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OPINION COMMITTEE

December 27, 2007

The Attorney General of the State of Texas
Supreme Court Building
Attn: Ms. Susan Gusky
Opinions Committee Chairperson
Post Office Box 12548
Austin, Texas 78711-2548
CERTIFIED MAIL NO.: 7007 0710 0000 3233 3000

FILE # ML-45495-08
I.D. # 45495

RQ-0659-GA

Re: Request for Attorney General's Opinion as to clarification under Section 118.0216 Local Government Code as to which "salaries" may be paid from the collection of records management and preservation fund as authorized under Section 118.011(b)(2) Local Government Code

Dear Ms. Gusky:

In light of Opinion Attorney General GA-0118 we seek clarification under Section 118.0216 Local Government Code as to which "salaries" may be paid from the collection of records management and preservation fund as authorized under Section 118.011(b)(2) Local Government Code.

Controversy:

The Frio county Auditor's office has discovered an inconsistent procedure of the records management fee. The Frio County Clerk's record management fund has accumulated a cash reserve of \$50,000.00 plus in collected fees. It appears that the only use of those funds in recent years have been to "supplement" salaries for the County Clerk's office. Frio County Clerk Angie Tullis has requested that her employees be paid additional compensation on the basis of GA-0118 (Exhibit "A"). Frio County Auditor Mary Hornbostel refuses to co-sign any warrants for such compensation until the Attorney General opines on this matter.

Facts:

Frio County Commissioners Court has set the annual salary for the County Clerk and for each of her 3 deputy clerks (Exhibit "B"). Commissioners Court has also approved a revenue budget for Frio County Records Management Acct No 40000-4304 (Exhibit "B"). Frio County pays all personnel twice per month, on 15th and 30th. Aside from the deputy clerk's monthly salary, the County Clerk requests extra compensation, as either salary enhancements or payroll supplements, for her deputies

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to be paid out of the Records Management Fund (Exhibit "C"). This written request is directed to Frio County Treasurer Anna Hernandez who in turn cuts out a supplement check payable at the next scheduled payroll period. Neither Mrs. Tullis nor Mrs. Hernandez present this matter to Commissioners Court for their consideration and approval. In fact the procedure totally bypasses Commissioners Court. Additionally, Frio County Auditor states that the Frio County Clerk's Office has failed to separate fees collected under the records management fund. I have provided copies of the statutory law involved in the collection of records management fees (Exhibit "D").

Another area of concern which was not addressed in GA-0118 is the \$25.00 collected from a defendant upon conviction of an offense in County Court. The County Clerk's office has been collecting this fee and depositing all into the County Clerk's Records Management Fund. I have provided copies of the statute, Section 102.005 Code of Criminal Procedure to the Commissioners Court, County Auditor, County Treasurer and County Clerk stressing the fact that \$22.50 goes to the County Records Management Fund and \$2.50 goes to the County Clerk's Records Management Fund. All previous supplements approved have been paid out of one single Records Management Fund. The Frio County Clerk states that since her office collects said fees that her deputies are entitled to be paid additional compensation from the total fees collected. My position is that they are entitled to the \$5.00 collected under Section 118.0216 Local Government Code and the \$2.50 collected under Section 102.005 Code of Criminal Procedure.

Request:

Given that the overriding rule of law which must be complied with the awarding compensation to employees is that one is not entitled to nor can be paid amounts over and above what he is legally entitled to. Also that the State Constitution prohibits the grant of extra compensation, Article III, § 53, Texas Constitution.

1. Whether the County Clerk may award additional compensation to each of her 3 deputies within her department from the Records Management Fund fee collected under Section 118.0216 Local Government Code.
2. If so, may the County Clerk pay this additional compensation without Commissioners Court's approval and without any consideration of time spent by each of the deputies in "some proportion" to the actual accomplishment of Records Management and Preservation purposes?
3. What authority exists for the County Clerk to compensate her deputies with supplemental pay which amounts to more than the actual monthly salary earned by each individual deputy?

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4. Clarify which "salaries" may be paid to employees in the clerk's office as per Section 118.0216 Local Government Code. Did opinion No. GA-0118 apply to the salaries of all employees within the clerk's office or was it intended to apply to the salary of a particular deputy employed for the specific purpose of Records Management and Preservation?
5. Is the Frio County Clerk entitled to use the \$2.50 fee collected under Section 102.005 Code of Criminal Procedure and deposited into the County Clerk's Records Management Fund to pay salaries to her deputies as authorized under GA-0118?
6. What was the breakdown for Records Management, Section 102.005 Code of Criminal Procedure prior to SB 526 which became effective June 17, 2005 and raised the fee from \$20.00 to \$25.00.
7. Whether the County Clerk is entitled to collect the \$25.00 Records Management Fund fee authorized by Section 102.005 Code Criminal Procedure from defendants who have their case dismissed?
8. If the Frio County Treasurer receives a request for extra compensation from the Frio County Clerk as per Exhibit "C" must the Frio County Treasurer present this matter to Commissioners Court for their approval prior to making the disbursement?

Law:

Local Government Code, Section 118.011
Local Government Code, Section 118.0216
Code of Criminal Procedure, Section 102.005
S.B. No. 526 Chapter 804

Sincerely,



HECTOR M. LOZANO

HML/ymm
xc: Files