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ATTORNEY GENERAL OF TEXAS

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The Honorable Ana Markowski Smith
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Opinion No. KP-0298

Re: Whether section 74.104 of the Government Code limits the commissioners court in setting salaries of the court coordinator and assistant court coordinator for a district court (RQ-0312-KP)

Dear Ms. Smith and Mr. Weingardt:

In separate request letters, you ask about the authority of district judges and the commissioners court to set the salaries of the district judges' court coordinators and assistant court coordinators under section 74.104 of the Government Code.¹ That section states that "[t]he judges shall determine reasonable compensation for the court coordinators, subject to approval of the commissioners court." TEX. GOV'T CODE § 74.104(a). You tell us that the county judge filed his proposed budget for fiscal year 2019–2020, which included salaries for the court coordinator and assistant court coordinator. Smith Letter at 2. Thereafter, judges for the 63rd and 83rd District Courts requested salaries deemed reasonable by the judges but higher than what the proposed budget reflected. *Id.*; Weingardt Letter at 3. The parties were unable to agree about appropriate compensation, and in light of this impasse, you raise three principal issues: (1) whether a district court may order the commissioners court to provide compensation in a specific amount; (2) whether a commissioners court may disregard the reasonable compensation determined by the district court judge and set a different compensation; and (3) whether chapter 74, subchapter E governs the salaries of assistant court coordinators. Smith Letter at 2; Weingardt Letter at 1.

¹See Letter from Honorable Ana Markowski Smith, Val Verde Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Oct. 22, 2019) ("Smith Letter") and Letter from Matthew S. Weingardt, Val Verde Cty. Auditor, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Oct. 28, 2019) ("Weingardt Letter"), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs>.

Commissioners courts may exercise only the powers expressly given by the Texas Constitution, subject to regulation by the Legislature. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003). A commissioners court possesses “powers and jurisdiction over all county business” as prescribed by the Constitution and the Legislature. TEX. CONST. art. V, § 18(b). Budget-making is a core responsibility, and a commissioners court has broad discretion in making budgetary decisions. *See Henry v. Cox*, 520 S.W.3d 28, 36 (Tex. 2017); *Griffin v. Birkman*, 266 S.W.3d 189, 194 (Tex. App.—Austin 2008, pet denied).

At the same time, the Constitution vests district courts with “general supervisory control” over the commissioners courts. TEX. CONST. art. V, § 8. A district court has inherent power to safeguard the proper administration of justice, including “the ability to compel the necessary money to compensate [local court] employees who assist in carrying out the courts’ responsibilities.” *Henry*, 520 S.W.3d at 36. A district court may direct the action of a commissioners court to perform a ministerial and nondiscretionary duty. *Mays v. Fifth Ct. App.*, 755 S.W.2d 78, 79 (Tex. 1988). For matters within a commissioners court’s discretion, however, a district court cannot substitute its policy judgment for that of the commissioners court. *Henry*, 520 S.W.3d at 37.

The Legislature has primary constitutional authority to provide for compensation of public officers and agents. TEX. CONST. art. III, § 44. The Legislature has not uniformly allocated the authority as between district judges and the commissioners court to establish the salary of various court staff. For example, under Government Code section 52.051, the judge of the district court sets the salary of an official district court reporter, with salary increases of more than ten percent subject to approval by the commissioners court of most counties. TEX. GOV’T CODE § 52.051(a), (d)(1).² Under that statute, when a judge sets a salary within the statutory parameters, the Legislature has “left no discretion,” and the commissioners court has a ministerial duty to pay the salary. *Mays*, 755 S.W.2d at 79. Also, a court administrator under section 75.401 of the Government Code “is entitled to reasonable compensation, as determined by the judges served and in the salary range for the position, as set by the commissioners court in the annual budget.” TEX. GOV’T CODE § 75.401(d). The Texas Supreme Court construed this statute to “divide[] power, letting commissioners set a salary range while letting local judges decide if compensation within that range is reasonable.” *Henry*, 520 S.W.3d at 31, 38 (holding that the district court could not order a specific salary and that the parties should work for “a collaborative agreement”). On the other hand, section 54.854 of the Government Code authorizes the commissioners court to set the salary of a criminal law hearing officer. TEX. GOV’T CODE § 54.854. Thus, the words of the particular statute determine how it allocates authority between the commissioners court and the district judges with respect to setting court staff salaries.

Chapter 74, subchapter E of the Government Code governs the compensation of court coordinators. *Id.* §§ 74.101–.106. The subchapter authorizes specified judges to “appoint a court coordinator” and “appropriate staff and support personnel.” *Id.* §§ 74.101, .103. Section 74.104

²A different exception exists for counties with a population of one million or more. TEX. GOV’T CODE § 52.051(d)(2).

provides that “[t]he judges shall determine reasonable compensation for the court coordinators, subject to approval of the commissioners court.” *Id.* § 74.104(a). Thus, the statute divides the power between the judge who must determine reasonable compensation, and the commissioners court, which must approve compensation. But a district judge’s determination of a reasonable compensation for a court coordinator alone does not set compensation. *See id.* § 74.104(a). The statute grants the commissioners court authority to approve compensation, which necessarily implies the discretion to disapprove. *See Tex. Att’y Gen. Op. No. GA-0767* (2010) at 1–2. Because the commissioners court possesses discretionary approval authority, the district judge cannot order the commissioners court to provide specific compensation. *See Henry*, 520 S.W.3d at 37–38; *Mays*, 755 S.W.2d at 79.

But by the same token, the statute gives the commissioners court only approval authority, not the authority to set compensation. If the Legislature intended the commissioners court to have unilateral authority to set compensation, treating the judges’ determination of reasonable compensation as merely informational, it could have written the statute to say so. *See Tex. Att’y Gen. Op. No. GA-0952* (2012) at 2. The authority to approve or disapprove the judges’ determination gives the commissioners court veto power. *See Tex. Att’y Gen. Op. No. GA-0767* (2010) at 2. But a commissioners court may not exercise its approval authority to infringe on the judge’s authority to determine reasonable compensation. TEX. GOV’T CODE § 74.104(a). In Attorney General Opinion KP-0052, this office considered a county policy to automatically reduce employee salaries upon vacancy in the position. *See Tex. Att’y Gen. Op. No. KP-0052* (2015). The opinion concluded that application of the county policy to a court coordinator would exclude the judge from the compensation process in violation of section 74.104. *Id.* at 3–4. Because the statute gives neither the judge nor the commissioners court unilateral authority to set a court coordinator’s compensation, the opinion observed that “section 74.104 appears designed to require the judge and the commissioners court to establish a court coordinators compensation by collaboration.” *Id.* at 3; *see also Henry*, 520 S.W.3d at 38 (instructing that, when a statute divides salary authority between the judges and the commissioners court, the parties should work to “reach a collaborative agreement”). Thus, section 74.104 does not authorize a commissioners court to unilaterally set the court coordinator’s salary without regard to the judges’ determination.³

³The Smith Letter also asks whether the commissioners court’s authority to approve the final budget gives it final authority to set the court coordinators’ salary, referencing Attorney General Letter Opinion LO-92-44. *See Smith Letter* at 3–4; *Tex. Att’y Gen. LO-92-44*, at 3. The letter opinion relied on the analysis in *Commissioners Court of Caldwell County v. Criminal District Attorney*, which construed a statute providing for a prosecuting attorney to “fix” the salaries of assistants subject to the approval of the commissioners court. 690 S.W.2d 932, 937–39 (Tex. App.—Austin 1985, writ ref’d n r.e.). Analogizing to the prosecutor statute, the letter opinion read section 74.104 of the Government Code as giving judges only the authority to propose compensation, while granting the commissioners court authority to “approve” a different salary in the final county budget. *Tex. Att’y Gen. LO-92-44*, at 2. However, the letter opinion’s construction of section 74.104 adds words to the statute. Subsection 74.104(a) authorizes judges to determine *reasonable* compensation and does not address whether a commissioners court may set different compensation in the final budget. Courts are reluctant to interpret statutes in a way that effectively adds words to them. *See Jones v. Liberty Mut. Ins. Co.*, 745 S.W.2d 901, 902 (Tex. 1988). Moreover, courts do not “give the words used by the Legislature an ‘exaggerated, forced, or constrained meaning.’” *Presidio Independ. Sch. Dist. v. Scott*, 309 S.W.3d 927, 931 (Tex. 2010). A court considering the plain language of section 74.104 is unlikely to construe the

The final issue is whether chapter 74, subchapter E governs the compensation of assistant court coordinators. Weingardt Letter at 1. While section 74.103 authorizes the district court to “appoint appropriate staff and support personnel according to the needs in each county,” subchapter E does not address the compensation of assistant court coordinators. TEX. GOV’T CODE § 74.103. Thus, the commissioners court may set the amount of compensation for assistant court coordinators as with other employees paid by the county under section 152.011 of the Local Government Code. *See* TEX. LOC. GOV’T CODE § 152.011 (general authority of commissioners court to set salaries); TEX. GOV’T CODE § 74.104.

S U M M A R Y

Under section 74.104 of the Government Code, the district court judge determines reasonable compensation for the court coordinator, subject to approval by the commissioners court. The district judge does not possess authority to order the commissioners court to provide compensation in a specific amount. A court is unlikely to conclude that the commissioners court may disregard the judge's determination of a reasonable compensation and unilaterally set compensation in a different amount in the county's final budget. The commissioners court may set the salary of an assistant court coordinator.

Very truly yours,



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