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August 29, 2003

FILE # ML-43245-03
I.D. # 43245

Hon. Greg Abbott
Attorney General of Texas
Attention: Opinion Committee
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RQ-0101-GA

Re: Request for Opinion

Dear General Abbott:

On behalf of the Potter County Commissioners Court, we request your opinion on a question of court reporter compensation.

SUMMARY OF FACTS

There are seven courts of record in Potter County ("County"). The courts are the 47th, 108th, 181st, 251st and 320th District Courts, and Potter County Courts at Law No. 1 and 2. ¹ As required by the Texas Government Code, the judge of each court appoints an official court reporter who is paid a salary out of Potter County funds. For the current fiscal year, the total amount budgeted for salaries of all seven court reporters is approximately \$449,000.00.²

Each court reporter receives a fee for the preparation of a transcript. In certain situations, that fee is paid from Potter County funds. For fiscal year 2003-2004, approximately \$75,000.00 has been budgeted to cover the County's responsibility for these fees.³

¹ The 181st and 251st District Courts also serve Randall County, while the 47th District Court also serves Randall and Armstrong Counties.

² Source: *Potter County 2003-2004 General Fund Budget Worksheets, July 29, 2003.*

³ *Id.*

Since the court reporters receive a salary from the County, and since the transcript is prepared as one of the duties of the court reporter, we have been asked if the County's payment of a fee for a transcript, in addition to the reporter's salary, constitutes the payment of "extra compensation" as prohibited by Article III, section 53 of the Texas Constitution.

QUESTION PRESENTED

Is it a violation of Art III, § 53 of the Texas Constitution for the County to pay court reporters a fee for a transcript in addition to the court reporter's salary?

DISCUSSION

As a county employee, the official court reporter for a district court receives a salary set by the judge of that court. TEX. GOV'T CODE ANN. § 52.051 (a) (Vernon 1998). The salary of the official court reporter for a county court at law is established by the commissioners court. TEX. LOC. GOV'T CODE ANN. § 152.011 (Vernon 1999); Op. Tex. Att'y Gen. No. DM-128 (1992).

We generally conceive of "salary" as "a periodical allowance as compensation for official or professional services." *Robinson v. Wichita County*, 266 S.W.2d 246, 250 (Tex.Civ.App.- Fort Worth 1954), *rev'd on other grounds*, 276 S.W.2d 509 (1955). Among the professional services of an official court reporter is the obligation to "furnish a transcript of the reported evidence or other proceedings." TEX. GOV'T. CODE ANN. § 52.046 (a)(5) (Vernon 1998). One might assume that the reporter's salary compensates the reporter for the service of preparing a transcript. However, the court reporter is entitled to a fee for the preparation of a trial transcript. TEX. GOV'T CODE ANN. § 52.047 (a)(Vernon 1998). A "fee" is distinguishable from a salary in that a fee is "compensation for the performance of particular acts or services rendered in the line of some duty." *Robinson* at 250.

In certain situations, the County is responsible for payment of this fee in addition to the salary it already pays the reporter. No authority exempts the County from this fee when the County requests a transcript in the appeal of a civil case to which it is a party. In addition, the County is obligated to pay for this service for the appeal of a criminal case by the defendant when the defendant is indigent, and for the appeal of a criminal case by the state. TEX. R. APP. P. 20.2; TEX. CRIM. PROC. CODE ANN. art. 44.01 (f)(Vernon Pamphlet 2003).

Article III, § 53 of the Texas Constitution provides:

The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.

- TEX. CONST. art III. § 53.

This restriction on "extra compensation" prohibits "the counties or municipalities from freely giving away public monies for services previously rendered or for which no valid legal authorization existed and for which the public would receive no return." *Lee v. El Paso County*, 965 S.W.2d 668, 673 (Tex.App.--El Paso 1998, pet. denied). Therefore, the constitutional provision is violated if a court reporter is compensated by the County for a service for which the reporter is already compensated for by the county salary.

At first glance, this appears to be the case in our fact situation. A closer look, however, supports the opposite conclusion.

Section 52.051(a) of the Government Code provides:

An official district court reporter shall be paid a salary set by the order of the judge of the court. This salary is **in addition to** transcript fees, fees for a statement of facts, and other necessary expenses authorized by law.

–TEX. GOV'T CODE ANN. § 52.051 (a) (Vernon 1998)(emphasis added).

This language divides the compensation of the district court reporter into separate components. "In addition to" refers not to "extra compensation" in the sense of a double payment for the same work, but to specific compensation for a specific duty. We find support for this conclusion by applying the presumption that a statute is in compliance with the Texas Constitution. *Id.* at § 311.021 (1).

Although the statutory language is not as specific in the case of the county court at law reporter, the same principle of interpretation applies. The commissioners court sets the "compensation . . . and all other allowances" of county court at law reporters. TEX. LOC. GOV'T CODE ANN. § 152.011 (Vernon 1999). The county court at law reporters also are entitled to the fee for preparation of a transcript. TEX. GOV'T CODE ANN. § 52.047 (a)(Vernon 1998). By applying the presumption of constitutionality, we interpret the compensation and allowances set by the commissioners court as compensating the reporter for all duties except for preparation of a transcript.

CONCLUSION

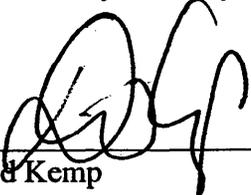
We presume that salary of a court reporter is compensation for all of the duties of the official court reporter except for the preparation of a transcript, for which a specific fee is established. As long as this distinction can be made, one avoids the constitutional problem of "extra compensation." *Witherspoon v. Sheppard*, 123 Tex. 93, 67 S.W.2d 1037 (1934).

We look forward to your opinion on this matter.

Hon. Greg Abbott
Request for Opinion
August 29, 2003

Sincerely,

SONYA LETSON
Potter County Attorney

By: 

David Kemp
Assistant County Attorney
Civil Division

C: Judge Arthur Ware
Commissioner Bill Thomas
Commissioner Manny Perez
Commissioner Joe Kirkwood
Commissioner Iris Lawrence