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Mike Stafford
Harris County Attorney

RQ-0079-GA

July 16, 2003

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OPINION COMMITTEE

Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43186-03
I.D. # 43186

Attention: Opinion Committee

Re: If Harris County Commissioners Court chooses to increase the salaries of its District Judges in accordance with SB 828, 78th Leg., R.S., will the State Comptroller be required to reduce the Judge's portion of such judge's salaries?
C. A. File No. 03GEN1126.

Dear Sir:

The legislature has amended TEX. GOV'T CODE ANN. §32.101, effective September 1, 2003, by enacting Act of May 6, 2003, S.B. 828 78th Leg., R.S., which reads:

AN ACT

relating to the supplemental salaries of district judges in Harris County.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Effective September 1, 2003, Subsection (a), Section 32.101, Government Code, is amended to read as follows:

(a) Notwithstanding Section 659.012, the [The] Commissioners Court of Harris County may [shall] budget for and pay the judges of the district courts having jurisdiction in that county an annual salary in an amount set by the commissioners court [of not less than \$12,000 nor more than \$25,000] for judicial and administrative services.

SECTION 2. Effective September 1, 2007, Subsection (a), Section 32.101, Government Code, is reenacted to read as follows:

(a) The Commissioners Court of Harris County shall budget for and pay the judges of the district courts having jurisdiction in that county an annual salary of not less than \$12,000 nor more than \$25,000 for judicial and administrative services.

SECTION 3. This Act takes effect September 1, 2003.

Honorable Greg Abbott

- 2 -

July 16, 2003

Salaries for Texas District Judges are currently determined in accordance with TEX. GOV'T CODE ANN. §659.012 (Vernon Supp. 2003), reading:

(a) Notwithstanding Section 659.011:

(1) a justice of the supreme court is entitled to an annual salary from the state that is at least \$102,463;

(2) a justice of a court of appeals other than the chief justice is entitled to an annual salary from the state that is five percent less than the salary provided by the General Appropriations Act for a justice of the supreme court, except that the combined salary of a justice of the court of appeals other than the chief justice from all state and county sources may not exceed the amount that is \$1,000 less than the salary provided for a justice of the supreme court;

(3) the chief justice of a court of appeals is entitled to an annual salary from the state that is \$2,500 more than the salary provided for the other justices of the court of appeals, except that the combined salary of the chief justice of a court of appeals may not exceed the amount that is \$500 less than the salary provided for a justice of the supreme court; and

(4) a judge of a district court is entitled to an annual salary from the state that is 10 percent less than the salary provided in the General Appropriations Act for a justice of the supreme court, except that unless otherwise provided by law, the combined salary of a district judge from state and county sources may not exceed the amount that is \$2,000 less than the salary provided for a justice of the supreme court.

(b) To the extent of any conflict, the salary differential provided by this section for the combined salary of a district judge prevails over any differential set by Chapter 32.

(c) Blank

(d) In a county with more than five district courts, a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled under Subsection (c).

(e) For the purpose of salary payments by the state, the comptroller shall determine from sworn statements filed by the justices of the courts of appeals and district judges that the required salary differentials provided by this section are maintained. If a salary combined with a county supplement would be in excess of the differential provided by this section, the comptroller shall reduce the state salary by the amount of the excess.

Honorable Greg Abbott

- 3 -

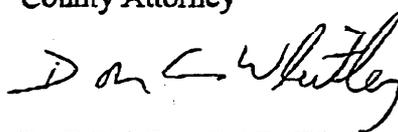
July 16, 2003

[emphasis added]

The referenced question involves the effect of the words "Notwithstanding Section 659.012" in S.B. 828. If the comptroller is required to reduce the state contribution by the amount combined salaries exceed an amount equal to an amount \$2,000 less than the salary of a justice of the supreme court, it will be necessary for the County to contribute the entire salary of each judge in order to increase the pay of its district judges above \$111,000. If the judges will be entitled to receive the full state share regardless of the County's contribution, the County will be able to accomplish the same goal by contributing any amount over \$9,300 to each judge. Therefore, your answer to our question is of great import in the Commissioners Court's determination of its contribution.

Sincerely,

MIKE STAFFORD
County Attorney



By DON C. WHITLEY
Assistant County Attorney

Approved:



JOHN R. BARNHILL
First Assistant County Attorney

MS:DCW

ISSUE: If Harris County Commissioners Court chooses to increase the salaries of its District Judges in accordance with SB 828, 78th Leg., R.S., will the State Comptroller be required to reduce the Judge's portion of such judge's salaries?

MEMORANDUM

Salaries for Texas District Judges are currently determined in accordance with TEX. GOV'T CODE ANN. §659.012 (Vernon Supp. 2003), which states as follows:

(a) Notwithstanding Section 659.011:

(1) a justice of the supreme court is entitled to an annual salary from the state that is at least \$102,463;

(2) a justice of a court of appeals other than the chief justice is entitled to an annual salary from the state that is five percent less than the salary provided by the General Appropriations Act for a justice of the supreme court, except that the combined salary of a justice of the court of appeals other than the chief justice from all state and county sources may not exceed the amount that is \$1,000 less than the salary provided for a justice of the supreme court;

(3) the chief justice of a court of appeals is entitled to an annual salary from the state that is \$2,500 more than the salary provided for the other justices of the court of appeals, except that the combined salary of the chief justice of a court of appeals may not exceed the amount that is \$500 less than the salary provided for a justice of the supreme court; and

(4) a judge of a district court is entitled to an annual salary from the state that is 10 percent less than the salary provided in the General Appropriations Act for a justice of the supreme court, except that unless otherwise provided by law, the combined salary of a district judge from state and county sources may not exceed the amount that is \$2,000 less than the salary provided for a justice of the supreme court.

(b) To the extent of any conflict, the salary differential provided by this section for the combined salary of a district judge prevails over any differential set by Chapter 32.

(c) Blank

(d) In a county with more than five district courts, a district judge who serves as a

local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled under Subsection (c).

(e) For the purpose of salary payments by the state, the comptroller shall determine from sworn statements filed by the justices of the courts of appeals and district judges that the required salary differentials provided by this section are maintained. If a salary combined with a county supplement would be in excess of the differential provided by this section, the comptroller shall reduce the state salary by the amount of the excess.

[emphasis added]

Until September 1, 2003, contributions of Harris County to the salary of a District Judge are provided for in TEX. GOV'T CODE ANN. §32.101 (Vernon 1988), which provides:

(a) The Commissioners Court of Harris County shall budget for and pay the judges of the district courts having jurisdiction in that county an annual salary of not less than \$12,000 nor more than \$25,000 for judicial and administrative services.

(b) The salary shall be paid in equal monthly installments from the county general fund or officers' salary fund.

(c) The salary is in addition to the salary paid by the state.

The legislature has amended TEX. GOV'T CODE ANN. §32.101, effective September 1, 2003, by enacting Act of May 6, 2003, S.B. 828 78th Leg., R.S., which reads:

AN ACT

relating to the supplemental salaries of district judges in Harris County.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Effective September 1, 2003, Subsection (a), Section 32.101, Government Code, is amended to read as follows:

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SECTION 2. Effective September 1, 2007, Subsection (a), Section 32.101, Government Code, is reenacted to read as follows:

(a) The Commissioners Court of Harris County shall budget for and pay the judges of the district courts having jurisdiction in that county an annual salary of not less than \$12,000 nor more than \$25,000 for judicial and administrative services.

SECTION 3. This Act takes effect September 1, 2003.

The Bill Analysis accompanying the report of the Senate Committee included the following paragraph:

DIGEST AND PURPOSE

Currently, Harris County is experiencing a perceived high turnover of district judges, which is believed to be a result of inadequate compensation. C.S.S.B. 828 allows Harris County to increase the supplemental salary paid to district judges during the period between September 1, 2003, and August 31, 2007.

The Bill Analysis accompanying the report of the House Committee included the following similar paragraph:

BACKGROUND AND PURPOSE

Currently, Harris County is experiencing a perceived high turnover of district judges, which is believed to be a result of inadequate compensation. S.B. 828 allows Harris County to increase the supplemental salary paid to district judges.

Thus, it appears that the new bill was intended to allow Harris County to increase the salaries of Harris County district judges to an amount that would not have been allowed under previously existing law. The question that has arisen is whether the words "[n]otwithstanding Section 659.012", as inserted in Section (a) of Section 32.101 by S.B. 828 merely removed the limit found in subparagraph (a)(4) of Section 659.012 (limiting the total salary from both county and state for a Harris County Judge), or whether it also removed the effect of Subsection (e) (requiring the comptroller to reduce the amount of funds provided by the state). A review of the effect of the various interpretations will clarify the issue and the importance to the County of its resolution.

Article IV of the Appropriation Act approved by the 78th legislature sets the salary for a Justice of the Supreme Court as \$113,000 for the years ending August 31, 2004 and 2005. Act of June 1, 2003, H.B. 1, Article IV, 78th Leg., R.S.. Under Section 659.012(a)(4), the state contribution to a district judge's salary, if not reduced pursuant to subsection (e) would be 90% of that amount, or \$101,700.

Under the law prior to the recent amendment, there was nothing that prevented Harris County from granting a full \$25,000 supplement to its judges, but this would have done nothing to increase the judges' total salaries. Section 659.012(a)(4) would have limited combined County and State contributions to an amount not exceeding the amount that is \$2,000 less than the salary for a justice of the supreme court, resulting in a limit of \$111,000 in total salary. Thus, if Harris County had provided any salary supplement in excess of \$9,300, the comptroller would have been required to reduce the state contribution by such an amount as to make the total salary equal \$111,000.

Thus, merely removing the upper limit from the County's contribution would not have increased the judge's salaries if the effect of Section 659.012 were not altered in regard to its effect upon district judges' salaries in Harris County. Therefore, the "notwithstanding" language was added. The issue is the extent of the effect of such alteration. At a minimum, the "notwithstanding" language must be interpreted as removing the \$111,000 total limit (\$113,000-\$2,000) of Section 659.012(a)(4) as it would apply to limit the amount of salary that the County can contribute. It has been argued that the language should not be interpreted as affecting the limitation insofar as it affects

the State's contribution. This argument would require that although the limitation of (a)(4) would be seen as having no application to the salaries of judges in Harris County in computing the County's contribution, it would somehow come back in effect when the comptroller determines the amount of the State's contribution.

The argument in favor of the narrower interpretation is that if the limitation applies only to the County contribution, the County could still, at least theoretically, accomplish the purpose of increasing the district judge's salaries by contributing a "supplemental" salary in excess of \$111,000, an amount which the County would have been prohibited from contributing by the total limit if not for the "notwithstanding" language. Even if the comptroller then acted under Subsection (e) of Section 659.012 to reduce the State contribution to nothing, the judges would receive whatever salary that the County is willing to contribute without any help from the state.

On the other hand, if the "notwithstanding" language also limits the instructions to the Comptroller in Subsection (e) of Section 659.012, any supplementary payment in excess of \$9,300 would result in accomplishing the legislature's purpose of increasing the judges' salaries. This could explain why S.B. 828 not only removed the maximum limit, but also the minimum requirement of \$12,000, upon Harris County's contribution.

The narrower interpretation makes the limitation disappear when the County is making its contribution, but reappear when the state's contribution is determined. The broader interpretation requires less slight of hand. The differential exception to the requirement that the state pay the full 90% of a supreme court justice's salary is applicable only "unless otherwise provided by law." TEX. GOV'T CODE ANN. §659.012(a)(4) (Vernon Supp. 2003) Even the narrower reading of the "notwithstanding" language makes Section 32.101 a law providing otherwise. Section 32.101, as amended, if nothing else, allows Harris County to provide \$112,000 to each of its district judges, resulting in the combined contributions being over \$111,000. Even under the narrower interpretation allowing the state to reduce its contribution, the state cannot reduce its contribution sufficiently to prevent the otherwise applicable limit from being exceeded. Thus, it is "otherwise provided by law" (the amended Section 32.101) that in Harris County the combined contributions can exceed an amount in excess of the amount \$2,000 less than the salary provided for Supreme Court justices. Any other reading of the "notwithstanding" language would mean that it has no meaning at all. Thus, there is no required differential for the comptroller to enforce by reducing the state's contribution to salaries in Harris County.

TEX. GOV'T CODE ANN. §311.021 (Vernon 1998), a part of the Code Construction Act, reads (emphasis added):

In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

As a further aid to construction, TEX. GOV'T CODE ANN. §312.005 (Vernon 1998), reads:

In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

TEX. GOV'T CODE ANN. §312.006 (Vernon 1998), further instructs:

- (a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.
- (b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.

The analyses accompanying S.B. 828 show that the intent of that bill was to give Harris County the power to discourage "turnover" among the district judges due to low salaries by allowing the County to "increase the supplemental salary paid to district judges" (emphasis added). While a narrow reading of the "notwithstanding" language could theoretically allow Harris County to increase judges' salaries, such salary would no longer be "supplemental." It would have to be the entire salary and would require an expenditure by the County in excess of \$111,000 for each judge. By contrast, a broader reading would allow accomplishment of S.B. 828's purpose by an expenditure \$10,000, or even less, per judge. The County's district judges could receive the entire state portion under the narrow reading if it provides only a \$9,300 supplement, resulting in no pay increase for the judges. The only purpose accomplished by the narrower reading would be to punish Harris County for providing funds resulting in its district judges being paid more than \$111,000. Since the entire purpose of S.B. 828 is to curtail an exodus of experienced jurists from state district benches in Harris County by allowing Harris County to supplement its state judges salaries so that they receive in excess of \$111,000, such an interpretation would contravene Sections 311.021(3) and §312.006(a) as quoted above in that it would not serve the purpose of the act, promote justice, or provide for a just and reasonable result. It is also submitted that provision of County funds in excess of \$111,000 to each district judge is essentially infeasible economically, thus conflicting with the guidelines of Section 311.021(4).