

RQ-0302-JC



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OCT 27 2000

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October 18, 2000

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548, Capitol Station
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FILE # ML-41727-00
I.D. # 41727

RE: **Request for an Opinion and Brief in support that Request** concerning: (1) Whether the District Judges of Smith County may republish under Chapter 152 of the Local Government Code and amend the salaries of the Auditor's Office after the Commissioner's Court has approved and certified the tax rate; (2) Whether the District Judges may amend the salaries of the Auditor and assistant auditor's after the County's budget has been approved and filed, and the new budget year has begun; (3) Whether it is necessary for the Auditor to certify amended salaries and make application to the District Judges under § 84.021 of the Local Government Code before the District Judges may reconsider the salaries of the Auditor and assistant auditors § 84.021 of the Local Government Code; and (4) Whether the Commissioners Court may amend the budget to include any such changes to the Auditor's and assistant auditors' salaries at a second meeting under Chapter 152 of the Local Government Code?

Dear General Cornyn:

This office is submitting a request for an opinion concerning the above issues. You have asked that we submit a brief pursuant to section 402.043 of the Texas Government Code containing relevant state statutes and our conclusions with respect to the questions asked. We do so with this letter.

The four District Judges of Smith County have asked that I request an opinion from your office as to whether the District Judges of Smith County may republish under Chapter 152 of the Local Government Code and amend the salaries of the Auditor's Office after the Commissioner's Court has approved and certified the tax rate, and whether the District Judges may amend the salaries of the Auditor and assistant auditor's after the County's budget has been approved and filed, and the new budget year has begun?

The District Judges met on August 10, 2000 in a meeting posted and published under §152.095 of the Texas Local Government Code, and set the salaries according to § 84.021 of the Local Government Code. Since the Judges have met, the County has approved a tax rate and passed and filed a budget for the fiscal year beginning October 1, 2000 incorporating the salaries set by the District Judges. On August 31, 2000, the District Judges through the Presiding Local Administrative Judge, Louis B. Gohmert, Jr. have asked that I seek an opinion from your office to clarify what appears to be conflicting opinions previously issued covering these questions.

It is important to note that the Auditor has not certified an application for a change in salary for the assistant auditors other than the application that was acted upon on August 10, 2000 by the District Judges.

ISSUE 1

Whether the District Judges of Smith County may republish under Chapter 152 of the Local Government Code and amend the salaries of the Auditor's Office after the Commissioner's Court has approved and certified the tax rate

The plain language of section 152.905, Texas Local Government Code, states that the district judges shall hold a public hearing before setting the annual compensation of the county auditor, assistant auditors, at which parties in interest, and citizens have an opportunity to be heard. Notice has to be published in a newspaper of general circulation in the county at least 15 days before the day of the hearing. Local Government Code section 152.031 states that at the hearing held in accordance with section 152.905, the district judges shall set the amount of compensation for the county auditor and assistant auditors.

In Opinion H-1266 your office concluded that under then existing article 1645, V.T.C.S., the District Judges of Henderson County could increase the salary of the county auditor at any time. In Opinion JM-49 your office concluded likewise that the salaries of the assistant auditor's could also be raised at any time. Your determination was based upon the legislature not placing any restrictions on the timing of the district judges' decision in articles 1645, and 1650. The language of the current statute, Local Government Code section 152.031, is almost identical to article 1645. We conclude that under the opinion in H-1266, and JM-49, and the authority cited therein, the District Judges of Smith County may republish under Chapter 152 of the Local Government Code and amend the salaries of the Auditor's Office after the Commissioner's Court has approved and certified the tax rate, subject to the certification of the Auditor as proscribed in § 84.021 of the Local Government Code, and a proper amendment by the Commissioners Court under §84.021 of the Local Government Code.

ISSUE 2

Whether the District Judges may amend the salaries of the Auditor and assistant auditors' after the County's budget has been approved and filed, and the new budget year has begun

Finding no authority to the contrary, we believe that the answer to this issue is the same as in issue number one. Under the same authority opined in H-1266, and JM-49, the District Judges may amend the salaries of the Auditor and assistant auditors' after the County's budget has been approved and filed, and the new budget year has begun.

ISSUE 3

Whether it is necessary for the Auditor to certify amended salaries and make application to the District Judges under § 84.021 of the Local Government Code before the District Judges may reconsider the salaries of the Auditor and assistant auditors

The plain language of section 84.021 clearly states that "From time to time the county auditor may certify to the district judges" a list of assistants and the salary to be paid to each assistant. The judges after careful consideration of the application shall prepare a list of the salary to be paid each. In letter opinion no 98-031 your office refers to the requirement that the auditor must first make an application under section 84.021 in order for the district judges to consider an increase in an assistant auditor's salary. The only exception to this requirement is the district judges' authority to withdraw the approval of an assistant auditor under section 84.021(e).

ISSUE 4

Whether the Commissioners Court may amend the budget to include any such changes to the Auditor's and assistant auditors' salaries at a second meeting under Chapter 152 of the Local Government Code


The District Courts have the inherent power to compel expenditures of public funds to fulfill a statutory function. *May v. Fifth Court of Appeals*, 755 S.W. 2d 78, 79. The Commissioners Court has a ministerial duty to comply with an order of the District Judges made in accordance with applicable statutes. *May*, at 79. In concluding that the District Judges have the inherent power to amend the salaries of the auditor and assistant auditors at anytime during the budget year, it would follow under *May* that following such order is a ministerial duty of the Commissioners Court.

Applying the opinion found in JM-49, an order from the District Judges would require (1) the proper application from the auditor to the district judges; (2) such application and action by

the judges must not require county expenditures in excess of anticipated revenue of the county for that year; and (3) such order would become effective only if a proper amendment of the county budget is made in compliance with law. The Commissioners Court may amend the county's budget under chapter 111 of the Texas Local Government Code.

The fiscal year 2000-2001 Smith County budget projects net revenues to exceed net expenditures. Under the scenario laid out in JM-49, the District Judges of Smith County could conceivably raise the salaries of the auditor and assistant auditors, subject to other statutory limitations, not to exceed projected county fund balances in the current years budget.

Thank you for your consideration of this matter.



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