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October 2, 2002

Honorable John Cornyn
Office of the Attorney General
c/o Susan Gusky, Chief
Opinions Committee
P.O. Box 12548
Austin, Tx 78711-2548

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OPINION COMMITTEE

RQ-0615-JC

Via Fax: 512-472-6538

Re: Salary Grievance Procedures

General Cornyn,

FILE # ML-42822-02
I.D. # 42822

The salary grievance procedures for county or precinct elected officials found in Chapter 152 of the Texas Local Government Code are less than clear.

The Attorney General has been asked for opinions on the subject on several occasions. Having reviewed a few of those opinions, some clarification is necessary.

In JC-471 (2002) at 2, it is stated, "After the commissioners court has adopted the budget, 'but before filing it with the county clerk,' see Tex. Att'y Gen. Op. No. DM-405 (1996) at 4, section 152.013 requires the commissioners court to notify each officer of the proposed salary . . .". Then, section 152.013 (c) (Vernon 1999) is quoted verbatim to include, "Before filing the annual budget . . .".

As a result, it appears that "filing the annual budget" has been construed to refer to the approved and adopted budget for the upcoming fiscal year.

Section 152.016 (a) (Vernon 1999) (as cited in JC-471) & (Vernon 2002) states, "An elected county or precinct officer who is aggrieved by the setting of the officer's

salary or personal expenses may request a hearing before the salary grievance committee *before the approval of the county's annual budget.*" [emphasis added]. The italicized language was added to the statute by HB 2286 in the 1997 Legislature. The bill analysis is of no assistance to determine the intent of the amendment.

If the amended statute is to be given effect, the entire salary grievance process is an impossibility. If notice to elected officials is given only after the budget is approved and adopted as contemplated in the heretofore cited provisions of JC-471, it is impossible for an aggrieved elected official to request a hearing *before the approval of the county's annual budget.* JC-471 even notes this limitation in which an aggrieved officer must request a hearing; however, the impossibility is not recognized. See JC-471 at 4.

Pursuant to the general tenets of statutory construction, the Legislature is presumed to not have intended an impossibility. Thus, the statutes should be construed in a manner to avoid the impossibility.

A couple of options come to mind. One, section 152.016 (a) could be read without the 1997 amendment. Alternatively, references to "filing the annual budget" in section 152.013 (c) could be construed to mean the "proposed" annual budget. *See also* Tex.Loc.Gov't.Code section 111.006 (a). Such a reading also comports with the tenor of the last phrase in section 152.013 (c)—"salary and personal expenses *to be included* in the budget." [emphasis added].

Regardless of the construction to be given these provisions, clarification of JC-471 is needed. Just as in the order of events presented by Van Zandt County, Comal County filed a proposed budget for fiscal year 2003, held a public hearing, approved the proposed budget, notified elected officials, and received a written request for a hearing before the salary grievance committee within five days after the officer received the notice. Due to this standard order of events, the impossibility comes into play.

Please contact me at anytime if I can provide additional information.

Respectfully submitted,



Dab Waldrip

Comal County District Attorney

cc: Danny Scheel, Comal County Judge
Margaret Herbrich, Comal County District Clerk
Joy Streeter, Comal County Clerk