



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2020

The Honorable Lisa L. Peterson
Nolan County Attorney
100 East 3rd Street, Suite 106A
Sweetwater, Texas 79556

Opinion No. KP-0292

Re: Authority to establish salaries of the staff
of a multicounty court at law (RQ-0305-KP)

Dear Ms. Peterson:

On behalf of the judge of the 1st Multicounty Court at Law (the “Court”), you ask about the judge’s authority to establish salaries of the Court’s staff.¹ The Court, the first of its kind, is a statutory county court created to serve multiple counties—Fisher, Mitchell, and Nolan counties. TEX. GOV’T CODE § 25.2701. Nolan County serves as the administrative county for the Court. *Id.* § 25.2702(c-1). We are informed that the Court has two employees—the official court reporter and the court administrator.² You tell us about wide swings in the budgeted salaries of the reporter and the administrator between 2016 and 2019. Request Letter at 1–2.³ You state that the budgeted salary for the court reporter was \$35,000 for fiscal year 2016, \$84,171 for fiscal 2018, and is \$50,000 for fiscal 2019. *Id.* The budgeted salary for the court administrator was \$37,256 for fiscal 2016, \$61,527 for fiscal 2018, and is \$44,500 for fiscal 2019. *Id.* You also refer us to subsection 25.2702(d), which addresses the court reporter’s and the court administrator’s salaries. *Id.* at 1 (referring to amendments in 2017 and 2019). You ask first about the authority, if any, of the judge of the Court to set the salaries of court staff. *Id.* at 2.

For background, we review the amendments to subsection 25.2702(d) during the time period when the salaries dramatically varied. Prior to 2017, subsection (d) provided that the “official court reporter of the county court at law is entitled to receive a salary set by the commissioners courts in the counties the reporter serves,” and did not address the court administrator. *See* Act of May 26, 2013, 83d Leg., R.S., ch. 1059, § 2.07, sec. 25.2702(d), 2013 Tex. Gen. Laws 2525, 2533. In 2017, the Legislature deleted the provision for the commissioners court to set salary and added a provision requiring the court reporter and the court administrator to receive the same salary as their district court counterparts. Act of May 24, 2017, 85th Leg., R.S., ch. 1114, § 1, sec. 25.2702(d), 2017 Tex. Gen. Laws 4299, 4300. In 2019, the Legislature deleted the requirement to match district court salaries and replaced it with the requirement that the court

¹*See* Letter from Honorable Lisa L. Peterson, Nolan Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (Sept. 11, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²*See* Brief from Honorable David Hall, Judge of the 1st Multicounty Court at Law at 1 (Sept. 26, 2019) (on file with the Op. Comm.).

³*See also* Nolan County, Tex., 2019–2020 Adopted Budget at 13, <http://www.co.nolan.tx.us/page/nolan.Budget>.

reporter and court administrator “receive a salary set by the commissioners courts in the counties the reporter or administrator serves.” Act of May 22, 2019, 86th Leg., R.S., ch. 686, § 1, sec. 25.2702(d), 2019 Tex. Sess. Law Serv. 1974, 1974–75. Subsection 25.2702(d) now provides in pertinent part:

The judge of the county court at law shall appoint an official court reporter. The judge may appoint a court administrator to aid the judge in the performance of the judge’s duties. The official court reporter and the court administrator of the county court at law are entitled to receive a salary *set by the commissioners courts* in the counties the reporter or administrator serves to be paid out of the county treasuries, either by salary or by contract as set by the commissioners courts. . . .

TEX. GOV’T CODE § 25.2702(d) (emphasis added).

Thus, subsection 25.2702(d) authorizes the county commissioners to set the salaries of the court reporter and court administrator. *Id.* And while the subsection authorizes the judge to appoint the reporter and administrator, it is silent about any authority of the judge with respect to salaries. *Id.* Courts “accept[] that lawmaker-authors chose their words carefully, both in what they included and in what they excluded.” *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018). Moreover, courts “consider the context and framework of the entire statute and construe it as a whole.” *Aleman v. Tex. Med. Bd.*, 573 S.W.3d 796, 802 (Tex. 2019) (quotation marks omitted). As discussed in a prior opinion of this office, other statutes creating county courts at law in chapter 25, subchapter C, prescribe the authority to set salaries in different ways, some granting the authority to the judge, others to the commissioners court, and still others granting the authority to the judge subject to the commissioners court’s approval. *See* Tex. Att’y Gen. Op. No. GA-0952 (2012) at 1–2 (discussing the variation in the grants of authority to set salaries for different courts); *see also, e.g.*, TEX. GOV’T CODE §§ 25.1152(g) (authorizing the judge of the Houston County Court at Law to set the reporter’s salary in an amount that does not exceed the district court reporter’s salary), 25.2362(g) (authorizing the judge of the Van Zandt County Court at Law to set the reporter’s salary with approval from the commissioners court), 25.0212(f) (providing that the Bowie County commissioners court may authorize the judge to set the reporter’s salary). From an examination of chapter 25, subchapter C, we must assume that subsection 25.2702(d)’s silence about any grant of salary authority to the judge was intentional. *See Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 497 (Tex. 2013) (“When the Legislature expresses its intent regarding a subject in one setting, but, as here, remains silent on that subject in another, we generally abide by the rule that such silence is intentional.”). Thus, construed in context, subsection 25.2702(d) vests the authority to set the salaries of the court reporter and the court administrator with the commissioners court, not the multicounty court at law judge.

In your second question, you ask whether the commissioners court may reduce the salaries of the court reporter and the court administrator without first giving notice to the judge of the Court. Request Letter at 2. Section 152.011 of the Local Government Code authorizes the commissioners court to “set the amount of the compensation . . . for county and precinct officers and employees who are paid wholly from county funds.” TEX. LOC. GOV’T CODE § 152.011.

Under subsection 152.013(c), before the commissioners court files the annual budget, it must “give written notice to each elected county and precinct officer of the *officer’s salary and personal expenses* to be included in the budget.” *Id.* § 152.013(c) (emphasis added). A commissioners court that fails to give notice of a reduction of the officer’s salary or personal expenses may not make such a reduction in the adopted budget. *See* Tex. Att’y Gen. Op. No. GA-0929 (2012) at 2 (explaining that the notice must give the officer a chance to utilize the statutory grievance process before adoption of the final budget). But no provision in chapter 152 requires the commissioners court to give the judge notice of a reduction of the Court’s other expenses, such as notice of reductions in staff salary.

In your third question you ask what remedies the judge may assert regarding the reduction of staff salary. Request Letter at 2. A county court at law does not have “general supervisory control or appellate review of the commissioners court.” TEX. GOV’T CODE § 25.0004(f). Chapter 152 grants an elected county officer, including a judge, “who is aggrieved by the setting of the officer’s salary or personal expenses” the right to request a hearing before the county salary grievance committee. TEX. LOC. GOV’T CODE § 152.016(a). But chapter 152 does not give an official the right to challenge staff salaries in the grievance committee process. *See* Tex. Att’y Gen. Op. No. H-1251 (1978) at 1–3 (discussing predecessor statutes). Thus, the primary remedy for a county court at law judge to complain about staff salaries is to challenge county funding of the judge’s court in district court. *See* TEX. CONST. art. V, § 8 (giving district courts “general supervisory control” over commissioners courts); *see also Henry v. Cox*, 520 S.W.3d 28, 36 (Tex. 2017) (stating that the judicial branch possesses “the ability to compel the necessary money to compensate county employees who assist in carrying out the courts’ responsibilities”).

Finally, you ask whether any limits exist prescribing how low the commissioners court may reduce the court reporter’s and the court administrator’s salaries. Request Letter at 2. Under section 25.2702 of the Government Code, the court reporter and court administrator are entitled to a salary set by the commissioners court. TEX. GOV’T CODE § 25.2702(d); *see also id.* § 25.2702 (d-1) (requiring the three counties to enter into an interlocal agreement to allocate the financial obligations of each county for the “salaries of court personnel”), (d-2) (calculating each county’s share if the counties do not reach agreement and providing for State compensation to each county in proportion to the amount paid under the statute). The statute necessarily requires the commissioners court to set a reasonable salary sufficient to fulfill the functions of the positions. *See Vondy v. Comm’rs Ct. of Uvalde Cty.*, 620 S.W.2d 104, 108–09 (Tex. 1981) (holding that constitutional provision for a constable to receive a salary necessarily means a reasonable salary). What constitutes a reasonable amount is a matter for the commissioners court to determine in the first instance, subject to judicial review for abuse of discretion. *See id.* at 109; *see also Henry*, 520 S.W.3d at 37–38.

S U M M A R Y

Under section 25.2702 of the Government Code, the judge of the 1st Multicounty Court at Law does not possess the authority to set the salaries of the official court reporter and the court administrator.

The commissioners court may reduce salaries of the court reporter and the court administrator of the multicounty court at law without giving the judge specific notice before adopting the budget.

The commissioners court must set reasonable salaries for the court reporter and the court administrator, subject to judicial review in district court for abuse of discretion.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

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