1972. Local Gov't Code §§ 152.011, .012. The commissioners court must set the salary of an elected official "at a regular meeting of the court during the regular budget hearing and adoption proceedings," after properly publishing notice of the meeting. *Id.* § 152.013(a), (b).

This office has stated in prior opinions that the commissioners court may modify an elected county official's salary only during the regular budget hearing. See Attorney

¹In a county with a population numbering less than 8,000, such as Sutton County, citizens may elect a single clerk who performs the duties of district and county clerks. See Tex. Const. art. V, § 20; Gov't Code § 51.501(a).

General Opinions JM-839 (1988) at 6; H-643 (1975) at 2 (construing statutory predecessor to Gov't Code § 152.013); H-11 (1973) at 3 (same). On the other hand, the commissioners court may adjust the salaries of nonelected county officials and employees at any time during the fiscal year. See Attorney General Opinions JM-1160 (1990) at 2; H-11, at 3 (construing statutory predecessor to Gov't Code § 152.013); O-1481 (1939) at 3-4. Consequently, the Sutton County Commissioners Court may not reduce the salary of the district and county clerk until the next regular budget hearing, but it may reduce the salaries of the district and county clerk's deputies at any time.

We turn to your second question. As you suggest in your letter to this office, no statute specifies the hours that the office of the district and county clerk of Sutton County is to be open.² Cf. Local Gov't Code §§ 157.021 - .022 (specifying hours of work for county employees in counties of at least 355,000 and for peace officers in counties of at least one million). Moreover, no statute explicitly or implicitly authorizes the county commissioners court to set such hours. We therefore conclude that the Sutton County Commissioners Court may not set the hours that the office of the district and county clerk's office must be open. See Attorney General Opinions JM-182 (1984) at 2-3; M-1197 (1972) at 1-2; C-350 (1964) at 1; O-6679 (1945) at 2.

²You suggest that Texas Rule of Civil Procedure 21a should provide a clerk of court with guidance in setting his or her office hours. Rule 21a pertains to methods by which a party may serve other parties to the lawsuit. Among other things, it provides that "[s]ervice by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day." We find no requirement in rule 21a that a party file a document with the clerk of court by 5:00 p.m. on a given day. Additionally, we are unaware of any other rule that would require a clerk of a district and county court to keep his or her office open until 5:00 p.m.

You also cite David Brooks's treatise, *County and Special District Law*, which states that "the common practice is to make the offices available 8:00 A.M. to 5:00 P.M. on weekdays." 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 7.24, at 266-67 (Texas Practice 1989). Brooks mentions as well, however, that no statute of general applicability sets the hours that a county office must be open to the public, *id.* at 266, and that, in general, an independently elected county official has the discretion to keep his or her office open as the officer sees fit, *id.* at 267. Brooks suggests, and you point out, that a court might find restrictive office hours to be an abuse of discretion and issue a writ of mandamus ordering the county official to keep his or her office open "a reasonable period of time." *Id.* We will assume for purposes of this letter that Brooks's hypothesis is a correct interpretation of the law. However, the determination of whether the district and county clerk's decision to keep his office open from 8:30 a.m. to 4:30 p.m. with no closure during the noon hour constitutes an abuse of discretion involves the resolution of facts; it is therefore not amenable to the opinion process.

S U M M A R Y

The Sutton County Commissioners Court may not reduce the salary of the district and county clerk until the next regular budget hearing. It may, however, reduce the salaries of the district and county clerk's deputies at any time during the fiscal year. The commissioners court may not set the hours that the office of the district and county clerk's office must be open.

Yours very truly,



**Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee**