



# OFFICE OF THE FRIO COUNTY ATTORNEY

Hector M. Lozano  
County Attorney

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Crime Victim Coordinator

December 26, 2007

**RQ-0660-GA**

**RECEIVED**

**JAN 03 2008**

**OPINION COMMITTEE**

The Attorney General of the State of Texas  
Supreme Court Building  
Attn: Ms. Susan Gusky  
Opinions Committee Chairperson  
Post Office Box 12548  
Austin, Texas 78711-2548  
CERTIFIED MAIL NO.: 7007 0710 0000 3233 2935

FILE # ML-45497-08  
I.D. # 045497

Re: Request for Attorney General's Opinion as to whether the County Assessor-Collector may award additional compensation to the salaried deputies within her department from the monies collected from the Certificate of Title Act, Section 501.138 Transportation Code

Dear Ms. Gusky:

In light of Opinion Attorney General 1951 No. V-1294, whether the payment of additional compensation to county tax collector deputies compensated on a salary basis violates Texas Constitution Art. 16 § 61? As per Article 16, § 61 Texas Constitution, Frio County, through its Commissioners Court, has determined that its officers and employees shall be compensated on a salary basis rather than a fee basis.

Controversy:

Frio County Tax Assessor Collector Anna L. Alaniz has requested my office obtain an Attorney General opinion as to her request for payment of supplements to her deputies out of monies she collects from the Certificate of Title Act and which are deposited into the salary fund for Frio County. My position is that the salary fund is really the general fund of the county in that all fees earned by district, county or precinct officers shall be paid into the county treasury. Article 16 § 61 (d) Texas Constitution. With the enactment of Section 61, Article 16 of Texas Constitution such monies construed "fees of office" but to which the official has no personal claim. *State v. Glass*, Civ. App. 1675 S.W. 2d 291. Ms. Alaniz contends that it is her department's salary fund and that her employees are entitled to additional pay as per Attorney General Opinion No. V-1294 ( Exhibit "A").

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Facts:

The Frio County Commissioners Court has established the salary of the Tax Collector and her deputies during the Budget process. See attached Budget as adopted by Commissioners Court for October 1, 2007 to September 30, 2008 fiscal year (Exhibit "B"). Despite this established salary for each individual employee within her department, Ms. Alaniz has supplemented her employees on a quarterly basis from the Tax Assessor-Collector's Fund #54 Account (Exhibit "C"). As evidenced by the enclosed letters addressed to Anna L. Hernandez, Frio County Treasurer, (Exhibit "D"), her employees were getting this extra compensation. All this process was circumventing the Commissioners Court's approval as neither Ms. Alaniz or Mrs. Hernandez presented this matter to Commissioners Court for their consideration and approval. In fact, Ms. Hernandez was simply cutting out these extra supplemental checks during the scheduled county payroll pay periods.

Request:

Given that the overriding rule of law which must be complied with in awarding compensation to employees is that one is not entitled to nor can be paid amounts over and above what he is legally entitled to. Also that the state Constitution prohibits the grant of extra compensation, Article III, § 53 Texas Constitution.

1. Is the Frio County Tax Assessor-Collector authorized to award additional (extra) compensation beyond the salary approved by Commissioners Court to her deputies from the monies (\$5.00) collected from the Certificate of Title Act, Section 501.138 Transportation Code?
2. Whether Op. Atty. Gen. 1951 No V-1294 provides a sound and binding legal basis for providing extra compensation to salaried deputies of the Frio County Tax Assessor-Collector?
3. If the Frio county Tax Assessor-Collector is authorized to provide additional compensation to her deputies from the monies collected from the Certificate of Title Act, must she obtain approval of the Commissioners Court? What procedure must be followed?
4. If the Frio County Treasurer receives a request for extra compensation from the Frio county Tax Assessor-Collector, as per Exhibit "D", must the Frio County Treasurer present this matter to Commissioners Court for their approval prior to making the disbursement?

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Law:

Article III, Section 53 Texas Constitution prohibits the grant of extra compensation  
Transportation Code, Section 501.138 Certificate of Title Act  
Local Government Code, Section 154.023 Salary Fund  
Article XVI, Section 61 Compensation on Salary Basis

Sincerely,

A handwritten signature in cursive script, appearing to read "Hector M. Lozano".

HECTOR M. LOZANO

HML/ymm  
xc: Files