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OPINION COMMITTEE

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Office of the Attorney General
Attention: Opinion Committee
P. O. Box 12548
Austin, TX 78711-2548

RQ-0305-KP

FILE # ML-48613-19

I.D. # 48613

Submitted via electronic mail to opinion.committee@oag.texas.gov

In re: Compensation for court staff of the 1st Multicounty Court at Law and the budgeting process for counties under 225,000

Dear Sir:

This request for an Opinion of the Attorney General is being made by the Office of the Nolan County Attorney at the request of the Judge of the 1st Multicounty Court at Law. The history and facts are as follows:

History

- 1) The statutory County Court for Nolan County was created in May, 1980. Its jurisdiction was expanded from strictly misdemeanor criminal to include family law in 1991. The Multicounty Court at Law was created by act of the legislature in 2013. (Tx Gov Code §25.2701).
- 2) In 2017, the legislature passed HB 4281, amending Government Code section 26.2702, requiring that the Court Administrator and Court Reporter of the Multicounty Court at law be compensated in the same amount and means as their counterparts in the 32nd District Court.
- 3) In 2019, the legislature passed an amendment to that statute, requiring that the three Commissioners Courts (Fisher, Mitchell and Nolan Counties) share the costs of the court and that the staff "receive a salary set by the commissioners courts in the counties." (<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=SB2215>, noted as effective immediately)
- 4) To date, there is no interlocal agreement signed by the Commissioners Courts; however, by Commissioners Court action, each of the three counties designated two County Commissioners to meet with the designees of the other counties to consider all aspects of the budget for the Multicounty Court at Law (with the exception of the salary of the Judge, which is set by statute) for the 2019 budget cycle.

Salary History

- 1) The budgeted salary for the Multicounty Court at Law Administrator for fiscal 2016 was \$37,256 and the Court Reporter was \$35,000. (<https://newtools.cira.state.tx.us/upload/page/0484/docs/Financial/Budgets/2016-2017AdoptedBudget.pdf> page 20)

- 2) The budget for 2017 available online does not accurately reflect the salaries, as they were changed following a suit over the interpretation of the law referenced in 2) above. (See cause 19859 in the 32nd District Court styled David Hall, in his Official Capacity as Judge Presiding for the 1st Multicounty Court at Law vs The Commissioners Court of Fisher County, Texas; The Commissioners Court of Mitchell County, Texas; The Commissioners Court of Nolan County, Texas.)
- 3) The budgeted salary for the Multicounty Court at Law Administrator for fiscal year 2018 was \$61,527 and the Court Reporter \$84,171.
(<http://www.co.nolan.tx.us/upload/page/0484/docs/Financial/Budgets/2018%20-%202019%20Adopted%20Budget%203.pdf> , page 22)
- 4) The recommendation of the committee of commissioners for the Multicounty Court at Law Administrator is \$44,500 (an increase over 2016 but a decrease from 2018). The recommended salary for the Court Reporter is \$50,000 (again, an increase over 2016 but a decrease from 2018) for the 2019 budget. (<http://www.co.nolan.tx.us/upload/page/0484/2019/2019%20-%202020%20Adopted%20Budget%20nolan.pdf>)

Questions

The questions posed by the Judge are:

- 1) What authority, if any, does the Judge of the Multicounty Court at Law have to set the salaries of his staff?
- 2) Does the Commissioners Court of Nolan County have the authority to reduce the salaries of the staff of the Multicounty Court at law without notifying the judge of the change prior to adopting the budget?
- 3) If the Nolan County Commissioners Court failed to follow the requirements of the statute with regard to preparation and filing of a budget, what remedies are available to the elected official with regard to staff salaries?
- 4) If the Nolan County Commissioners Court was within its rights to adjust the 2019 salaries as cited in 3) above, is there a limit to how far these salaries may be reduced?

Authorities

The Multicounty Court at Law is the first court of its kind in Texas. While it has some of the characteristics of a District Court, it is not financed by the state in the manner of District Courts, nor was it created by the Legislature as a District Court. It is different from its sister statutory county courts, in that it was created by the action of multiple counties, is supported financially by the budgets of multiple counties, and those counties receive more financial support of the Court from the State than do single counties hosting statutory county courts. Because this Court is the first of its kind in Texas, falling squarely into neither description, the issues posed in its financing are, of necessity, issues not previously addressed in Texas law.

Question 1

The Commissioners Court, as the governing body of the county, is charged with "exercis(ing) such powers and jurisdiction over all county business, as is conferred by (the Texas) Constitution and the laws of the State" (Tex. Const. art. V, §18). This includes setting a budget for the county offices. Allocation of county

funds is a discretionary function of the Commissioners Court, although they are charged with allocating them in a way that is reasonable and does not unnecessarily underfund any office or program. The litmus test for abuse of discretion since the late 1980s has been that the Commissioners Court may not attempt to restrict or abolish an office by their budgetary decisions. (*Vondy v Commissioners Court of Uvalde County*, 714 S.W.2d 417,420 (Tex. App.-San Antonio 1986, writ refd n.r.e.) There does not appear to be any authority for an elected county or precinct official to set the salaries for the staff of his or her office.

The Commissioners Court is responsible for setting salaries of all employees who are paid with county funds. (Tex. Loc. Gov't Code Ann. §152.011) There is no provision in statute for the compensation of court reporters (or staff) in statutory county courts, other than the general provision calling for salaries to be set by the Commissioners Court. This specific question was asked of Attorney General Morales in 1992. (Tex Att'y Gen Op. DM-0128 (1992)) The determination of the Attorney General's office at that time was that the compensation for court reporters of the statutory county courts of Denton County were to be set by the Commissioners Court. A similar issue was raised in 2012. (Tex. Att'y Gen. Op. GA-0952 (2012)). The relevant question in that opinion centered on the whether the authority to set the salary for the court reporter was in the judge or the Commissioners Court. The opinion centers on the statute which created the court, and specifically points out that not all statutes creating Courts at Law are worded alike, indicating that the Legislature was crafting them for the court being created.

The Government Code allows the District Judge to set the salary for the reporter in that court, with certain restrictions. There is no language in the Code which allows for input from the Commissioners Courts of the counties which may be covered by that court with regard to the salary; the only mention is that they are to receive the order on or before September 1 and prior to the approval of the County Budget. (Tex. Gov't Code §52.051) This (and county auditors) are the exception to the rule that the Commissioners Court shall set the salaries of employees paid with county funds.

Court Coordinators and their compensation are discussed in Section 74 of the Texas Government Code. Specifically, section 74.104(a) states "(t)he judges shall determine reasonable compensation for the court coordinators, *subject to the approval of the Commissioners Court.*" (emphasis added). Subsection b then provides again that "*upon approval by the Commissioners Court of the position and compensation*", the funds shall be budgeted to pay those positions. (emphasis added)

The language of SB 2215 specifically states that the salaries of the court staff for the 1st Multicounty Court at Law are to be set by the Commissioners Courts of the three counties participating in the Court. Attached as Exhibit A is the report of the committee formed by the three courts. (The 2018/2019 figures reflect salaries set under the prior wording of §25.2502 Tex. Gov't Code, which required that they be equal to the salaries for those positions paid to the District Court personnel, with no input or control from the Commissioners Courts.) The committee considered the salaries of other county employees in the three counties, as well as salaries for statutory court administrators and reporters in counties with similar populations. An examination of employee and elected official salaries in the three counties shows the salary of the court coordinator to be well above the majority of county employees and some elected officials. As cited above, the law requires that salaries be "reasonable". A search of court reporter salaries for Texas shows salaries in major cities as topping about \$70,000. The average appears to be about \$49,000.

Questions 2 and 3

The Local Government Code sets the budget process for Counties. Chapter 111, subchapter A deals with counties under 225,000 population, which includes all three of these (Fisher, Mitchell and Nolan) counties. During the 7th or 10th month, the County Judge shall prepare a budget, and may request input from the elected officials. (Tex. Loc. Gov't Code §111.005) Chapter 152 sets forth requirements for notice to elected officials of their salary (§152.013) and provides that the salary of neither official nor employee may be set below what it may have been January 1, 1972. (§152.012). Annotations to section 152.013 point out that the written notice to officials is to give an aggrieved office holder the opportunity to file with the salary grievance committee within the allotted time. There are no provisions for an office holder to contest the salary proposed for an employee; nor is there a requirement that the official receive notice of other line items than "*the officer's salary and personal expenses to be included in the budget.*" (§ 152.013, emphasis added)

There appears to be no requirement that an elected official be given notice of changes in the salaries of the employees of the office. Furthermore, under the provisions of SB 2215, the salaries of the staff of the Multicounty Court at Law were set by a committee made up of commissioners of all three counties. It is the understanding of this author that a copy of what is attached as Exhibit A was given to the elected official prior to being presented to any of the Commissioners Courts.

Question 4

There would appear to be no answer in statute or case law for this issue. The District Judge is limited regarding increasing court reporter salaries to no more than 10% per year without the consent of the Commissioners Court(s) if serving in smaller counties. There is no limitation, however, on how often a 10% increase could be ordered, nor is there a remedy for the Commissioners Courts, if the statute is followed.

Anecdotal evidence from multiple counties indicates that employees have taken cuts in salary when the county in question suffered economic setbacks. While officials have access to the grievance committee to discuss concerns about their compensation, employees of the county are dependent on the largesse of the Commissioners Court. For the Multicounty Court at Law, this would be the combined decision of the three Commissioners Courts.

The answer to this undoubtedly returns to the definition of "reasonable." The Commissioners may not use their power of the budget to so underfund an office that its purposes cannot be met; however, they are also not required to pay any employee position based on salary scales from other parts of the state or nation.

Respectfully submitted,



Lisa L. Peterson
Nolan County Attorney