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OPINION COMMITTEE



David K. Walker

County Attorney  
Montgomery County

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OCT 29 2010  
OPEN RECORDS DIVISION

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OPEN RECORDS DIVISION

October 27, 2010

FILE # ML-46613-10  
46613

RQ-0929-GA

CERTIFIED MAIL NO. 7005 1160 0005 1424 7610

RETURN RECEIPT REQUESTED

Honorable Greg Abbott  
Office of the Attorney General  
**Attn: Open Records Division**  
Post Office Box 12548  
Austin, Texas 78711-2548

**Re: Request for clarification of Judicial Salaries for District Judge acting as Local Administrative Judge.**

Dear Attorney General Abbott:

On June 15, 2006, the Office of the Attorney General for the State of Texas through its Attorney General, Greg Abbott, rendered Open Records Opinion GA-0437 with regard to the maximum salary payable to a district judge under Section 659.012 of the Government Code. See Exhibit "A". In that Opinion, it was determined that:

*"Under section 659.012 of the Government Code the maximum lawful amount payable to a state district judge is \$140,000.00"*

The salary for a judge of a district court is set forth pursuant to Section 659.012(a)(1) of the Government Code, which provides that:

*"a judge of a district court is entitled to an annual salary from the state of at least \$125,000, except that the combined salary of a district judge from state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the salary provided for a justice of a court of appeals other than a chief justice;"*

Based on this information, it is clear that the maximum amount that a judge for a district court in the State of Texas shall be paid cannot exceed \$140,000.00, which includes any payments paid by the County for which the judge serves.

However, there exists a point of contention between this office and the Office of the Comptroller in the interpretation of the maximum salary that can be paid to a judge acting as a local administrative judge. By email communication (a copy of which is attached hereto as Exhibit "B"), counsel for the Comptroller's Office advised that the local administrative judge for Montgomery County would be entitled to a stipend over and above the maximum salary provided in Section 659.012(a)(1), despite the language of Section 659.012(b) that:

*(b) To the extent of any conflict, the salary limitations provided by this section for the combined salary of a state judge or justice from state and local sources prevails over any provision of Chapter 31 or 32 that authorizes the payment of additional compensation to a state judge or justice.*

In a Report on Judicial Salaries and Turnover FY 2006-2007, the State Office of Court Administration ("OCA") has provided its interpretation of Section 659.012, which we believe to also be in direct conflict with the statute. See Exhibit "C". In Table 3 of its Report, the OCA has stated that a judge acting as a local administrative judge is entitled to a total salary not to exceed \$145,000.00 pursuant to Section 659.012(d) of the Texas Government Code, which provides:

*(d) In a county with more than five district courts, a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled under Subsection (a)(1).*

Apparently, the OCA interprets this statute that a district court judge serving as local administrative judge may be entitled to a salary of \$125,000.00, in addition to a salary from the local county for which the judge serves in the amount of \$15,000.00, with an additional supplement of \$5,000.00 for providing service as local administrative judge, for a total salary of \$145,000.00. We believe that this is in direct conflict with Section 659.012(e):

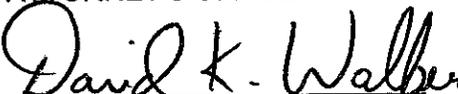
*(e) For the purpose of salary payments by the state, the comptroller shall determine from sworn statements filed by the justices of the courts of appeals and district judges that the required salary limitations provided by this section are maintained. If a salary combined with additional compensation from a county would be in excess of the limitations provided by this section, the comptroller shall reduce the state salary by the amount of the excess.*

We do not dispute that a local administrative judge is entitled to an additional salary supplement from the State in the amount of \$5,000.00, but Section 659.012(d) merely increases the salary payable by the state and does not increase the salary cap imposed in Section 659.012(a)(1). Further, we believe that Section 659.012(e) provides that, when such a supplement is given, it is the duty of the Comptroller to insure that the total salary does not exceed the limitation of \$140,000.00 as imposed by Section 659.012; and, should such salary exceed the limitation, we interpret the statute to require a reduction of the state's salary by the amount in excess. It is our interpretation that the salary of a local administrative judge would then be \$120,000.00 from the state, \$15,000.00 from the County, and an additional \$5,000.00 compensation from the state for services provided as local administrative judge, in order to comply with Section 659.012 and its sub-sections for a total salary of \$140,000.00.

Due to the differing interpretations of Section 659.012 and its' sub-sections, we request a clarification of the provisions of this Section and the salary payable to a local administrative judge. Please contact my legal assistant, Angela Walker, at (936) 539-7828 should you have questions or need additional information.

Sincerely,

MONTGOMERY COUNTY  
ATTORNEY'S OFFICE

By:   
David K. Walker,  
County Attorney

# **EXHIBIT “A”**

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ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2006

The Honorable Carole Keeton Strayhorn  
Texas Comptroller of Public Accounts  
Post Office Box 13528  
Austin, Texas 78711-3528

Opinion No. GA-0437

Re: Maximum salary payable to a district judge  
under section 659.012 of the Government Code  
(RQ-0419-GA)

Dear Comptroller Strayhorn:

In 2005, during the Second Called Special Session of the Seventy-ninth Legislature, Texas judges received a salary increase. You request our opinion on the lawful maximum amount payable to a state district judge under the provisions of the enacting legislation, House Bill 11.<sup>1</sup>

House Bill 11, which was codified at section 659.012 of the Government Code, was effective December 1, 2005, and provides that

a judge of a district court is entitled to an annual salary from the state of at least \$125,000, except that the combined salary of a district judge from state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the salary provided for a justice of a court of appeals other than a chief justice[.]

TEX. GOV'T CODE ANN. § 659.012(a)(1) (Vernon Supp. 2005); Act of Aug. 9, 2005, 79th Leg., 2d C.S., ch. 3, § 1, 2005 Tex. Gen. Laws 34, 35. In addition to the salary provided by the state pursuant to section 659.012, district judges may also receive additional compensation from counties for extrajudicial services they render to their county.<sup>2</sup> See TEX. GOV'T CODE ANN. § 32.001 (Vernon Supp. 2005). A similar scheme provides for the salary of justices of the courts of appeal other than a chief justice:

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<sup>1</sup>Letter from Honorable Carole Keeton Strayhorn, Texas Comptroller of Public Accounts, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Nov. 15, 2005) (on file with the Opinion Committee, also available at <http://www.oag.state.tx.us>).

<sup>2</sup>For instance, a district judge may serve as a member of the county juvenile board, see TEX. GOV'T CODE ANN. § 24.306 (Vernon 2004), and establish community supervision and corrections departments. See *id.* § 76.002(a) (Vernon Supp. 2005).

a justice of a court of appeals other than the chief justice is entitled to an annual salary from the state that is equal to 110 percent of the salary of a district judge, except that the combined salary of a justice of the court of appeals other than the chief justice from all state and county sources, including compensation for any extrajudicial services performed on behalf of the county, may not exceed the amount that is \$5,000 less than the salary provided for a justice of the supreme court.

*Id.* § 659.012(a)(2). Chapter 31 of the Government Code authorizes counties to pay additional compensation to justices of the courts of appeal. *See id.* § 31.001.

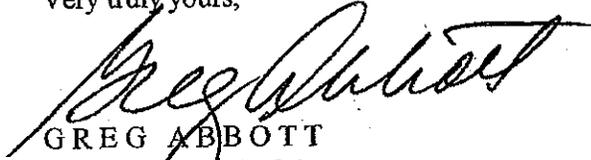
To answer your question we must determine what “salary provided for a justice of a court of appeals” means. In construing section 659.012, we must give effect to the legislature’s intent. *See* TEX. GOV’T CODE ANN. §§ 311.021, .023 (Vernon 2005); *Albertson’s Inc. v. Sinclair*, 984 S.W.2d 958, 960 (Tex. 1999). When interpreting a statute, courts look first to the literal text of the statute for its meaning and ordinarily give effect to that plain meaning. *See Sinclair*, 984 S.W.2d at 960; *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). A court will look beyond the literal language of the statute only when “the plain language of [the] statute would lead to absurd results or if the language is . . . ambiguous.” *Ex parte Russell*, 60 S.W.3d 875, 876 (Tex. Crim. App. 2001) (quoting *Boykin*, 818 S.W.2d at 785–86).

Under section 659.012, the salary of a district judge is subject to the limitation that the judge’s combined state and county salary may not exceed an “amount that is \$5,000 less than *the salary provided for a justice of a court of appeals other than a chief justice.*” TEX. GOV’T CODE ANN. § 659.012(a)(1) (Vernon Supp. 2005) (emphasis added). The maximum salary provided for a justice of a court of appeals other than a chief justice is “\$5,000 less than the salary provided for [an associate] justice of the supreme court.” *Id.* § 659.012(a)(2). The statute provides that the fixed salary for associate supreme court justices is “120 percent of the salary of a district judge,” or \$150,000. *Id.* § 659.012(a)(3). Therefore the maximum salary of an appellate court justice is \$145,000. *See id.* § 659.012(a)(2), (“the combined salary of a justice of the court of appeals . . . may not exceed the amount that is \$5,000 less than the salary provided for a justice of the supreme court”). Accordingly, the maximum salary of a district court judge, which is limited to \$5,000 less than the salary provided for a justice of a court of appeals other than a chief justice, is \$140,000. *See id.* § 659.012(a)(1) (“the combined salary of a district judge . . . may not exceed the amount that is \$5,000 less than the salary provided for a justice of a court of appeals”).

S U M M A R Y

Under section 659.012 of the Government Code the maximum lawful amount payable to a state district judge is \$140,000.

Very truly yours,



GREG ABBOTT  
Attorney General of Texas

ELLEN L. WITT  
Deputy Attorney General for Legal Counsel

NANCY S. FULLER  
Chair, Opinion Committee

Charlotte M. Harper  
Assistant Attorney General, Opinion Committee

# **EXHIBIT “B”**

**Walker, Angela**

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**Subject:** FW: Judge Seiler/Administrative Judge Pay

**From:** Martin, Phyllis  
**Sent:** Monday, October 04, 2010 9:36 AM  
**To:** Seiler, Michael  
**Subject:** RE: Judge Seiler/Administrative Judge Pay

When I speak to Leonard Higgins at the Comptroller's Office, he states that you are, indeed eligible for this stipend under Government Code 659.012(d). I pointed out the possible conflict with Attorney General opinion GA-0437, which addresses Government Code 659.012, with no specific reference to any subsection. He stated that this was an *opinion* and it did not trump statute. He also estimated that there were 19 other counties where the presiding administrative judge receives this stipend in addition to the \$140,000 maximum allowed by law.

Phyllis L. Martin  
Montgomery County Auditor  
P O Box 539  
Conroe, TX 77305  
936-539-7820

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**From:** Seiler, Michael  
**Sent:** Monday, October 04, 2010 9:10 AM  
**To:** Martin, Phyllis  
**Subject:** RE: Judge Seiler/Administrative Judge Pay

Maybe a quick call from the county auditor to the person who wrote that letter to find the basis of why they used the words they used in the letter. It seemed very specific.

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**From:** Martin, Phyllis  
**Sent:** Monday, October 04, 2010 9:01 AM  
**To:** Rainey, Phyllis  
**Cc:** Seiler, Michael  
**Subject:** FW: Judge Seiler/Administrative Judge Pay

Phyllis,

Please consider this reminder email for an opinion on the below string. Thanks!

Phyllis L. Martin  
Montgomery County Auditor  
P O Box 539  
Conroe, TX 77305  
936-539-7820

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**From:** Martin, Phyllis  
**Sent:** Tuesday, September 28, 2010 11:17 AM  
**To:** Rainey, Phyllis  
**Subject:** FW: Judge Seiler/Administrative Judge Pay

Phyllis,

Please review this letter and Attorney General opinion GA-0437. After reviewing the attached letter, I understand Judge Seiler's position. However, previous conversations with other Judges lead me to believe that the total compensation

cannot exceed \$140,000 **inclusive** of the administrative judge stipend. Please let me know your thoughts, as I feel unqualified to provide a legal opinion.

Thanks.

Phyllis L. Martin  
Montgomery County Auditor  
P O Box 539  
Conroe, TX 77305  
936-539-7820

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**From:** Knudsen, April  
**Sent:** Monday, September 27, 2010 2:36 PM  
**To:** Martin, Phyllis  
**Subject:** RE: Judge Seiler/Administrative Judge Pay

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**From:** Martin, Phyllis  
**Sent:** Monday, September 27, 2010 2:28 PM  
**To:** Knudsen, April  
**Subject:** RE: Judge Seiler/Administrative Judge Pay

April,

There was no attachment. Please send it again.

Phyllis L. Martin  
Montgomery County Auditor  
P O Box 539  
Conroe, TX 77305  
936-539-7820

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**From:** Knudsen, April  
**Sent:** Monday, September 27, 2010 1:53 PM  
**To:** Martin, Phyllis  
**Subject:** Judge Seiler/Administrative Judge Pay

Judge Seiler got this letter and wanted me to send it to you. He asks that you please call this person at the comptroller's office because the way he reads this, he would be entitled to the additional \$5,000 as administrative judge. It says the max is \$140,000 "excluding" the pay for being administrative judge. Can you let us know what you learn please?

Also, I have a question for you that you might want to ask at the same time, so before you call, can you also please call me too? Thanks!

April L. Knudsen  
Court Coordinator  
435th District Court  
936-538-3532  
936-538-8148 - Direct Line  
936-538-3619 - Fax Number  
[april.knudsen@mctx.org](mailto:april.knudsen@mctx.org)

# **Exhibit "C"**

**Table 3: Salary Summary for Elected State Judges as of September 1, 2007**

Judge <sup>1</sup>	State Salary	Additional Compensation <sup>2</sup>	Other	Total
Supreme Court - Chief Justice	\$152,500	N/A		\$152,500
Supreme Court - Justice	\$150,000	N/A		\$150,000
Ct. of Criminal Appeals - Presiding Judge	\$152,500	N/A		\$152,500
Ct. of Criminal Appeals - Judge	\$150,000	N/A		\$150,000
Court of Appeals - Chief	\$140,000	up to \$7,500 <sup>3</sup>		\$147,500
Court of Appeals - Justice	\$137,500	up to \$7,500 <sup>3</sup>		\$145,000
Presiding Judge - Admin. Judicial Region (Active District Judge)	\$125,000	up to \$15,000 <sup>3</sup>	not to exceed \$33,000 <sup>4</sup>	up to \$173,000
Presiding Judge - Admin. Judicial Region (Retired or Former Judge)	N/A	N/A	\$35,000 - 50,000 <sup>5</sup>	up to \$50,000
District Judge - Local Admin. Judge who serves in county with more than 5 dist. cts.	\$125,000	up to \$15,000 <sup>3</sup>	\$5,000 <sup>6</sup>	\$145,000
District Judge	\$125,000	up to \$15,000 <sup>3</sup>		\$140,000
District Judge - Presiding judge of silica or asbestos multi-district litigation	\$125,000	up to \$15,000 <sup>3</sup>	not to exceed \$33,000 <sup>7</sup>	up to \$173,000

**Notes:**

1. Entitled to monthly longevity pay of \$20 for each year of service credited in the retirement system (maximum of \$320 per month) after completing 16 years of service.
2. Additional compensation provided by counties in judicial and appellate districts for extra judicial service performed by judges and justices. Tex. Gov't Code Secs. 31.001 and 32.001.
3. The state salary of a district judge whose county supplement exceeds \$15,000, or appellate justice whose county supplement exceeds \$7,500, will be reduced by the amount of the excess so that the maximum salary the judge or justice receives from state and county sources is \$140,000 (district judge), \$145,000 (appellate justice), or \$147,500 (appellate chief justice). Tex. Gov't Code Secs. 659.012, 31.001 and 32.001.
4. Presiding judges' salary set by Texas Judicial Council. Tex. Gov't Code 74.051(b). Paid by counties in administrative judicial region on a pro rata basis based on population.
5. Presiding judges' salary based on number of courts and judges in region. Tex. Gov't Code Sec. 74.051(c). Paid by counties in administrative judicial region on a pro rata basis based on population.
6. Tex. Gov't Code Sec. 659.012(d).
7. Tex. Gov't Code Sec. 659.0125.

***Judicial Salaries Compared with Salaries of Private Practitioners***

In 2008, the State Bar of Texas conducted a survey of the salaries received by full-time attorneys in the state during the previous year. Results of the survey showed the average income of private practitioners to be \$233,060. The average salary of a private practitioner was 55.4 percent higher than the salary of a justice or judge on the state's two courts of last resort, 60.9 percent higher than the average salary of a justice of an intermediate court of appeals, and 68.7 percent higher than the average salary of a district judge. (See Table 4.)