

TERRY D. McEACHERN  
DISTRICT ATTORNEY



ROBERT W. KINKAID, JR.  
1ST FELONY PROSECUTOR  
ASSISTANT DISTRICT ATTORNEY

TOMMY QUISENBERRY  
INVESTIGATOR

CHERYL FARREN  
CHIEF MISDEMEANOR PROSECUTOR  
ASSISTANT DISTRICT ATTORNEY

RQ #273

State of Texas  
District Attorney Office  
64th & 242nd Judicial Districts

AREA CODE 806 296-2416 - 293-8481  
COUNTIES OF HALE AND SWISHER  
HALE COUNTY COURTHOUSE  
Plainview, Texas 79072

IDA#14347  
MJ

November 21, 1991

Honorable Dan Morales  
Attorney General, State of Texas  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

RECEIVED

DEC 02 91

Opinion Committee

ATTENTION: OPINIONS COMMITTEE

RE: CAN A JUVENILE BOARD ORDER AN INCREASE IN THE AMOUNT OF COMPENSATION PAID TO COUNTY JUDGE MEMBERS OF THE BOARD IN EXCESS OF THE AMOUNT OF COMPENSATION ORDERED BY THE COMMISSIONERS COURT WHERE SECTION 152.0411 OF THE TEXAS HUMAN RESOURCES CODE STATES THAT THE ANNUAL SALARY OF THE JUDGES ON THE BOARD BE SET BY THE COMMISSIONERS COURT? IF SO, CAN THE JUVENILE BOARD ORDER THE INCREASED SALARIES BY PAID IMMEDIATELY IN THE FISCAL YEAR WHEN SUCH AMOUNTS HAD NOT PREVIOUSLY BEEN BUDGETED BY THE COMMISSIONERS COURT?

Dear General Morales:

In authority with Section 402.043 of the Texas Government Code, I request an opinion on behalf of the Hale County, Texas Commissioners Court regarding whether a juvenile board created and defined by Section 152.0411 of the Texas Human Resources Code can order an increase in salaries paid to board members without the approval of the commissioners court.

FACTUAL BACKGROUND:

On September 9, 1991, the Juvenile Board of the 64th and 242nd Judicial Districts, comprising Castro, Hale, and Swisher Counties, Texas entered a written order that the three county judges on the board have their compensation for serving on the board increased. The orders, attached to this request as Exhibit "A", state that the monthly salaries of the County Judges of Swisher and Hale Counties be increased from \$100 dollars per month to \$300 dollars per month and that the monthly salary of the Castro County Judge be increased from \$100 per month to \$400 monthly. The order states that the increase in salaries would be effective September

1, 1991 even though such funds had not been included in the 1991 budget of the counties. Prior to the entry of the order, the members of the juvenile board, which consists of the county judges of Castro, Hale, and Swisher and the District Judges of the 64th and 242nd Judicial Districts, were paid \$100 per month for their service on the board. The District Judges did not receive an increase in their compensation for serving as board members in this order. These orders were given to the treasurer of Hale County, Texas for payment in September 1991 without approval by the Hale County, Texas Commissioners Court. The fiscal year of Hale County, Texas begins on January 1 and ends on December 31. Hale, Swisher and Castro Counties each have a population of less than 225,000 persons per county. The Texas Human Resources Code does not offer clear guidance as to whether the juvenile board created by Section 152.0411 can vote and budget an increase in the compensation paid to board members without the approval of the commissioners court. To my knowledge, case law has not precisely addressed the issue presented for consideration. Due to lack of guidance, I propose the following question for your opinion:

**QUESTION PRESENTED:**

CAN A JUVENILE BOARD ORDER AN INCREASE IN THE AMOUNT OF COMPENSATION PAID TO COUNTY JUDGE MEMBERS OF THE BOARD IN EXCESS OF THE AMOUNT OF COMPENSATION ORDERED BY THE COMMISSIONERS COURT WHERE SECTION 152.0411 OF THE TEXAS HUMAN RESOURCES CODE STATES THAT THE ANNUAL SALARY OF THE JUDGES ON THE BOARD BE SET BY THE COMMISSIONERS COURT? IF SO, CAN THE JUVENILE BOARD ORDER THE INCREASED SALARIES TO BE PAID IMMEDIATELY IN THE FISCAL YEAR WHEN SUCH AMOUNTS HAD NOT PREVIOUSLY BEEN BUDGETED BY THE COMMISSIONERS COURT?

**LIST OF STATUTORY AUTHORITIES**

THE STATUTES WHICH MIGHT INFLUENCE AN OPINION ARE AS FOLLOWS:

**TEXAS LOCAL GOVERNMENT CODE**

SECTION	111.010
SECTION	111.011
SECTION	152.013

**TEXAS HUMAN RESOURCES CODE**

SECTION	152.0003
SECTION	152.0411
SECTION	152.1011
SECTION	152.2251

**BRIEF**

Section 152.013 of the Texas Local Government Code states that the commissioners court shall set the salary, expenses, and other allowances of elected county or precinct officers. This statute applies to county judges in counties where the population of the county is less than 1.7 million persons. Op. Atty. Gen 1979, No. MW-110, Section 152.0003 of the Texas Human Resources Code reveals that the compensation paid to a judge under Chapter 152 of the same code for serving

on a juvenile board is in addition to all other compensation provided or allowed by law for a judge. Section 152.041 (a) of the Human Resources Code creates the juvenile board for the counties of Castro, Hale, and Swisher and outlines that the judges of the county courts and district courts of the counties comprise the board. Under Section 152.0411 (c), the statute reads that the "commissioners courts of the counties shall pay the members of the juvenile board an annual salary set by the commissioners court at not less than \$1200, payable in equal monthly installments from the general fund of the counties . . ." Despite the wording of this specific statute, the juvenile board of these counties has entered an order that the \$1200 annual salary be increased for the county judge members of the board and further ordered that the increase go into effect during the fiscal year without approval from the commissioners court of Hale County, Texas regarding the portion of the raise that the taxpayers of Hale County are responsible for by way of 152.0411 (c). This writer recognizes that the commissioners court does not have discretion over setting salaries of juvenile probation officers and other costs or expenses that are certified as essential by the board. This is clear in the case law and 152.0411 (e). However, it is equally clear that by excluding discussion of the judge's salaries from 152.0411 (e) and including the wording of 152.0411 (c), the Texas legislature left the authority to set the salaries of the board members of these counties with the commissioner court as long as the salary is at least \$1200 per year. It would seem to reason that any salary above this minimum mandated by statute would have to be set by the commissioner courts of the counties and be budgeted with their approval. This counsel can find no authority for the juvenile board of these counties to set their compensation for serving. If these orders contained in Exhibit "A" are valid in your opinion, the question thus becomes whether the juvenile board can order the increased salaries to be paid in 1991 when they are not a budgeted item in 1991. Section 111.011 of the Texas Local Government Code gives the commissioners court of a county with a population of less than 225,000 the ability to "make changes in the budget for county purposes". While there is ample case law recognizing that a budget can be amended during the fiscal year by the commissioners court, Section 111.010 states that after final approval of a budget, the commissioners court may spend county funds only in strict compliance with the budget except in an emergency to meet "an unusual and unforeseen condition" arising out of grave public necessity. For salaries to be increased by the commissioners court that are not budgeted, there has to be a finding by the commissioners court as to the existence of an emergency to be a valid amendment to the budget. Guerra v. McClellan, 243 S.W. 2d 715, (Tex. Civ. App. - San Antonio 1951), mandamus overruled. The order of the juvenile board in this case is in effect an amendment to the budget. This writer can find no authority for a juvenile board to amend the budget of a county by raising compensation of board members. Only the commissioners court of a county can amend a budget and there must be a showing of an emergency to do so to be a valid amendment. Therefore, it seems that if the order of the juvenile board is valid in that the board can set the salaries of the board members under Section 152.0411, such order cannot be effective until January 1, 1992.

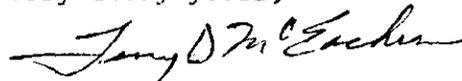
**SUMMARY:**

I propose that under Section 152.0411 of the Texas Human Resources Code that the juvenile board of Castro, Hale, and Swisher counties does not have the authority to set the salaries of board members and such salaries must be set by the commissioners court subject to the limitation imposed by such statute.

I further propose that if you find that the board can set the salaries without approval of the commissioners, any order imposing the increase in salary cannot take effect immediately in the middle of a fiscal year unless the commissioners court properly amends the county budget.

We would sincerely appreciate a prompt reply so that we may hopefully resolve a dilemma in our budget process in Hale County, Texas.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Terry D. McEachern".

Terry D. McEachern  
District Attorney  
Hale County, Texas

EXHIBIT "A"

STATE OF TEXAS  
COUNTIES OF HALE,  
SWISHER, AND CASTRO

HONORABLE BILL  
HOLLARS- MEMBER  
OF JUVENILE BOARD

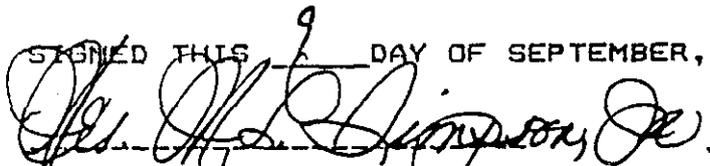
ORDER

WHEREAS, the salaries concerning the Juvenile Board for all County Judges for the 64th and 242nd Judicial Districts of Texas, comprised of Hale, Swisher, and Castro Counties, are met through County and State Funds;

WHEREAS, the Juvenile Board of the 64th and 242nd Judicial District voted on and approved a Juvenile Board Salary for Judge Bill Hollars, different from and apart from the Basic Salary approved by Texas Legislature for serving on the board, August 22nd, 1991;

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that effective September 1, 1991, A.D.; that JUDGE HOLLARS MEMBER OF JUVENILE BOARD, for HALE, SWISHER AND CASTRO Counties, be paid a salary of \$300.00 dollars a month or \$3,600.00 a year, in addition to the basic salary set for Juvenile Board Members by Texas Legislature.

SIGNED THIS 9 DAY OF SEPTEMBER, A.D. 1991.



HONORABLE POLLY SIMPSON  
CHAIRWOMAN OF JUVENILE BOARD  
HALE, SWISHER, CASTRO COUNTIES

EXHIBIT "A"

STATE OF TEXAS  
COUNTIES OF HALE,  
SWISHER, AND CASTRO

HONORABLE JAY  
JOHNSON- MEMBER  
OF JUVENILE BOARD

ORDER

WHEREAS, the salaries concerning the Juvenile Board for all County Judges for the 64th and 242nd Judicial Districts of Texas, comprised of Hale, Swisher, and Castro Counties, are met through County and State Funds;

WHEREAS, the Juvenile Board of the 64th and 242nd Judicial District voted on and approved a Juvenile Board Salary for Judge JAY JOHNSON, different from and apart from the Basic Salary approved by Texas Legislature for serving on the board, August 22nd, 1991;

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that effective September 1, 1991, A.D.; that JUDGE JOHNSON MEMBER OF JUVENILE BOARD, for HALE, SWISHER AND CASTRO Counties, be paid a salary of \$300.00 dollars a month or \$3,600.00 a year, in addition to the basic salary set for Juvenile Board Members by Texas Legislature.

SIGNED THIS 9 DAY OF SEPTEMBER, A.D. 1991.

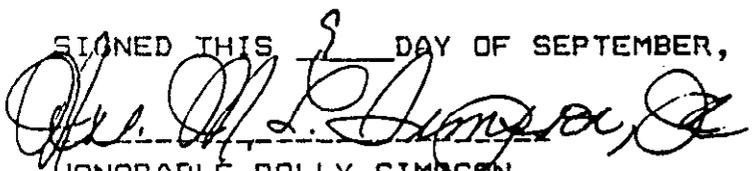
  
HONORABLE POLLY SIMPSON  
CHAIRWOMAN OF JUVENILE BOARD  
HALE, SWISHER, CASTRO COUNTIES

EXHIBIT "A"

STATE OF TEXAS  
COUNTIES OF HALE,  
SWISHER, AND CASTRO

HONORABLE POLLY  
SIMPSON, CHAIRWOMAN  
OF JUVENILE BOARD

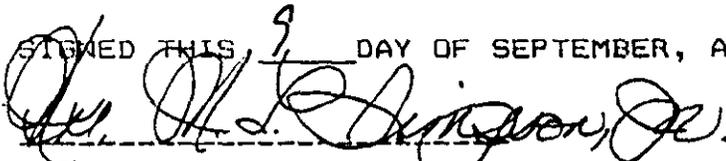
ORDER

WHEREAS, the salaries concerning the Juvenile Board for all County Judges for the 64th and 242nd Judicial Districts of Texas, comprised of Hale, Swisher, and Castro Counties, are met through County and State Funds;

WHEREAS, the Juvenile Board of the 64th and 242nd Judicial District voted on and approved a Juvenile Board Salary for Judge Polly Simpson, different from and apart from the Basic Salary approved by Texas Legislature for serving on the board, August 22nd, 1991;

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that effective September 1, 1991, A.D.; that JUDGE SIMPSON CHAIR OF JUVENILE BOARD, for HALE, SWISHER AND CASTRO Counties, be paid a salary of \$400.00 dollars a month or \$4,800.00 a year, in addition to the basic salary set for Juvenile Board Members by Texas Legislature.

SIGNED THIS 9 DAY OF SEPTEMBER, A.D. 1991.

  
HONORABLE POLLY SIMPSON  
CHAIRWOMAN OF JUVENILE BOARD  
HALE, SWISHER, CASTRO COUNTIES