



COLLIN COUNTY

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RECEIVED

November 10, 2010

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OPINION COMMITTEE

FILE # ML-46621-10
I.D. # 46621

The Honorable Greg Abbott
Office of the Attorney General
Opinion Division
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0930-GA

RE: Request for opinion concerning Collin County Commissioners' authority related to salaries, benefits, overtime, and compensation time of certain county employees

Dear General Abbott:

I am requesting your opinion concerning the authority of the Collin County Commissioners Court with respect to the following issues:

1. Does Local Government Code section 157.021(a) allow the Commissioners Court to withhold the payment of partial salaries and benefits of full-time County employees whose compensation is set or approved by the Commissioners Court, and who, in a particular week, may not meet a forty-hour work week as set by an order of the Commissioners Court during each budget?
2. Local Government Code section 157.021(b) allows the Commissioners Court to adopt and enforce uniform rules on overtime and compensatory time for County employees whose compensation is set or approved by the Commissioners Court, except when the Commissioners Court or an elected county or district officer declares an emergency.
 - a. What are examples of an emergency that requires payment of overtime compensation? For example, is a jury trial that goes into late hours an emergency? Who determines if an emergency exists?
 - b. Does the Commissioners Court have any discretion over payment of overtime or compensatory time to an employee when an elected county or district officer declares an emergency under Local Government section 157.021(b)(1)?

3. If a County employee in the office of an elected county or district officer works unbudgeted overtime or compensatory time, can those costs be charged against the official's budget that is approved annually by the Commissioners Court? Does the Commissioners Court have the authority to require the elected county or district officer find funds in his or her department budget to fund the overtime or compensatory time?
4. Given the Commissioners Court has the authority to mandate a forty-hour work week under Local Government Code section 157.021(a), does the Commissioners Court have the implied power to mandate the method of timekeeping used by the elected official's employees whose compensation is set or approved by the Commissioners Court?

Background Facts:

The Collin County Commissioners Court has adopted a forty-hour work week for all County employees. (See, Commissioners Court Order 2010-613-08-17, a copy of which is included with this letter as Attachment 1.) Additionally, Collin County has a time clock and badge reader time-keeping system in which each county employee is required to enter their hours worked for purposes of being paid his or her salary and related benefits.

The employees in question are compensated by the Collin County Commissioners Court through the normal budget and County payroll process. Employees must enter their hours worked through the County's automated time clock and badge reader system.

From time to time, elected officers¹ in Collin County have granted county employees a day off or permitted county employees to take leave from their job duties. In these situations, the employees at issue did not accrue a total of forty hours worked as required by the Collin County Commissioners Order adopted pursuant to Texas Local Government Code section 157.021.

For instance, employees of the District Attorney's office have been excused from work for security purposes by the District Attorney during a recent event involving a shooting near the main courthouse. In addition, the District Attorney has asked the Commissioners Court for clarification on documentation of compensatory leave - when an employee of the District Attorney's office is granted "High 5" paid leave in recognition of exceptional job performance. (See, August 24, 2010 letter from Collin County District Attorney discussing these matters, which is included with this letter as Attachment 2.)

¹ For purposes of this request, the term elected local officer is intended to mean those officers who utilize employees paid wholly from county funds, such as District Judges, the District and County Attorneys, County and District Clerks, the Sheriff, the County Tax Assessor-Collector and the like.

Consequently, legitimate issues have arisen among the Commissioners Court and the elected county and district officers whether these County employees should be paid for a forty-hour week during those weeks in which they were granted time off by the elected official and did not work forty hours, or whether it is within the authority of the Commissioners Court to pay them on a pro-rata basis for the actual hours worked per the rules set forth in the Commissioners Court Order.

Notwithstanding the provisions section 157.021(a), the Collin County Commissioners Court does not intend to set office hours for other elected county and district officers, nor does it intend to dictate when an elected officer closes or opens his or her office. Rather the issue is the enforcement of a budgeted forty-hour work week.

In addition, there exist issues between the Commissioners Court and the elected county and district officers as to what events constitute "emergencies" that would allow for one or more county employees to accrue unbudgeted overtime, when the Commissioners Court has promulgated rules prohibiting such unbudgeted overtime.

For example, does the situation where deputies and county employees work into the evening in connection with a jury trial that runs late constitute an emergency? Does Texas Local Government Code section 157.021(b) afford the Commissioners Court policymaking authority to define an emergency for purposes of controlling unbudgeted overtime?

Or does such an exercise of authority interfere with the "sphere of authority" possessed by the elected county officers for which they may manage their offices without interference from the commissioners court.²

Also, there are unresolved issues regarding whether payment of unbudgeted overtime and compensatory time is to be charged against the elected official's departmental budget in the event the employee who accrues the unbudgeted time is under the control of the official. Or, must the Commissioners Court find another source of funds in the County budget (other than the official's departmental budget) from which to pay the unbudgeted overtime and compensatory time accrual?

Lastly, given the Commissioners Court has the authority to mandate a forty-hour work week under Local Government Code section 157.021(a), does it follow that the Commissioners Court possesses the implied power to mandate the method of timekeeping used by the elected official's employees whose compensation is set or approved by the Commissioners Court?

² See *Pritchard & Abbott v. McKenna*, 350 S.W. 2s 333, 225 (Tex. 1961); Tex. Att'y Gen. Op. No. GA-0778 (2010).

Legal Analysis:

Texas Local Government Code Section 157.021

Section 157.021 of the Texas Local Government Code grants authority to the Commissioners Court to adopt and enforce hours of work for employees whose compensation is set or approved by the Court. Section 157.021 provides as follows:

Sec. 157.021. HOURS OF WORK OF COUNTY EMPLOYEES.

(a) In a county with a population of 355,000 or more, the commissioners court may adopt and enforce uniform rules on the hours of work of department heads, assistants, deputies, and other employees whose compensation is set or approved by the court.

(b) The commissioners court of any county may adopt and enforce uniform rules on overtime and compensatory time for department heads, assistants, deputies, and other employees whose compensation is set or approved by the commissioners court. The rules may:

- (1) prohibit unbudgeted overtime, except when the commissioners court or an elected county or district officer declares an emergency; and**
- (2) require that emergency overtime be reported to the county auditor and the commissioners court.**

The statute has three express requirements. First, the statute applies only to counties with a population exceeding 355,000. Second, a Commissioners Court must adopt uniform rules on hours of work. Third, the rules adopted by the Commissioners Court only apply to department heads, assistants, deputies, and employees whose compensation is set or approved by the Commissioners Court.

Collin County has a population in excess of 355,000. The 2000 decennial census reported the County's population to be 491,675. (Source, U.S. Census Bureau, 2000 Census data.)

As allowed by Texas Local Government Code section 157.021(a), the County Commissioners have adopted an Order on an annual basis setting a forty-hour work week for County employees. The most recent Order was adopted on August 17, 2010 (See Commissioners Court Order 2010-613-08-17, a copy of which is included with this letter as Attachment 1). The Order specifically mandates a forty-hour work week and adopts an enforcement policy stating that any employee who does not accumulate forty hours of employment during a work week will be paid a pro-rata salary based upon actual hours worked.

The Commissioners Court is of the opinion that Local Government Code section 157.021(a) provides the requisite authority to mandate a forty-hour work week for county employees whose compensation is approved by the Commissioners Court. By such Order, the Commissioners Court believes it has restricted the elected county or district officials' authority to grant paid, unworked time to employees under their control, regardless of whether the unworked time was a result of being released from work due to an emergency, inclement weather, a grant of compensatory leave for exceptional performance, or the like.

However, prior Attorney General opinions have created confusion on the issue of whether the Commissioners Court may reduce the weekly pay of County employees who do not report to have worked a forty-hour week, due to the fact they were granted compensatory leave by another county or district officer.³

These prior Attorney General opinions address in general the power of elected county and district officers to control the employment-related aspects of their county staffs. In almost every instance, these opinions confirm the power of the elected officer to control the work hours of their staffs.

In Tex. Att'y Gen. Op. No. JC-0239 (2000), the Attorney General opined that Grimes County could not withhold payment of full salary and benefits under similar circumstances. However, the opinion was specific to Counties with less than 355,000 population.⁴

Similarly, in Tex. Att'y Gen. Op. No. GA-0303 (2005), the Attorney General opined that the Somervell County Commissioners were not authorized to establish work hours of county employees under authority of elected officials. Again in that opinion, section 157.021 was not at issue due to the fact that the County's population fell below 355,000.

More recently, in Tex. Att'y Gen. Op. No. GA-0778 (2010) the Attorney General addressed the question of whether the Grayson County Commissioners Court, in the middle of a budget year, may amend the budget of the County Clerk to reduce that office's salary line item in an amount equal to the pay which was due to county clerk employees for a time period the employees did not work due to a weather related

³ Presumptively, the elected officer, while having significant authority over county employees within his department, cannot dictate to the County Human Resources Department that an employee has worked forty hours when the employee's time that is entered into the County payroll system is less.

⁴ JC-0239 opinion states as follows: "Section 157.021 authorizes a county of 355,000 or more to adopt and enforce such uniform rules. *See id.* We do not address in this opinion the authority of a county with a population large enough to permit it, in accordance with section 157.021, to adopt and enforce uniform rules on county employees' hours of work."

emergency. In addressing this question, the Attorney General reiterated prior common law principles to the effect that elected county officials possess a "sphere of authority" within which they manage their offices without interference from the commissioners court."⁵ The Attorney General noted that the commissioners court "may not, by transferring funds from an elected county officer's budget, thereby prevent the officer from performing his or her required duties." Tex. Att'y Gen. Op. No. GA-778 (2010) at 4-5, *citing* Tex. Att'y Gen. Op. No. GA-0037 (2003) at 5. The Attorney General concluded that a court would likely conclude that the Grayson County Commissioners Court may not transfer funds to reduce the salary line item to deprive the clerk's employees for the payment for the time period that the clerk dismissed them as a result of inclement weather because such reduction would intrude upon the elected county clerk's sphere of authority. Tex. Att'y Gen. Op. No. GA-778 (2010) at 4.

Grayson County's population is less than 355,000 according to the most recent census data, therefore, section 157.021(a) was not addressed in ex. Att'y Gen. Op. No. GA-0778

Nevertheless, these opinions provide support for the basic legal premise that the Commissioners Court lacks authority to set the office hours of other county officials and their employees due to possible interference with the "sphere of authority" of the elected officials to control and manage their respective offices and employees.

Section 157.021 of the Local Government Code appears to be a legislative departure from the general common law legal principle that the elected county or district official is entitled to establish the work hours of his or her office and that of his or her staff.

Prior Attorney General Opinions do not address whether a forty-hour work week requirement for all county employees adopted by the Commissioners Court under section 157.021(a) for those counties with populations in excess of 355,000 must be adhered to by the elected county or district officials, and whether county employees under the control of those officials are subject to a pro-rata reduction in their respective salaries should they not work the forty hours as determined by the County's timekeeping system.

Section 157.021(a) appears to be clear and unambiguous, allowing the Commissioners Court to adopt and enforce uniform rules on the hours of work of county employees.

A separate, but related issue pertains to the control of compensatory time and overtime by the Commissioners Court, which is controlled by subsection (b) of section 157.021.

⁵ See Tex. Att'y Gen. Op. No. GA-0778 (2010) at 1, *citing Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961); *Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App. – Austin 1997, pet. denied); Tex. Att'y Gen. Op. No. GA-0332 (2005) at 3.

TEXAS LOCAL GOVERNMENT CODE 157.021(b) allows the Commissioners Court to adopt and enforce uniform rules on overtime and compensatory time for department heads, assistants, deputies, and other employees whose compensation is set or approved by the Commissioners Court. The Commissioners Court is authorized under subsection (b) to prohibit unbudgeted overtime, except when the Commissioners Court or an elected county or district officer declares an emergency.

The statute contains no definition of an emergency. Rather it appears such decision as to what constitutes an emergency rests within the discretion of the Commissioners Court or possibly the elected county or district officer. Obviously, this is potentially problematic, as there could be attempts to characterize situations as emergencies so as to overcome the rules prohibiting unbudgeted overtime. For example, if a jury trial runs late into the evening due to jury deliberations and courthouse personnel accrue unbudgeted overtime as a result, must the elected county or district official declare the situation an emergency in order to overcome the rules adopted by the Commissioners Court prohibiting unbudgeted overtime?

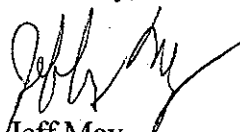
There appear to be no cases or prior opinions of the Attorney General that provide guidance on this issue.

Third, assuming the Commissioners Court approves the payment of the unbudgeted overtime due to an emergency, does the Commissioners Court's have the authority to approve a budget amendment which effectively reduces one or more of the other allowances contained in the elected county or district official's budget? Or must such payments be made from accounts in the general county budget that are independent of the allowances for the elected county or district official? Do the principles set forth in Tex. Att'y Gen. Op. No. GA-0778 (2010) at 4 and Tex. Att'y Gen. Op. No. GA-0037 (2003) at 5 to the effect that budget amendments made by the Commissioners Court prevent the officer from performing his or her required duties control?

Lastly, it would appear that given the Commissioners Court has the authority to mandate a forty-hour work week under Local Government Code section 157.021(a), the Commissioners Court possesses the implied power to mandate the method of timekeeping used by the elected official's employees whose compensation is set or approved by the Commissioners Court. However, I could find no specific legal guidance on this issue.

Your opinion as to these questions is appreciated.

Sincerely,



Jeff May
Collin County Auditor

COURT ORDER NO. 2010 613 -08-17

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Uniform Pay Policy – Human Resources

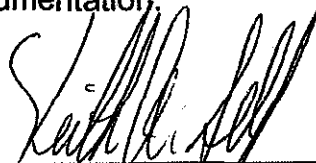
On August 17, 2010, the Commissioners Court of Collin County, Texas, met in special session with the following members present and participating, to wit:

Keith Self
Matt Shaheen
Jerry Hoagland
Joe Jaynes
Kathy Ward

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, Precinct 4

During such session the court considered a request for approval of the Uniform Pay Policy.

Thereupon, a motion was made, seconded and carried with a majority vote of the court to approve the Uniform Pay Policy to read as follows: "The salary of county employees is based upon a 40-hour week unless otherwise noted. Upon failure to accumulate 40 hours of approved time, the employee shall be compensated at a pro-rata hourly rate. Approved time shall be calculated according to pay provisions incorporated in the adopted budget. Specifically, time clock or badge readers shall be used to record employee time." Same is hereby approved in accordance with the attached documentation.



Keith Self, County Judge



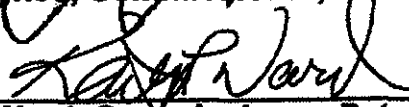
Matt Shaheen, Commissioner, Pct. 1



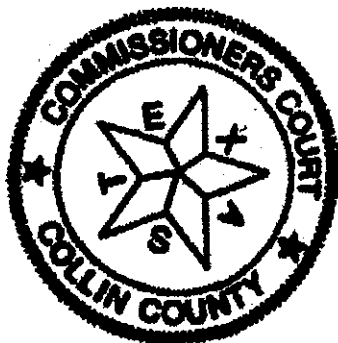
Jerry Hoagland, Commissioner, Pct. 2



Joe Jaynes, Commissioner, Pct. 3



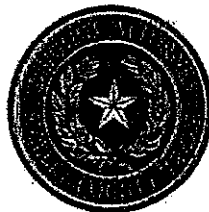
Kathy Ward, Commissioner, Pct. 4



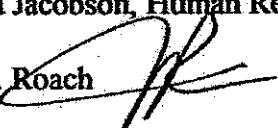
ATTEST:



Stacey Kemp, Ex-Officio Clerk
Commissioners' Court
Collin County, TEXAS



JOHN R. ROACH
CRIMINAL DISTRICT ATTORNEY
COLLIN COUNTY COURTHOUSE
2100 BLOOMDALE ROAD, SUITE 20004
MCKINNEY, TEXAS 75071
972-548-4323
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FAX NO 214-491-4860
www.collincountyda.com

DATE: August 24, 2010
TO: Commissioner's Court
Cynthia Jacobson, Human Resource Director
FROM: John R. Roach 
RE: Payroll Codes

RECEIVED
10 AUG 27 AM 9:55
HUMAN RESOURCES

I am writing to request payroll codes to account for employee time when our "High 5" program awards time off as a reward for exemplary or outstanding job performance in specific or unusual circumstances; and for those occasions when personnel are excused from work for security reasons.

First: security. On August 17, 2010 there was a shooting, a very extensive shooting involving the firing of 100 rounds of high powered ammunition at McKinney Police Headquarters, which is near enough to our office at the main courthouse for our office security system to be activated until the nature and extent of a threat, if any, can be ascertained. In this instance our office was locked down and all employees at work accounted for. Those employees involved in trials received extra protection. When the degree of the threat was determined to have passed, the lockdown was lifted.

It should be pointed out that the DA's office is the only office in county government that has a security plan to protect its equipment, records, and employees in the event of any emergency or threat. This is important to know in order to understand the later events of August 17, 2010, which resulted in the evacuation of DA employees from the main courthouse.

Later on August 17, 2010, investigators learned of a bomb threat to the Sheriff's Office and the County Administration Building. Our office was then locked down pursuant to our emergency plan. The response of others to the possibilities that might arise from this threat was

feeble at least. As a result, we had very little real information. No "all clear" was ever given. By 4 pm, it was decided to evacuate our offices and excuse our employees, as it appeared as if no action was being taken, other than by our office lockdown. Apparently, a cursory search of the courthouse for anything suspicious was being conducted by three detention officers, and I believe McKinney PD was in the courthouse as well. Unfortunately, no responders had any plan, lacked vital information, and had no idea what to do.

Given the confusion and lack for plan of action by others and a lack of clear information for us, evacuation (removal of potential victims or targets) was decided upon. Employees were then excused. They had no choice but leave their stations.

Please see the memorandum of Chief Criminal Investigator Varner attached to this memorandum.

Second: The High 5 program. From time to time supervisors and managers recommend "High 5" recognition of exceptional job performance by an employee in specific or unusual circumstances. The supervisor/manager initiates and documents the exceptional performance, it is reviewed by me, and if deemed exceptional and meritorious, I award 1 to 2 hours of time off, although under even more exceptional circumstances, I have once or twice authorized up to 8 hours. Four hours would be also exceptional.

Each and every "High 5" award is evidenced by the documentation provided by the employee's supervisor/manager and a nice certificate and that documentation is placed in the employee's personnel file. The time off award is required to be taken within 30 days of the award. The precise timing within that period must be approved by the employee's supervisor/manager.

The "High 5" program is used sparingly, thus increasing its value and impact. The "High 5" program has been in effect since 2003.

In the past, the payroll system allowed a designation of administrative leave. When that was changed, an explanation was given. Now, it's cumbersome to use the system to designate time off as being granted for meritorious service, personnel security reasons, and the like.

Therefore, I request assistance by the creation of codes that would allow easy designations for work time awards as in the case of our "High 5" program, and for emergency or security reasons as in the events of August 17, 2010, when payroll is prepared. These codes would allow easy tracking of what once was referred to as administrative leave.