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OPINION COMMITTEE

FILE # ML-41748-00
I.D. # 41748

RQ-0310-JC

REQUEST FOR ATTORNEY'S GENERAL'S OPINION

FACTS:

The Palo Pinto County Attorney comes under Government Code Section 46.0031 as a county prosecutor as of September 1, 1999. The Palo Pinto County Attorney has filed a written waiver of \$2,905.00 of his annual compensation for the 2000-2001 budget year. The Palo Pinto County Attorney submitted a request to pay for computer software for his office from the waived compensation. The request was returned as denied by commissioners court signed by the County Judge, although the Palo Pinto County commissioners court did not meet in a public and posted meeting from the date of this request until the date of the return of the request.

ISSUE:

Whether the funds a county receives from a county prosecutor's partial waiver of annual compensation can only be expended at the discretion of a commissioner's court?

ARGUMENT AND AUTHORITIES

Any waived amount of compensation can only be used for the expenses of the prosecutor's office and is not subject to the discretion or control of a commissioner's court. Chapter 46 of the Texas Government Code is the Professional Prosecutor's Act. A previous attorney general's opinion addresses

whether expense monies given to a state prosecutor's office for expenses from the state is subject to the discretion of a commissioner's court. They are not. The expenses discussed in this attorney general's opinion are from a different section of the same chapter of the Government Code than the expenses the subject of this brief, however, the same logic applies. The expenses discussed today are not subject to the discretion of a commissioner's court.

Section 46.005(d) of the Texas Government Code holds in pertinent part:

- (d) This section does not apply to a county prosecutor who files with the County auditor an annual written waiver of the amount of compensation that is equal to or exceeds 80 percent of the benchmark salary. **An amount waived under this subsection shall be used for expenses of the county prosecutor's office.**

Any amount of waived compensation can only be used for the expenses of the prosecutor's office.

In the same chapter of the Professional Prosecutor's Act expenses are discussed that being each state prosecutor is entitled to monies from the state to defray salaries and expenses.

Section 46.004 of the Texas Government Code holds in pertinent part:

- (a) Each state prosecutor is entitled to receive not less than \$22,500 a year from the state to be used by the prosecutor to help defray the salaries and expenses of the office. That money may not be used to supplement the prosecutor's salary.
- (b) Each state prosecutor shall submit annually to the comptroller of public accounts a sworn account showing how this money was spent during the year.

Opinion JM-428 set forth that funds received under this statute are not subject to appropriation or control by the commissioner's court. The reasoning used in Opinion JM-428 is applicable to all expenses discussed in the Professional Prosecutors chapter of the Texas Government Code.

The waived amount of compensation can only be used for a prosecutor's office expenses, however, if a commissioner's court can refuse a request to expend those funds a commissioner's court can circumvent the required use of those funds. There are no cases that interpret this new statute nor is the legislative history of this law (HB 804) of any benefit to this request for an opinion.

SUMMARY

Funds received by a county from a waiver of compensation by a prosecutor can only be used for the expenses of that prosecutor's office. If those funds are subject to appropriation or control by a commissioners court the funds may never be expended and thus a commissioners court could circumvent the requirement that the funds be used solely for the expenses of the prosecutor's office. These funds should not be subject to the discretion or appropriation of commissioners court.

Very truly yours,

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

Phil Garrett

PG/bh