

Cherokee County
RUSK, TEXAS
75785

October 30, 1997

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P O Box 12548
Austin TX 78711-2548

FILE # ML-39885-97 RECEIVED
I.D. # 39885 NOV 03 1997

REF: Request for an Attorney's General Opinion

Opinion Committee

RQ-1023

Dear Mr. Morales:

I am requesting an opinion from you because a conflict has arisen between the Commissioners' Court of Cherokee County, Texas, and the County Attorney for Cherokee County, Texas.

The 75th Texas Legislature passed H.B. 591. The part of H.B. 591 in contention is section (k). It is the belief of the County Judge and the Judge of the County Court At Law of Cherokee County that any fee assessed for services of a prosecuting attorney by the judge holding a hearing under section (k) goes into the County's general fund. A copy of the bill is attached.

It is the contention of the County Attorney of Cherokee County that any fee assessed by the judge under section (k) goes to the prosecuting attorney as salary, in addition to the salary that is provided in the County's budget.

Section (j) of H.B. 591 is not in contention because additional compensation is allowed the judge under Chapter 571, Section 571.018, of the Mental Health Code. The Mental Health Code does not provide for a supplement for the prosecuting attorney.

The County also believes that Opinion No. H-11, dated February 15, 1973, page 4, first paragraph, is applicable in this case. A copy is attached.

The question is: "in H.B. 591, section (k), if the judge assess a fee for the services of a prosecuting attorney as court costs, is the County Attorney of Cherokee County entitled to the fee, or does it go into the general fund of the county" ?

Respectfully submitted,

L.H. Crockett,
Auditor,
Cherokee County

Honorable Joe Max Shelton, page 4 (H-11)

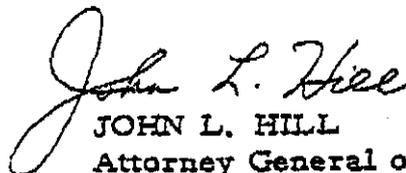
We therefore answer the first part of your question that the Grayson County Commissioners Court may amend the county's 1973 budget and allow an increase in the salaries of county employees other than elected county or precinct officers. As to elected county and precinct officers, any increases in their salaries must await budget hearings for the next fiscal year.

Your letter to us, dated January 1, 1973, asked if the raises could be given effective as of that date. It is our opinion that any salary increases authorized by the commissioners court must operate prospectively and not retroactively. Article 3, Section 53, Constitution of Texas; Pierson v. Galveston County, 131 S.W.2d 27 (Tex. Civ. App., Austin, 1939, no-writ history); Fausett v. King, 470 S.W.2d 770 (Tex. Civ. App., El Paso, 1971, no writ history).

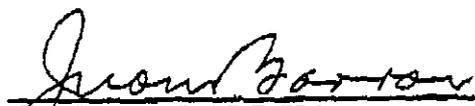
- SUMMARY -

Pursuant to the provisions of Article 39.12k the Grayson County Commissioners Court may amend its 1973 Budget to allow an increase in the salaries of non-elected employees, such increase to be effective at the time of its adoption or thereafter but not retroactively.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


JOHN M. BARRON
First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee

AN ACT

1-2 relating to fees and costs for certain mental health proceedings.

1-3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-4 SECTION 1. Section 574.031, Health and Safety Code, is
1-5 amended by amending Subsection (h) and adding Subsections (j) and
1-6 (k) to read as follows:

1-7 (h) A judge who holds a hearing under this section in
1-8 hospitals or locations other than the county courthouse is entitled
1-9 to be reimbursed for the judge's reasonable and necessary expenses
1-10 related to holding a hearing at that location. The judge shall
1-11 furnish the presiding judge of the statutory probate courts or the
1-12 presiding judge of the administrative region, as appropriate, an
1-13 accounting of the expenses for certification. The presiding judge
1-14 shall provide a certification of expenses approved to the county
1-15 judge responsible for payment of costs under Section 571.018. [The
1-16 expenses shall be collected as court costs.]

1-17 (j) Notwithstanding other law, a judge who holds a hearing
1-18 under this section may assess for the judge's services a fee in an
1-19 amount not to exceed \$50 as a court cost against the county
1-20 responsible for the payment of the costs of the hearing under
1-21 Section 571.018.

1-22 (k) Notwithstanding other law, a judge who holds a hearing
1-23 under this section may assess for the services of a prosecuting
1-24 attorney a fee in an amount not to exceed \$50 as a court cost
2-1 against the county responsible for the payment of the costs of the
2-2 hearing under Section 571.018.

2-3 SECTION 2. Section 571.018(c), Health and Safety Code, is
2-4 amended to read as follows:

2-5 (c) Costs under this section include:

2-6 (1) attorney's fees;

2-7 (2) physician examination fees;

2-8 (3) compensation for court-appointed personnel listed
2-9 under Section 571.017; [and]

2-10 (4) expenses of transportation to a department mental
2-11 health facility or to a federal agency;

2-12 (5) costs and salary supplements authorized under
2-13 Sections 574.031(i) and (j); and

2-14 (6) prosecutor's fees authorized under Section
2-15 574.031(k).

2-16 SECTION 3. The importance of this legislation and the
2-17 crowded condition of the calendars in both houses create an
2-18 emergency and an imperative public necessity that the
2-19 constitutional rule requiring bills to be read on three several
2-20 days in each house be suspended, and this rule is hereby suspended,
2-21 and that this Act take effect and be in force from and after its
2-22 passage, and it is so enacted.

President of the Senate

Speaker of the House

I certify that H.B. No. 591 was passed by the House on April
3, 1997, by a non-record vote; and that the House concurred in