

**TEMPIE T. FRANCIS**  
**Motley County Attorney**  
**P. O. Box 7**  
**Matador, Texas 79244**

**806-347-2391 Telephone**

**Fax 806-347-2220**

September 10, 2003

Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

**RQ-0108-GA**

**RECEIVED**

**SEP 22 2003**

**OPINION COMMITTEE**

Re: **Adopted Salary for Motley County Elected Official More than Posted Amount**

To the Office of the Honorable Greg Abbott:

**FILE # ML-43263-**

**I.D. # 43263**

I am writing to request a written opinion on the following:

What will be the salary for an elected official when the commissioner's court adopts a budget amount more than the amount posted in the local newspaper?

If a commissioner's court decides an amount was incorrectly set for an elected official, what is the method for changing the elected official's salary?

The facts are as follows:

The Motley County Commissioner's Court met and adopted a proposed budget on August 4, 2003. The proposed salaries for the elected official were posted in the Motley County Tribune. A hearing date was also stated for the public to attend and discuss the budget on August 26, 2003. There was a hearing set for a Monday at 8:00 a.m. and the public did attend the hearing.

All of the public's concern was with regard to the salaries of the elected officials. Those voicing their opinions were very upset that the Motley County Commissioner's Court stated they were on a very tight budget and therefore were cutting two employee positions and yet raised salaries of some elected officials. Some elected officials declined raises in light of the report of the availability of funds for the budget.

Some of the citizens were also angry because the Commissioner's Court discussed exploring ways to get more taxes at the same hearing wherein raises for elected officials were being considered. This elected official stated at the hearing I would defer any salary I may have to the assistant of the office that assists the Sheriff's office because they were cutting her to part-time. The Treasurer and Tax Assessor also declined their salaries in light of the employee cuts. I am not aware of any other elected official declining salary increases but there could have been others.

The citizens left and the budget was adopted. The Motley County Judge made the changes from the proposed budget to the final budget and filed it with the Motley County Clerk on August 26, 2003, the same day as the adoption.

The amount the Commissioner's Court adopted for the Motley County Sheriff was more than the posted in the proposed budget and the newspaper. The amount in the proposed budget for the Motley County Sheriff was \$24,000.00. His salary for the prior year was \$21,440.00. The amount that was adopted for the Motley County Sheriff salary for the 2003-2004 fiscal year was \$25,826.00.

The Motley County Judge did not deliver a copy of the final budget and salary to each of the elected officials. Therefore the Sheriff was not afforded the right to a grievance with regard to his salary. It may not be likely he would have complained since he was receiving more than the amount posted in the newspaper but it could be possible. Apparently the Sheriff had discussed with one or more of the Motley County Commissioner's Court outside the budget hearing that he wanted the raise but he wanted the county to pay the taxes on his posted raise. This had been the practice in the past in Motley County. However, the Motley County Treasurer had already pointed out that the county could not legally pay the FICA for elected officials and her office was repaying amounts to the Internal Revenue Service for those amounts previously paid incorrectly by the county and officials.

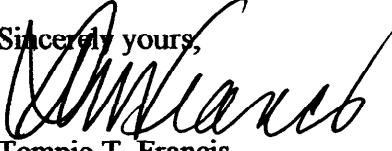
The Motley County Treasurer pointed out to the Motley County raises could not be paid on amounts higher than the posted amounts. The Motley County Treasurer was relying on two separate Texas Attorney General Opinions for her position, 95-018 and JC-255.

The Motley County Commissioner's met in regular session on September 8, 2003. No notice was published in the newspaper that the budget was going to be reconsidered with regard to the salary of an elected official. Notice was posted on the front door of the Motley County Courthouse. The Motley County Commissioner's voted to change the Sheriff's salary back to the posted amount of \$24,000.00 at the regular monthly commissioner's court meeting.

I am not opposed to the Sheriff getting a raise. However, I do want to make sure that Motley County follows the statutes. Therefore, what amount should be the Motley County Sheriff's salary? Is it last year's salary, the posted amount, the amount in the final budget or the amount set after the budget was filed with the clerk when the court met in regular session in September?

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Your assistance in the matter is greatly appreciated. It is my hope to have a speedy reply and will therefore will work with you in any way to facilitate a reply at your earliest convenience.

Sincerely yours,  
  
Tempie T. Francis

TTF/ttf

cc: Motley County Treasurer  
Motley County Judge  
Motley County Sheriff

## **BRIEF**

### **Facts**

The Motley County Commissioners adopted a proposed budget and posted it in the local newspaper. The proposed budget was adopted on August 4, 2003 and was in the newspaper ten or more days than the hearing date set for the adoption of the final budget. The hearing was on the Tuesday following the Labor Day weekend at 8:00 a.m. There were several citizens that attended the meeting. The citizens asked about the budget. There was debate over the elected officials getting raises. The reason that the debate occurred was the Commissioner's Court was cutting two salary amounts for two positions stating that there was not enough money in the budget to continue funding the positions but were raising salaries of elected officials. The Commissioner's Court also discussed getting additional tax revenue in the future. This also upset some of the citizens in light of the raises. The citizens left. The budget was adopted. The final budget was immediately filed the date of the hearing, August 26, 2003. The final budget was not presented to any elected officials prior to being filed.

The salary for 2002-2003 for the Motley County Sheriff was \$21,440. The Motley County Sheriff's propose raise was \$2,560.00 for 2003-2004. The final adopted budget raise was \$4,396.00. This would be a difference between less than twelve percent raise to over a twenty-one percent raise.

Later, the Commissioners Court met at their regular monthly meeting and amended the budget on September 8, 2003 and reduced the salary of the Motley County Sheriff to the proposed amount of \$24,000 from the amount in the final budget, \$25,836.00.

### **Authorities**

Chapters 111 and 152 of the Texas Local Government Code govern raises for elected officials.

Section 111.007 requires the Commissioner's Court to post date, time and place the budget will be considered so that the public may attend the hearing.

Section 152.013 requires a commissioners court to publish notice of the amount of any proposed salary increases for elected officers and raises must be considered at the regular hearing. The purpose for the statute is to give the public notice of any amount the elected officials propose to increase their salaries. "Clearly, the purpose of this requirement is to notify the public of the potential amount of salary increases rather than just the mere fact that the commissioners court is considering increasing the salaries of elected officials." See Texas Attorney Gen. Opin. JC-255. JC-225 also states, "The fact that the standard to be applied is substantial rather than literal compliance, however, will not save a notice which fails to advise the public of the very matter it is meant to state." If full disclosure is not given then there is not substantial compliance with the notice statute. See Cox Enters., Inc. v. Board of Trustees of Austin Indep. Sch. Dist., 706 S.W.2d 956 (Tex. 1986).

The procedures for the elected official complaining and filing a grievance regarding their salary and must be done before the budget is adopted. This requires the salary to be delivered to the elected official before the budget is filed with the clerk. See 152.013 (c). Within five days of receiving notice, an aggrieved county officer must deliver to the salary committee chair a request for a hearing before the salary grievance committee. The salary grievance committee must

conduct a public hearing within ten days of receiving a request. See Sec.152.016(b). If the grievance committee's vote is unanimous, the increase in salary or personal expenses takes effect in the next budget year. 152.016(c). But where an elected officer has not been afforded the opportunity to file a grievance he or she may still have the ability to have their salary changed after the budget has been set. See Neptune v. Renfro, 586 S.W.2d 596 (Tex. Civ. App.-Austin 1979, no writ).

Relying on J.D. Evans Constr. Co., Inc. v. Travis Cent. Appraisal Dist., 4 S.W.3d 447, 451 (Tex. App.-Austin 1999), substantial compliance is met if those things that make up the essential requirements of a statute are accomplished. See id.

Where there no publication of a raise then a raise for an elected official is invalid and void causing the elected official to have the same compensation as paid the previous year. See 1095-018.

#### Issue

- (1) Whether or not there has been notice when the final raise was 20% higher than the previous year's annual salary and the published proposed budget amount was less than 12% and the citizens attending the budget hearing did not want raises since jobs were being cut due to a shortage of county funds?
- (2) Whether or not an elected official may file a grievance after the budget has been adopted but where no notice was given to the official?
- (3) Whether or not the salary shall be set at the previous year's amount, the proposed budget amount, the final budget amount or the amended budget amount if the notice was not

#### Arguments

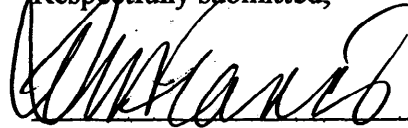
When Motley County Commissioner's Court failed to notify the public that they were considering giving a raise to the Sheriff in the amount of over 20% they may not have given substantial notice to apprise the citizens of the amount of raise. The court did state that they contemplated a raise in the amount of less than 12%. This amount together with other raises and cuts for other employees funding caused citizens to complain about the salaries of elected officials. Therefore, the court may have failed to give notice at all if substantial compliance has not been met. When the court fails to give notice then the Sheriff would have to be paid at the previous years salary. However, where the Sheriff has not been afforded the grievance process he may be eligible to have a grievance committee look at his salary and determine his salary.

Once the Motley County Commissioner's Court adopted the final budget and it was filed they could not amend the salary of an elected official. Therefore, the salary of the Sheriff cannot be any amount set after the time the final budget was filed with the clerk on August 26, 2003. Rather, the salary would be the salary set for the previous year. The only recourse the Motley County Sheriff may have his through the grievance process.

**Summary**

The Motley County Sheriff will be only eligible to receive the same pay as the previous year in the amount of \$21,440.00. The only potential recourse may be through the grievance process since he was not given a copy of the budget prior to the final budget being filed with the clerk.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tempie T. Francis", written over a horizontal line.

Tempie T. Francis  
Motley County Attorney  
P. O. Box 7  
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806-347-2391 Telephone  
806-347-2220 Fax