



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2020

Mr. Rakesh Pandey
Montgomery County Auditor
501 North Thompson, Suite 205
Conroe, Texas 77301

Opinion No. KP-0339

Re: Calculation of the minimum salary of a county court at law judge with twelve or more years of accrued service under subsection 25.0005(a) of the Government Code (RQ-0353-KP)

Dear Mr. Pandey:

You ask about the calculation of the minimum salary of a county court at law judge with twelve or more years of accrued service under subsection 25.0005(a) of the Government Code.¹ Subsection 25.0005(a) generally governs a statutory county court judge's minimum total annual salary while subsection 25.0005(a-2) sets forth the maximum. TEX. GOV'T CODE § 25.0005(a), (a-2). You observe that while subsection (a) bases a county court at law judge's minimum salary in part on salary payments "to a district judge with comparable years of service," it does not specifically address the inclusion of longevity pay. Request Letter at 1. You note that in contrast, subsection 25.0005(a-2) specifically includes a district judge's longevity pay in calculating a county court at law judge's maximum salary. *Id.* You ask us to clarify whether the county court at law judge's minimum salary under subsection 25.0005(a) includes an amount based on a district judge's longevity pay. *Id.* at 2.

In broad strokes, subsection 25.0005(a) provides that a county court at law judge's minimum total annual salary is an amount not less than \$1,000 less than the sum of a district judge's salary, contributions, and supplements as specified in other statutes. *See* TEX. GOV'T CODE § 25.0005(a). Subsection 25.0005(a) provides in part:

- (a) A statutory county court judge . . . shall be paid a total annual salary set by the commissioners court at an amount that is not less than \$1,000 less than the sum of the annual salary as set by the General Appropriations Act in accordance with Section 659.012 paid to a district judge with comparable years of service

¹See Letter from Mr. Rakesh Pandey, Montgomery Cty. Auditor, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (May 4, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0353KP.pdf> ("Request Letter").

as the statutory county court judge and any state or county contributions and supplements paid to a district judge in the county A statutory county court judge’s total annual salary includes any state or county contributions and supplements paid to the judge.

Id. Thus, the formula for calculating the minimum total annual salary for a county court at law judge first requires determining “the annual salary . . . paid to a district judge with comparable years of service as the statutory county court judge.” *Id.* The General Appropriations Act and section 659.012 of the Government Code specify the annual base salary for district judges. *See* General Appropriations Act, 86th Leg., R.S., S.B. 1, art. IV-37 (2019);² TEX. GOV’T CODE § 659.012(a)(1). Subsection 659.012(a)(1) of the Government Code provides that “a judge of a district court is entitled to an annual base salary from the state as set by the General Appropriations Act in an amount equal to at least \$140,000.” TEX. GOV’T CODE § 659.012(a)(1); *see also id.* § 659.011 (stating that “salaries of all state officers and employees are in the amounts provided by the biennial appropriations act”).

Subsection 659.012(b) adjusts a district judge’s state annual base salary according to the judge’s years of service as described in the statute. *Id.* § 659.012(b) (including accrual of judicial retirement service credit and service in certain positions); *see also* OFFICE OF COURT ADMINISTRATION, JUDICIAL SALARIES EFFECTIVE SEPTEMBER 1, 2019, <http://www.txcourts.gov/media/1446571/judicial-salaries-september-2019.pdf>. District judges with more than four but less than eight years of service are entitled to an annual salary in an amount that is 110 percent of the state base salary. TEX. GOV’T CODE § 659.012(b)(1). District judges with eight or more years of service are entitled to an annual salary in an amount that is 120 percent of the state base salary. *Id.* § 659.012(b)(2). You ask about a county court at law judge who has twelve or more years of “accrued service.” Request Letter at 2. The annual salary of a district judge with “comparable years of service”—twelve years—is 120 percent of the state base salary under subsection 659.012(b)(2). TEX. GOV’T CODE §§ 25.0005(a), 659.012(b)(2).

To the annual salary of a district judge with comparable years of service, the formula in subsection 25.0005(a) adds “any state or county contributions and supplements paid to a district judge in the county.” *Id.* § 25.0005(a). Eligible district judges also receive the state longevity-pay supplement under section 659.0445. *Id.* § 659.0445(a). To receive longevity pay, a judge must be a current judicial officeholder, receive a salary paid by the State, be a member of the Judicial Retirement System of Texas Plan One or Plan Two, and have twelve years of credited service in the appropriate retirement system. *Id.* §§ 74.041(4), 659.0445(a), (b), (d) (also providing that a county may provide longevity pay to district judges who meet other qualifications). The formula in subsection 25.0005(a) includes only those “supplements paid to a district judge *in the county*.” *Id.* § 25.0005(a) (emphasis added). Thus, under subsection 25.0005(a), if a district judge in the county receives a longevity-pay supplement, it should be included in the formula to calculate the total annual salary of a county court at law judge with comparable years of service. *Id.*; *see also* Tex. Att’y Gen. Op. No. GA-0694 (2009) at 1, (determining that “‘total annual salary’ in

²Available at https://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2020_2021.pdf.

section 25.0005 is broad enough to encompass the amount of longevity pay received by a district judge in the county”).

In summary, a county court at law judge’s minimum total annual salary under subsection 25.0005(a) is an amount not less than \$1,000 less than the sum of a district judge’s salary, as adjusted by subsection 659.012(b) according to years of service, plus any county or state contributions and supplements paid to the district judge. If a district judge in the same county as the county court at law judge receives longevity pay under section 659.0445, then that amount should be included in the calculation of the sum of the district judge’s salary, contributions, and supplements that forms the basis of a county court at law judge’s minimum total annual salary.³

³Although you ask only about section 25.0005 of the Government Code, because your question concerns the county court at law judges in Montgomery County, you should also consider the potential impact of section 25.1722, which applies only to Montgomery County judges. Subsection 25.1722(d) provides: “The judge of a county court at law [in Montgomery County] shall be paid an annual salary that is not less than \$1,000 less than the total annual salary, including supplements, of any district judge in the county.” TEX. GOV’T CODE § 25.1722(d). Usually in chapter 25, a statute applicable to courts in a specific county prevails over conflicting statutes that apply generally. *Id.* § 25.0001(a). But subsection 25.0005(d) has its own provision for resolving conflicts, providing that notwithstanding the general rule,

section [25.0005] prevails over any other law that limits a particular statutory county court judge to an annual salary of less than the amount provided by Subsection (a), but does not affect a salary minimum set by other law that equals or exceeds the amount provided by Subsection (a).

Id. § 25.0005(d). In other words, the formula in subsection 25.1722(d) would control only if it produced a salary minimum that equals or exceeds the minimum specified in subsection 25.0005(a).

S U M M A R Y

A county court at law judge's minimum total annual salary under subsection 25.0005(a) of the Government Code is an amount not less than \$1,000 less than the sum of a district judge's salary, as adjusted by subsection 659.012(b) of the same code according to years of service, plus any county or state contributions and supplements. If such a district judge in the county receives longevity pay under section 659.0445 of the Government Code, then that amount should be included in the calculation of the sum of the district judge's salary, contributions, and supplements that forms the basis of a county court at law judge's minimum total annual salary.

Very truly yours,

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

KEN PAXTON
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