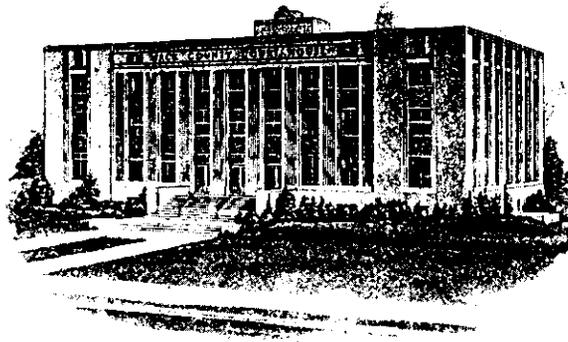


JACK COUNTY



JACKSBORO, TEXAS

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DEC 27 1999

MICHAEL G. MASK
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THIRD FLOOR
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December 21, 1999 Opinion Committee

Attorney General of Texas
Opinion Division
PO Box 12548
Austin, TX 78711-2548

RQ-0166-JC

FILE # ML-41189-99

I.D. # 41189

Re: Request for AG Opinion, County Attorney's State Supplemental, HB 804
Pay & Payroll Deductions

Dear Attorney General's Office:

I pose two questions concerning the recent legislation supplementing the salaries of two county elected officials - County Judge supplement (for Attorney-Judges) and County Attorney supplement:

1) May a county commissioners court regard a state legislated and appropriated salary supplement directed to a county or precinct elected official or employee as being inclusive of the matching cost associated with county benefit and related pay roll matching expenses when the legislation authorizing the supplement does not specify otherwise?

2) Is it with the constitutional authority of the Texas Legislature to grant salary supplements to county elected or appointed officials or county employees that would increase the counties pay roll matching cost of benefits and other pay roll expenses as that would pertain to Title 5 Subtitle B Chapter 152 Subchapter B Sections 152.011 and 152.013 of the Texas Local Government Code?

As to these 2 issues my research indicates the following:

Requiring the county attorney, as an employee, to bear the total cost of FICA, Medicare and other employee taxes is not authorized, and in fact would likely violate federal labor laws which prohibit an employer from requiring that the entire cost of employment taxes be borne by the employee. Further, there are

several documents and support materials prepared by the Legislature during the consideration of HB 804 which indicate the Legislature's intent that the amounts provided by HB 804 be directed to salary only. Most importantly, there is an absence of language authorizing commissioners court to deduct the employer's share of employment taxes from the supplemental funding provided by the state.

a. Comparing HB 804 as introduced with HB 804 as finally passed. HB 804 amended during legislative consideration in a significant manner that indicates the Legislature's intent that the state funding be provided as salary to the county attorney. In the original version of the bill, it was provided that "each county prosecutor is entitled to receive from the state supplemental compensation ... " (see page 3, line 1 of HB 804, As Filed.) However, in the "As Finally Passed" version of HB 804, the word "salary" was inserted between the words "supplemental" and "compensation", clearly evidencing the Legislature's direction that the funding be used for salary, not salary less the employee and employer share of employment taxes (see page 3, line 2 of HB 804 As Finally Passed.) Further, the amended version added a new subsection (d) which directed the comptroller of public accounts to pay to the salary fund of each county eligible for funding an amount to supplement the salary of the county prosecutor. (See page 4, lines 1-4 of HB 804 As Finally Passed.)

b. The bill analyses of HB 804 prepared in both the House and the Senate clearly states that the Legislature's intent was for the funding to be used as a salary supplement. No where within these official documents prepared by the Legislature's own staff is any language authorizing commissioners court to deduct from the salary supplement the employer's share of employment taxes.

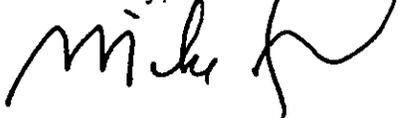
As to the second question proposed:

Article 5, Section 21 of the Texas Constitution specifically provides that the "Legislature may provide for the election of District Attorneys in such Districts; as may be deemed necessary, and make provision for the compensation of District Attorney and County Attorneys."

It is clearly set out in the Texas Constitution that the Legislature has the authority to make provisions for compensation of the County Attorney.

Summary: It is my opinion that the county, as the employer, must pay the employers portion of salaried county employees.

Sincerely,

A handwritten signature in black ink that reads "mick" followed by a large, stylized flourish.

Michael G. Mask