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RQ-0548-JC

May 7, 2002

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OPINION COMMITTEE

Opinions Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42604-02
I.D. # 42604

Re: Section 61.001, Government Code

Dear General Cornyn:

This letter is a request for an attorney general's opinion concerning an interpretation of Section 61.001, Government Code. Specifically, the commissioners court of Guadalupe County, pursuant to that section, has set the reimbursement expenses for jurors. They have set the reimbursement rates differently for different jurors. Grand jurors are reimbursed more than petit jurors. Petit jurors in district court and county court are reimbursed at a higher rate than petit jurors in justice court.

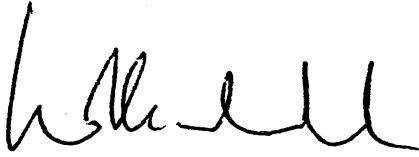
This specific questions are as follows:

1. Whether the commissioners court has the discretion or authority to set the daily reimbursement rate of expenses for grand jurors at a different rate than petit jurors?
2. Whether the commissioners court has the discretion or authority to set different daily reimbursement rates for petit jurors in varying courts such as district courts, county courts and justice courts?

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Thank you for your cooperation in this matter. The brief required by Section 402.043, Government code is attached.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'W.C. Kirkendall', written over a horizontal line.

W.C. Kirkendall
25th Judicial District Attorney

WCK/alm

Enclosures

cc: Kristen Klein
CPA County Auditor
Guadalupe County

BRIEF

1. Whether the commissioner's court has the discretion or authority to set the daily reimbursement rate of expenses for grand jurors at a different rate than petit jurors?
2. Whether the commissioner's court has the discretion or authority to set different daily reimbursement rates for petit jurors in varying courts such as district courts, county courts and justice courts?

I am unable to find any cases which interpret Section 61.001, Government code. There are no opinions of the attorney general which address the above questions.

There are, however, certain inferences which can be drawn from other matters other than cases or opinions directly on point.

In Section 61.001, Government Code, itself, in subsection (d), the commissioner's court is authorized to "reduce or eliminate the daily reimbursement" if a particular juror attends court for only one day or a fraction of one day. This specific authorization for a reduction or elimination would lead one to believe that, absent a specific authorization, the commissioner's court may not reduce reimbursement for jurors who are not in the particular category described in subsection (d). The statute does not specifically address the above questions.

There are numerous other statutes where commissioner's courts are authorized to approve reimbursement, such as section 52.056, Government Code; section 434.038, Government Code; section 822.029 Health and Safety Code, for example.

None of these other statutes provide for different treatment for different classes covered by the statute. It is unknown whether this particular treatment exists.

The office of the attorney general addressed an analogous question in letter opinion 97-009, dated February 20, 1997. The question in that case was whether the district judge and litigants could agree to fund an increase in the jury fee to petit jurors. The attorney general wrote that a juror acts as an officer of the court and a "public officer may not accept from a third party compensation for performing official duty. Thus, when an individual accepts an appointment to perform jury service, he or she may accept no more than the compensation the county usually pays to others for the same service."

The conclusion of the attorney general was that neither the litigants nor the district court had the authority to increase the compensation to jurors above that authorized by the commissioners' court. Although the precise questions inquired of here were not addressed, one could infer from the above quoted language that each juror "may accept no more than the compensation the county usually pays to others for the same service." This could be taken to mean that the opinion committee expected each juror to receive the same compensation.

Because of the dearth of interpretation of Section 61.001, Government Code, I am unable to provide a definitive answer to the questions.