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SEP 24 2008

Fred Edwards  
First Assistant D.A.

**OPINION COMMITTEE**

Joyce Hester  
Executive Assistant

September 22, 2008

The Honorable Greg Abbott  
Attorney General of Texas  
Opinion Division  
209 W. 14<sup>th</sup> Street  
Austin, Texas 78701

**RQ-0746-GA** FILE # ML-45840-08  
I.D. # 45840

RE: Opinion request concerning reimbursements for the court reporter of the 506<sup>th</sup>  
Judicial District Court of Waller/Grimes Counties

Dear Sir:

The purpose of this request is to ask the following:

**Does Government Code Section 52.055 provide exclusive limits on the expenses and reimbursement to be paid to official court reporters not covered by special statute, or may counties within the court's district pay reasonable expenses and reimbursement to court reporters equivalent to that paid to all other officers, employees, servants and agents of the county; and, for a multi-county district may those payments be proportional to population as opposed to shared equally, or should payments be made by the county for whom the expense was incurred?**

Correspondence dated September 10, 2008 from the Honorable Albert M. McCaig, Jr., Judge of the 506<sup>th</sup> Judicial District Court to Ms. Vickie Tyson Hall, Waller County Auditor is enclosed for your review and assistance in assessing the law on this matter. Thank you for your anticipated cooperation and assistance in this matter.

Sincerely,

Elton R. Mathis  
Waller County Criminal District Attorney

Cc: The Honorable Albert M. McCaig, Jr.  
The Honorable Vickie Tyson

Laurie A. Sellers  
Assistant D.A.

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Legal Assistant

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Legal Assistant

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Legal Assistant

# 506<sup>th</sup> Judicial District Court



Albert M. McCaig, Jr., Judge

www.Court506.com

Court Coordinator  
Kathy R. Sims

Court Reporter  
Kelly D. Kelly

Grimes County  
Waller County

September 10, 2008

836 Austin Street, Suite 307  
Hempstead, Texas 77445  
Fax: 979.826.9149  
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Ms Vickie Tyson Hall  
Waller County Auditor  
836 Austin Street, Suite 221  
Hempstead, Texas 77445

Re: Application of Government Code 52.055, to the Official Court Reporter for the 506<sup>th</sup> Judicial District Court

Ms Hall:

In your memo of September 10, 2008, you raise the question about Government Code 52.055, Expenses of District Court Reporters, and the applicability of that statute to the Official Court Reporter for the 506<sup>th</sup> Judicial District Court. In reviewing the state of the law, there is also an implied question that must be answered of whether that statute provides for the only reimbursement or allowance that may be paid to a court reporter. A second implied question is raised about whether the statute precludes the interlocal agreement with Grimes County from being proportional to population, or must the payments be equal. Thus, we actually have three questions to address.

All references in this letter to statutes are to the Texas Government Code unless otherwise noted. In relevant part, the statute reads as follows:

## § 52.055. Expenses of District Court Reporters

(a) Each official or deputy court reporter of a district court in a district composed of more than one county is entitled to reimbursement in the amount prescribed by Subsections (b) and (d) for actual and necessary expenses incurred while engaged in official duties in any county of the state other than the county of the reporter's residence. This reimbursement is in addition to the reporter's regular salary.

(b) Travel expenses reimbursed under this section may not exceed 25 cents per mile for the use of private conveyances, traveling the shortest practical route.

© The expenses shall be reimbursed after the completion of each court term by the respective counties of the judicial district for which the expenses were incurred, each county paying the expenses incidental to its own regular or special term. The commissioners court of each county shall pay the expenses for which the county is responsible from the county general fund.

(d) The expenses reimbursed under this section are subject to annual limitations based on the size of the judicial district. A court reporter may not receive more than the maximum reimbursement amount set for the reporter's judicial district in any one year. The maximum reimbursement amount is as follows:

- (1) if the judicial district contains two counties, the maximum reimbursement amount is \$400;
- (2) et, seq. Omitted.

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In addition to the above statute pertaining to court reporters in general, there is a special statute that pertains to the court reporter for the 155<sup>th</sup> Judicial District Court. In relevant part, it states:

§ 52.057. Expenses of Court Reporters in Certain Enumerated Districts

(a) Notwithstanding Section 52.055, the expenses of the official court reporters for the 31st, 46th, 104th, 112th, and 155th judicial districts shall be reimbursed as prescribed by this section.

(b) - (d) Omitted

(e) In lieu of the expenses provided by Section 52.055, the official court reporter for the 155th Judicial District may receive an annual allowance of \$3,000 for travel and other expenses incurred in performing official duties. The counties in the district, other than the county in which the reporter resides, shall pay the allowance in equal shares.

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Interestingly, Section 52.057 refers to an allowance as opposed to reimbursement for expenses. That could lead us into the question of whether that \$3,000 allowance is a mandatory payment to be made without regard to reimbursement for actual expenses, or whether it is a fund from which reimbursements are paid. The general understanding is that allowances are paid on an annualized basis regardless of, and in lieu of, actual expenses. However, that issue is not addressed in detail here. Therefore, it is clear that the payment of some items for the court reporter for the 155<sup>th</sup> Judicial District Court is covered by a separate statute than the general statute pertaining to the court reporter of the 506<sup>th</sup> Judicial District Court. The question of reimbursement, however, remains even though the amounts and description of payment are different.

The enabling statute for the 506<sup>th</sup> Judicial District Court, Government Code Section 24.5995, does not provide for special consideration of the court reporter.

The most relevant Opinion from the Office of the Attorney General of Texas, Opinion No. GA-0155, pertaining to compensation and reimbursement of court reporters addresses several issues, but it does not clearly delve into the reimbursement or allowance issue pertaining to mileage, meals and per diem. A copy of the Opinion is attached. In the Opinion, there are relevant references to various parts of the statutes pertaining to court reporters, some of which I will include in this letter. For example:

§ 52.051. Compensation of District Court Reporters

(a) 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.

Thus, it appears that the Legislature has delegated to the District Judges the responsibility for setting the salaries of the district court reporters paid from county funds. This is supported in Mays v. Fifth Court of Appeals, 755 S.W.2d 78 (Tex. 1988). That alone, however, begs the question about reimbursement. Thus, further information appears to be needed.

The AG Opinion raised and answered the question of whether a court reporter is a "district, county or precinct officer" as referred to in Chapter 154 of the Local Government Code, and Article XVI, Section 40 of the Texas Constitution. The Attorney General determined that a "court reporter is not a "district, county or precinct officer for purposes of the prohibition on the payment of any additional fees and commissions to salaried officers." That reasoning was limited, however, to allow court reporters to charge for transcripts, publishing fees and other expenses related to preparation of transcripts of proceedings.

That Opinion appears to be in conflict with the court case of In re Johnson, 554 S.W.2d 775 (Tex.Civ.App.—Corpus Christi 1977) wherein the Court of Appeals stated that a court reporter is an "officer, servant or agent" for purposes of Article III, Section 44 of the Texas Constitution, which authorizes the Legislature to provide by law for compensation of all officers, servants, agents and public contractors, not provided for by the Constitution. That case also was a limiting opinion in an effort to allow certain compensation to court reporters. Again, though, it did not specifically address the issue of reimbursement covered by the statutes.

The Opinion then goes on to say, however, that Section 52.011 of the Government Code authorizes county commissioners to set the amount of compensation and all other allowances for county and precinct officers *and employees* (emphasis added) who are paid wholly from county funds. The court reporter for the 506<sup>th</sup> Judicial District is paid wholly from county funds, but then 42% of that expenditure is reimbursed from another county. That alone clouds the issue of reimbursement and allowances even further, in that the question is raised about interlocal agreements for proportional payments rather than equal payments..

Thus, from both AG opinions and case law, it does appear that a court reporter may receive additional fees and commissions. This area of the Opinion also appeared to address other items of compensation and reimbursement other than travel and meals. However, those items of interest here were not specifically addressed in the AG Opinion, the relevant statute nor the Constitution.

The AG Opinion does interestingly address a tangential area dealing with court reporters that has been a constant area of concern since the creation of this Court, and that is the hours to be worked, and how the work of the reporter is managed or reported. The Opinion states in relevant part as follows:

Moreover, this office already has noted that court reporters do not work typical eight-hour days, but rather perform specific duties in service to the courts that appoint them. The position of court reporter is described in terms of the duties to be performed, not of the number of hours of service required each week.

Thus, while not a key question here, it appears that Waller County's insistence that the court reporter submit time slips for work performed is in error, and in fact against a published opinion of the Texas Attorney General.

Unfortunately, the Summary to the AG Opinion does not clarify the issues being addressed here, that being the questions of whether the statute excludes further supplementation by a county; and, the question of payments under inter-local agreements.

Reading the Summary, only in part, simply raises other issues. The opinion did not address Section 52.055 or 52.077 of the statute, nor the difference between payment of an allowance and reimbursement of expenses. Further, it did not address the implied questions that have been raised.

Sections 52.051 of the Government Code and 152.011 of the Local Government Code authorize a district court reporter and a county court at law court reporter, respectively, to be paid a salary. Additional fees charged under sections 52.047 and 52.059 of the Government Code do not constitute extra compensation in violation of Article III, Section 53 of the Texas Constitution.

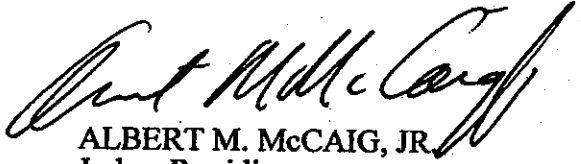
Thus, to your question to me of whether Government Code 52.055 applies to the 506<sup>th</sup> Judicial District Court, the answer is that it does. However, to the implied question of whether that is the only reimbursement or allowance that may be paid to a court reporter, the answer is unclear. The question of the viability of the inter-local agreement is unclear.

Because of the lack of clarity on these issues, I request that before Waller County takes any action to change its current procedures on this matter, one way or the other, that an opinion be requested from the Texas Attorney General on the following question:

**Does Government Code Section 52.055 provide exclusive limits on the expenses and reimbursement to be paid to official court reporters not covered by special statute, or may counties within the court's district pay reasonable expenses and reimbursement to court reporters equivalent to that paid to all other officers, employees, servants and agents of the county; and, for a multi-county district may those payments be proportional to population as opposed to shared equally?**

Until such clarification is obtained from the Office of the Attorney General, I request that no action be taken pertaining to changing the methods of compensation, reimbursement and expenses, and reporting, of the court reporter of the 506<sup>th</sup> Judicial District Court.

Thank you for your time and courtesies.

  
ALBERT M. McCAIG, JR.  
Judge, Presiding

enc  
AMM/

c: Honorable Dan R. Beck  
Judge, 155<sup>th</sup> Judicial District Court

Honorable Betty Shiflett  
Grimes County Judge

Honorable Elton Mathis  
Waller County Criminal District Attorney

Ms Debra Mergel  
Attorney at Law

Honorable Owen Ralston  
Waller County Judge

Honorable Susan Winfree  
Waller County Treasurer

Mr. Sidney Lequey  
Grimes County Auditor

## FOCUS - 1 of 1 DOCUMENT

## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

Opinion No. GA-0155

2004 Tex. AG LEXIS 1451

February 24, 2004

**SYLLABUS:**

[\*1]

Whether it is a violation of article III, section 53 of the Texas Constitution for a county to pay court reporters a fee for a transcript in addition to the court reporter's salary (RQ-0101-GA)

**OPINIONBY:**

GREG ABBOTT, Attorney General of Texas; BARRY R. MCBEE, First Assistant Attorney General; DON R. WILLETT, Deputy Attorney General for Legal Counsel; NANCY S. FULLER, Chair, Opinion Committee; Jim Moelinger, Assistant Attorney General

**OPINION:**

You inform us that there are seven courts of record in Potter County, five district courts and two county courts at law. n1 See *TEX. GOV'T CODE ANN.* §§ 24.149, .210, .361, .428, .628 (Vernon 1988) (creating various district courts in Potter County or in Potter and additional counties), 25.1901 (Vernon Supp. 2004) (creating statutory county courts in Potter County), .1902 (jurisdiction of statutory county courts in Potter County); see also *id.* §§ 25.0003 (jurisdiction of statutory county courts generally), .0004 (powers and duties of statutory county courts). You indicate that the judge of each court has appointed a court reporter pursuant to statute and that in addition to salary, each reporter is entitled by statute to receive certain fees, including [\*2] fees for the preparation of court transcripts upon request, which is a statutory duty of court reporters. See Request Letter, *supra* note 1, at 1-2; *TEX. GOV'T CODE ANN.* §§ 52.041, .046, .047, .051 (Vernon 1998). You state that in addition to instances in which the county pays the fee for transcripts requested by indigents, the county also pays the fee for transcripts when the county is a party to the litigation. See Request Letter, *supra* note 1, at 2; *TEX. R. APP. P.* 20.1-2 (concerning transcripts for indigents). You ask whether the county's practice of paying court reporters both a salary and a fee for the preparation of court transcripts violates article III, section 53 of the Texas Constitution, which, *inter alia*, forbids the county from paying "any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered." *TEX. CONST.* art. III, § 53; See Request Letter, *supra* note 1, at 2.

n1 See Letter from Honorable Sonya Letson, Potter County Attorney, to Honorable Greg Abbott, Texas Attorney General, at 1 (Aug. 29, 2003) (on file with Opinion Committee) [hereinafter Request Letter].

**I. [\*3] Relevant Law**

Section 52.046, *Government Code*, sets forth the duties and powers of a court reporter and provides:

(a) On request, an official court reporter shall:

(1) attend all sessions of the court;

(2) take full shorthand notes of oral testimony offered before the court, including objections made to the admissibility of evidence, court rulings and remarks on the objections, and exceptions to the rulings;

(3) take full shorthand notes of closing arguments if requested to do so by the attorney of a party to the case, including objections to the arguments, court rulings and remarks on the objections, and exceptions to the rulings;

(4) preserve the notes for future reference for three years from the date on which they were taken; and

(5) furnish a transcript of the reported evidence or other proceedings, in whole or in part, as provided by this chapter.

(b) An official court reporter of a district court may conduct the deposition of witnesses, receive, execute, and return commissions, and make a certificate of the proceedings in any county that is included in the judicial district of that court.

(c) The supreme court may adopt rules consistent with the relevant statutes to provide [\*4] for the duties and fees of official court reporters in all civil judicial proceedings.

(d) A judge of a county court or county court at law shall appoint a certified shorthand reporter to report the oral testimony in any contested probate matter in that judge's court.

*TEX. GOV'T CODE ANN. § 52.046* (Vernon 1998).

District court reporters are entitled by statute to be paid a salary in addition to certain fees authorized by law:

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.

*Id.* § 52.051(a). Compensation of court reporters appointed by county court at law judges is governed by *section 152.011 of the Local Government Code*, which provides that "the commissioners court of a county shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds." *TEX. LOC. GOV'T CODE ANN. § 152.011* (Vernon 1999).

In addition to receiving salaries, court reporters are also entitled to charge fees for [\*5] the performance of certain tasks or duties. *Section 52.047 of the Government Code*, the provision you note specifically, governs the preparation of court transcripts upon request and permits the court reporter to charge a fee for such preparation:

(a) A person may apply for a transcript of the evidence in a case reported by an official court reporter. The person must apply for the transcript in writing to the official court reporter, and the reporter shall furnish the transcript on payment of the transcript fee or as provided by Rule 40(a)(3) or 53(j), n2 Texas Rules of Appellate Procedure.

(b) If an objection is made to the amount of the transcript fee, the judge shall determine a reasonable fee, taking into consideration the difficulty and technicality of the material to be transcribed and any time constraints imposed by the person requesting the transcript.

(c) On payment of the fee or as provided by Rule 40(a)(3) or 53(j), n3 Texas Rules of Appellate Procedure, the person requesting the transcript is entitled to the original and one copy of the transcript. The person may purchase additional copies for a fee per page that does not exceed one-third of the original cost per page. [\*6]

(d) An official court reporter may charge an additional fee for:

(1) postage or express charges;

(2) photostating, blueprinting, or other reproduction of exhibits;

(3) indexing; and

(4) preparation for filing and special binding of original exhibits.

(e) If an objection is made to the amount of these additional fees, the judge shall set a reasonable fee. If the person applying for the transcript is entitled to a transcript without charge under Rule 40(a)(3) or 53(j), n4 Texas Rules of Appellate Procedure, the court reporter may not charge any additional fees under Subsection (d).

(f) If the official court reporter charges an amount that exceeds a fee set by the judge, the reporter shall refund the excess to the person to whom it is due on demand filed with the court.

(g) Notwithstanding Rule 53(j), n5 Texas Rules of Appellate Procedure, an official court reporter who is required to prepare a transcript in a criminal case without charging a fee is not entitled to payment for the transcript from the state or county if the county paid a substitute court reporter to perform the official court reporter's regular duties while the transcript was being prepared. To the extent [\*7] that this subsection conflicts with the Texas Rules of Appellate Procedure, this subsection controls. Notwithstanding Sections 22.004 and 22.108(b), the supreme court or the court of criminal appeals may not amend or adopt rules in conflict with this subsection.

TEX. GOV'T CODE ANN. § 52.047 (Vernon 1998). Additionally, court reporters are entitled to charge fees for the preparation of depositions, *see id.* § 52.059, and are entitled to reimbursement for certain expenses as well. *See id.* § 52.055.

n2 Rule 40(a)(3) of the Texas Rules of Appellate Procedure, adopted in 1986, was amended in 1997 and is now Rule 20.1; Rule 53(j), also adopted in 1986, was amended in 1997 and is now Rule 20.2. *See* TEX. R. APP. P. 20.1-2; TEX. GOV'T CODE ANN. §§ 22.004, .108 (Vernon 2004) (authority of Texas Supreme Court and Texas Court of Criminal Appeals to adopt rules of appellate procedure).

n3 *See supra* note 2.

n4 *See supra* note 2.

n5 *See supra* note 2.

Article III, section 53 of the Texas Constitution forbids counties or municipalities from, *inter alia*, paying "any extra compensation, fee or allowance to a public officer, agent, servant or contractor, [\*8] after service has been rendered." TEX. CONST. art. III, § 53. n6 The retention of fees for the performance of tasks and duties required by section 52.046 constitutes extra compensation in violation of article III, section 53 only if the court reporter's salary may be said to include payment for those tasks and duties. *See* TEX. GOV'T CODE ANN. § 52.046 (Vernon 1998). If the salary includes payment for the statutory tasks and duties, then sections 52.047 and 52.059, which permit a court reporter to charge a fee for preparing a transcript or deposition, would not apply to requests for transcripts and depositions requested by a county. *See id.* §§ 52.047, .059. In essence then, you ask whether the county violates article III, section 53 by paying a court reporter both a salary and a fee for preparing a transcript. *See* Request Letter, *supra* note 1, at 2.

n6 Article III, section 44 of the Texas Constitution, which is considered the state counterpart to section 53, provides:

The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law.

TEX. CONST. art. III, § 44.



[\*9]

## II. Analysis

Your question is moot if court reporters may not receive fees in addition to salary. Thus, as a threshold matter, we consider whether a court reporter is a "county officer" within the meaning of Texas Constitution, article XVI, section 61, which prevents county officers from being compensated on a fee basis except as provided therein, *see* TEX. CONST. art. XVI § 61, and Local Government Code chapter 154, which implements this constitutional provision. *See* TEX. LOC. GOV'T CODE ANN. §§ 154.002 (Vernon 1999) (salary paid in lieu of fees and commissions), .003 (collection and disposition of fees and commissions of salaried officers), .004 (state and county prohibited from paying fees or commissions to salaried officers), .005 (fees and commissions certain salaried officers may receive in addition to salary). It is evident from the original predecessor of Local Government Code chapter 154 that it was intended to implement article XVI, section 61. *See* Act of Nov. 14, 1935, 44th Leg., 2d C.S., ch. 465, § 24, 1935 Tex. Gen. Laws 1762, 1784 (the adoption of a constitutional amendment requiring county officers to be compensated solely on a salary basis creates [\*10] an emergency).

Specific statutory language uses the terms "officer," "office," and "official" in describing a court reporter. *See* TEX. GOV'T CODE ANN. §§ 52.041 (Vernon 1998) ("official court reporter is a sworn officer of the court and holds office at the pleasure of the court"), .045 ("official court reporter must take the official oath required of officers of this state"). However, case law uniformly has held that court reporters are not "officers" for various purposes, including specifically for purposes of article XVI, section 61. *See* *Lightfoot v. Lane*, 140 S.W. 89, 90 (Tex. 1911) (stenographer for court of civil appeals was an employee, not an officer), *Harris County v. Hunt*, 388 S.W.2d 459, 467 (Tex. Civ. App.--Houston 1965, no writ) (court reporter was not an officer within article XVI, section 61 of the Texas Constitution requiring officers to pay fees into county treasury), *Tom Green County v. Proffitt*, 195 S.W.2d 845, 847 (Tex. Civ. App.--Austin 1946, no writ) (official court reporter is not a "public officer" within the article III, section 56 prohibition against local laws [\*11] creating offices), *Robertson v. Ellis County*, 84 S.W. 1097, 1098 (Tex. Civ. App.--Dallas 1904, no writ) (court reporter is not an officer within article XVI, section 30 of the Texas Constitution, which provides that the "duration of all offices not fixed by this Constitution shall never exceed two years"); *see also* Tex. Att'y Gen. Op. Nos. JM-1083 (1989) at 2 (court reporter does not hold "civil office of emolument" for purposes of article XVI, section 40 of the constitution), O-6491 (1945) at 6. n7 Therefore, we conclude that a court reporter is not a "district, county or precinct officer" for purposes of the prohibition on the payment of any additional fees and commissions to salaried officers that is set forth in subchapter A of chapter 154 of the Local Government Code. *See* TEX. LOC. GOV'T CODE ANN. § 154.002 (Vernon 1999).

n7 *But see* *In re Johnson*, 554 S.W.2d 775, 784 (Tex. Civ. App.--Corpus Christi 1977, writ ref'd n.r.e.) (holding that a court reporter is an "officer" for purposes of article III, section 44 of the Texas Constitution, which authorizes the legislature to provide by law for the compensation of all officers, servants, agents, and public contractors, not provided for in this Constitution). Because a court could hold that court reporters fall within the scope of article III, section 44 because they are "servants" or "agents" without holding that they are "officers" and because the case on appeal to the Texas Supreme Court was decided because the appellant failed to preserve any point of error, *see* *In re Johnson*, 569 S.W.2d 882 (Tex. 1978), we are reluctant to conclude that court reporters are "officers" as opposed to "employees."

[\*12]

Turning to your specific question, we note that article III, section 53, like its state counterpart, article III, section 44, is intended to prevent a gratuitous payment of public funds for work already performed. *See, e.g.,* *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928); *Dallas County v. Lively*, 167 S.W. 219, 220 (Tex. 1914); *Turner v. Barnes*, 19 S.W.2d 325, 327-28 (Tex. Civ. App.--Fort Worth 1929), *aff'd*, 27 S.W.2d 532 (Tex. Comm'n App. 1930, judgment adopted); *Devon v. City of San Antonio*, 443 S.W.2d 598, 600 (Tex. Civ. App.--Waco 1969, writ ref'd). But payment of additional compensation for extra work performed or expenses incurred does not constitute "extra compensation" prohibited by the Texas Constitution. *See, e.g.,* *Univ. of Tex. Sys. v. Robert E. McKee, Inc.*, 521 S.W.2d 944, 949 (Tex. Civ. App.--Eastland 1975, writ ref'd n.r.e.). In this instance, the statutory provisions at issue do not authorize payment of "extra compensation" for work already performed; rather, they authorize additional [\*13] compensation for additional work requested to be performed. Indeed, the mere fact that the legislature has authorized the additional compensation for additional work performed upon request supports the proposition that the additional compensation is not intended to pay for work already performed. *See* TEX. GOV'T CODE ANN. §§ 52.047, .059 (Vernon 1998).

It is evident that the legislature did not intend for the term "salary," *see id.* § 52.051, or the phrase "compensation . . . and all other allowances," *see TEX. LOC. GOV'T CODE ANN. § 152.011* (Vernon 1999), to include payment for the performance of other tasks for which other specific statutory provisions authorize the imposition of fees. Ordinarily, when the legislature has used a term or phrase in one section of a statute and excluded it in another, courts will not imply the term where it has been excluded. *Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 90 (Tex. 2001); *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995); *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980). In this instance, sections [\*14] 52.047 and 52.059 of the Government Code expressly confer authority on court reporters to charge a fee for the performance of certain specific tasks. *See TEX. GOV'T CODE ANN. §§ 52.047, .059* (Vernon 1998). By way of contrast, section 52.051 of the Government Code requires a district court reporter to be paid a "salary," *see id.* § 52.051, and section 152.011 of the Local Government Code authorizes county commissioners to set "the amount of compensation . . . and all other allowances for county and precinct officers and employees who are paid wholly from county funds." *TEX. LOC. GOV'T CODE ANN. § 152.011* (Vernon 1999).

Moreover, this office already has noted that court reporters do not work typical eight-hour days, but rather perform specific duties in service to the courts that appointed them, *see Tex. Att'y Gen. Op. Nos. JM-1083* (1989) at 4 ("The position of court reporter is described in terms of the duties to be performed, not of the number of hours of service required each week."), a fact which does not preclude a court reporter from being paid for any additional "outside" work. *See also Tex. Att'y Gen. Op. No. JM-163* (1984) at 1 ("In essence, your secretary is being [\*15] paid to perform specified duties and is not necessarily employed for a specified time during the day during which she cannot have other employment."). Similarly, we believe that the salary authorized by sections 52.051 of the Government Code and 152.011 of the Local Government Code represents compensation for the employment duties performed in service to the court reporter's assigned court, not for the performance of any additional work performed upon request of parties in the litigation, in effect work constituting "other employment."

And finally, when the county is paying a court reporter a salary pursuant either to sections 52.051 of the Government Code or 152.011 of the Local Government Code, it is acting in the role of employer. When, by way of contrast, it is paying a court reporter for certain additional services, such as the preparation of a transcript or a deposition, it is acting in the role of a party to the litigation. No provision in the Government Code nor the Local Government Code supports the proposition that the legislature intended that counties, when requesting transcripts in the role of parties to litigation, should be treated differently than other nongovernmental [\*16] parties requesting transcripts. In such an instance, the additional compensation received by the court reporter is not "extra compensation" for services or work already performed in the role as an employee of the county; rather, it is additional work performed at the request of a litigating party.

#### SUMMARY

Sections 52.051 of the Government Code and 152.011 of the Local Government Code authorize a district court reporter and a county court at law court reporter, respectively, to be paid a salary. Additional fees charged under sections 52.047 and 52.059 of the Government Code do not constitute extra compensation in violation of article III, section 53 of the Texas Constitution. A county may be required to pay for a transcript prepared by a court reporter when the county itself is a party to litigation or when the transcript is prepared for an indigent pursuant to the Texas Rules of Appellate Procedure.

#### Legal Topics:

For related research and practice materials, see the following legal topics:  
 Civil Procedure  
 Judicial Officers  
 Court Reporters  
 Fees  
 Criminal Law & Procedure  
 Counsel  
 Costs & Attorney Fees  
 Governments  
 Courts  
 Court Personnel