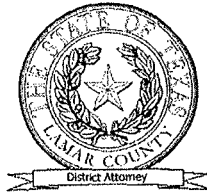


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**OPINION COMMITTEE**



FILE # M1-46832-11  
I.D. # 46832

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**RQ-0999-BA**

September 21, 2011

Honorable Greg Abbott  
Attorney General  
State of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

Honorable Greg Abbott:

Please receive this letter as a request for an opinion from your office regarding the determination of salaries for elected county officials. In accordance with your requirements I have attached the facts, law, and questions as I understand them.

Attorney General Abbott, thank you for your attention to this matter. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Young".

Gary Young  
Lamar County Attorney

GDY

## FACTS

1. A Salary and Allowance Order” for elected officials was passed by the Lamar County Commissioners Court on August 15, 2011. The “Salary and Allowance Order” gave each elected official a flat \$1,200.00 pay raise for the next fiscal year. The County Judge sent the “Salary and Allowance Order” to each elected official on August 16<sup>th</sup> (See Exhibit A). At that time, the Judge also informed the elected officials, in writing, of their right to grievance the “Salary and Allowance Order” and the procedure for doing so. No grievances were filed. In addition, notice of the pay raise for elected officials was timely published in a newspaper of general circulation in Lamar County (See Exhibit B). On August 30<sup>th</sup>, 2011, the Judge filed the proposed budget with the County Clerk so that the proposed budget would remain on file for public inspection for the requisite period of time. The pay raise to the elected officials was included in the proposed budget. On September 15<sup>th</sup>, the Lamar County Commissioners Court adopted the annual 2011-2012 budget (See Exhibit C). At the public hearing to adopt the budget, the Commissioners Court summarily removed the \$1,200.00 pay raise for elected officials and left the salary and allowances for elected officials at the current level. The elected officials were not given notice of this change and had no time to file a grievance before adoption of the budget.

## LAW

“Each year the Commissioners Court shall set the salary, expenses, and other allowances of elected county...officers...during the regular budget hearing and adoption proceedings.”**[1]** “Before filing the annual budget with the county clerk, the commissioners court shall give written notice to each elected county and precinct officer of the officer’s salary and personal expenses to be included in the budget.”**[2]** “An elected county... officer who is aggrieved by the setting of the officer’s salary or personal expenses may request a hearing before the salary grievance committee before the approval of the county’s annual budget.”**[3]** If the salary grievance committee unanimously votes to approve the increase in the salary for the elected official, “...the commissioner’s court shall include the increase in the budget before the budget is filed and the increase takes effect in the next budget year.”**[4]**

It is noted that the difference between the instant fact pattern and that of those contained in opinion GA-0620 (May 1, 2008) is that in the instant case the Commissioners Court voted in Commissioners Court to give the raises, gave written notice of the increase in salary to the elected officials, published the increase in the newspaper, and the raise was included in the proposed budget filed by the County Judge. Then, at the public hearing, the Commissioners Court, without any notice or discussion, removed the pay raise from the budget.

In opinion GA-0620 no notice of the decrease, or increase, of compensation was given to the elected officials prior to adoption of the budget. Accordingly, it appears that the rule is that without notice to the elected official, or the public, prior to adoption of the budget, no change can be made to the salary and allowances of an elected official.

In the instant fact pattern, appears that all of the proper procedures were followed for the elected officials to receive a raise, but then, after the time for a grievance to be filed had passed, and at the actual public hearing, the raise was rescinded. The elected officials were unable to pursue the grievance procedure because they relied upon the actual notice and representations of the Commissioners Court.

## QUESTIONS

Assuming the Commissioners Court voted to give the elected officials a raise during the regular budget process, and gave timely written notice to the elected officials and the public of its intent to give the raise, can the Commissioners Court remove the raise from the budget at the final hearing to adopt the budget without giving the elected officials a chance to grievance the decision?

If so, may the elected official's grievance the decision after the adoption of the budget?

Are the elected officials entitled to rely on the representation of the Commissioners Court as contained in the "Salary and Allowance Order" and other written notices? If not, would it be possible for the Commissioners Court to vote a "Salary and Allowance Order" each year with a raise, give the proper notices to the elected officials and the public, allow the grievance period to expire, and then, remove the raise from the budget at the public hearing, and thus deny the elected officials of their right to a grievance?

Are the elected officials entitled to the pay raise as contained in the "Salary and Allowance Order" and written notices? If so, is it simply inserted into the budget?

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[1] Texas Local Government Code 152.013(a)

[2] Texas Local Government Code 152.013 (c)

[3] Texas Local Government Code 152.016(a)

[4] Texas Local Government Code 152.016 (c)