

Ana Markowski Smith
Val Verde County Attorney
207 East Losoya Street, Del Rio, Texas 78840
(830) 774-7571 | Fax: (830) 774-1235
email: vvca@valverdecountry.texas.gov

October 22, 2019

RQ-0312-KP

FILE # ML-48637-19

I.D. # 48637

SENT VIA ELECTRONIC MAIL TO opinion.committee@oag.texas.gov

Attorney General Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, TX 78711-02548

RE: Request for an opinion

Dear General Paxton:

I respectfully request your opinion regarding the authority of district judges and the commissioners court to set the salaries of district judges' coordinators and assistant court coordinators.

BACKGROUND

One of the county's district judge's requested raises for his staff that were contrary to the commissioners court's budget orders in two budget years as follows:

Fiscal Year 2012-2013

On February 28, 2013, the district judge, signed an order as follows:

ORDER

IT IS ORDERED THAT, EFFECTIVE FEBRUARY 18, 2013, THE SALARY TO BE PAID BY VAL VERDE COUNTY FOR THE AFOREMENTIONED POSITION BE SET AS FOLLOWS:

Court Coordinator \$40,000

ADDITIONALLY, VAL VERDE COUNTY SHALL BUDGET FOR THE PAY RELATED EMPLOYEE COSTS FOR FICA TAXES AND RETIREMENT FOR THE ABOVE NAMED [sic] INDIVIDUAL.

SIGNED THIS 26TH DAY OF FEBRUARY, 2013

/S/

Fiscal Year 2019-2020

County Judge Lewis G. Owens, Jr. filed his proposed county budget for fiscal year 2019-2020 on July 31, 2019. During the budget workshop hearings and again, after the final budget was filed, the district judge, made a request which included raises for his staff that exceeded what was proposed in the county judge's budget and what the commissioners court had approved in a prior meeting.

It is the opinion of this office that the Val Verde Commissioners Court has the ultimate authority to set the salaries for the district judges' staff with the exceptions set out by statute. However, a question was raised that Texas Government Code §74.104 might limit the commissioners court in setting the salaries of the court coordinator and the assistant court coordinator. I am seeking clarification from the Office of the Attorney General in that regard. Furthermore, I am seeking clarification as to the authority of a district judge to order the commissioners court to pay the court coordinator a salary that is different from the one set by the court.

DISCUSSION

A district judge does not have authority to unilaterally, and outside of a court proceeding, order or compel the commissioners to pay the court administrator and assistant court administrator a specific salary. If the district judge believes that the commissioners court has abused its budgetary discretion in setting in the salaries, he may seek to set aside the commissioners court salary determination in a lawsuit brought under the district court's authority to supervise the commissioners court, or under the district court's

inherent authority. However, the reviewing court may only order the commissioners court to exercise its discretion- it cannot tell the commissioners court what decision to make.

COURT COORDINATOR

Texas Government Code §74.101 authorizes a district court judge to appoint a court coordinator who serves at the pleasure of the judge, and §74.104 sets forth the procedures to be followed in setting the court coordinator's compensation. §74.104 provides that the judge "shall determine reasonable compensation for the court coordinator, subject to approval of the commissioners court," and upon approval, the "commissioners court of the county shall provide the necessary funding through the county's budget process." Because §74.104 relates specifically to appointment and payment of court coordinators, it controls over the more general provisions of an analogous statute, Texas Local Government §151.001, which sets forth a procedure for a district, county or precinct officer to apply to the commissioners court for the authority to appoint deputies, assistants, or clerks.

Your office has concluded that under §74.104, the commissioners court may exercise its discretion in budgeting the court coordinator's salary and that a district judge does not have the power to mandate the amount of the court coordinator's salary. Opin. Tex. Att'y Gen. L0-92-44 (1992); L0-96-003(1996). The Attorney General's analysis relied on *Commissioners Court of Caldwell County v. Criminal Dist. Attorney*, 690 S.W. 2d 932 (Tex. App.-Austin 1985, writ ref'd n.r.e.). That case harmonized two statutes, one authorizing the prosecuting attorney to "fix" the salaries of assistants "subject to the approval of the commissioners court," and the other authorizing the commissioners court, after public hearing, to approve and adopt a county budget incorporating any changes to the proposed budget that the commissioners court deemed legally necessary or proper. The court determined that the portion of the first statute authorizing the prosecuting attorney to "fix" salaries authorized him to include them as part of the county's proposed budget under the second statute, and that the phrase "subject to the approval of the commissioners court in the first could be harmonized with the commissioners court's explicit authority under the second statute to finally approve and adopt the county's budget. The commissioners court was therefore not bound by the prosecuting attorney's salary request but could change it during the commissioners court's regular budget process.

The legislature has clearly indicated its intent that salaries of court coordinators must be subject to the regular county budget process. Your conclusion in L0-92-44, as in the court's conclusion in *Commissioners Court of Caldwell County*, confirmed the commissioners court's authority under §74.104 to approve the compensation of court coordinators.

Additionally, here is a recent Texas Supreme Court opinion persuasive to the conclusion that a district court judge may not unilaterally order a raise for its court coordinator or other support personnel. In *Henry v. Cox*, 520 S.W. 3d 28 (Tex. 2017), the district court pursuant to a lawsuit brought by the district judge had ordered payment of a specific salary

to a court administrator under an analogous statute (Texas Government Code §75.401) because it thought the salary budgeted by the commissioners court for the court administrator position was too low. §75.401 provided that "[a] court administrator is entitled to reasonable compensation, as determined by the judges served and in the salary range for the position, as set by the commissioners court."

The *Henry* court recognized the county budget-making process as a core component of the commissioner's court's legislative function, *Id.* at 36, and conversely, that the judiciary's role is not to dictate salaries, other than as statutorily allowed. *Id.* at 37. The court determined that under §75.401, the district judges determine if compensation is reasonable, but the range is set by the commissioner's court. *Id.* at 37. Thus, the district judges had no authority to mandate a specific compensation outside of the range established by the commissioner's court. Applying the principles of *Henry*, the approval of the commissioner's court is a discretionary exercise of its budgetary authority and under §74.104 the district judge lacks authority to unilaterally order the commissioners court to approve a specific salary for the court coordinator.

Your opinion in KP-0052 focused on a budget policy adopted by a commissioners court that automatically reduced a position's salary to a base salary upon a vacancy and provided for a predetermined transfer of the excess salary to another budget line item. In applying the budget policy to a court coordinator under §74.104, you stated that the statute does not authorize a commissioners court to unilaterally set the court coordinator's salary without the judge's determination of reasonable compensation, but that such reasonable salary determination is subject to the commissioners court's approval pursuant to its budget authority. The additional language in KP-0052 that §74.104 appears designed to require collaboration between the judge and commissioners court in establishing the court coordinator's compensation while "giving neither final authority to set the salary," necessarily means that neither has unilateral authority. A reading to mean otherwise that the commissioners court may not exercise its discretionary budget authority would conflict with your prior interpretations of §74.104, and the case law referenced in our memorandum, including the Supreme Court's analysis in *Henry v. Cox*.

As stated in KP-0052, a budget policy reducing an existing salary to a base salary whenever a vacancy occurs would infringe on the district judge's authority to determine a reasonable compensation under §74.104. The commissioners court would not be authorized to apply such a budget policy to a court coordinator. However, the commissioners court would not be constrained in adopting such a policy with respect to an assistant court coordinator since the district judge does not have similar authority to determine a reasonable salary for an assistant court coordinator. Consequently, the district judge is authorized to appoint an assistant court coordinator, but the salary for such position is set by the commissioners court. If the commissioners court adopted a base salary policy for new assistant court coordinator hires, the district judge would need to submit a request to the commissioners court if the judge wanted to compensate the assistant court coordinator at a higher rate.

DISTRICT COURT'S SUPERVISORY AND INHERENT AUTHORITY

However, the commissioners court's discretionary exercise of its budget authority is not unfettered, but is subject to the judiciary's inherent authority to ensure the proper administration of justice, *Id.* at 36, as well as the district court's general supervisory control over the commissioners court by which a district court can mandate the performance of a ministerial or nondiscretionary statutory duty. *Id.* at 36-37. The Supreme Court in *Henry* noted that in exercising the general supervisory authority a court may not substitute its own policy judgment for that of the commissioners court acting as a legislative body, but can only set aside decisions or actions that are illegal, unreasonable, or arbitrary. *Id.*, at p. 37. Further, the commissioners courts' decisions are reviewable only upon a showing of abuse of discretion or lack of jurisdiction-the district court may order the commissioners court to exercise its discretion, but cannot tell the commissioners what decision to make. *Id.* at 38. A good discussion of the district court's supervisory jurisdiction over the commissioners court and the inherent power of the district court is found in *In re El Paso County Commissioners Court*, 281 S.W.3d 16 {Tex. App.-El Paso 2005} (orig. proceeding).}

Supervisory Authority Over the Commissioners Court

Article V, section 8, of the Texas Constitution provides in part:

The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law.

TEX. CONST., art. V. §8. Essentially the same language is found at §24.020 of the Texas Government Code.

While the Constitution and statutes vest the district court with supervisory control over the commissioners court, the Supreme Court has held that a "party can invoke the district court's constitutional supervisory control over a commissioners court judgment only when the commissioners court acts beyond its jurisdiction or clearly abuses the discretion conferred upon the Commissioners Court by law." *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 80 {Tex. 1997}. Further, it is a power that "may not be exercised in such a fashion as to abrogate the correlative rights of the executive and legislative authorities of our government, for the public is equally protected by the preservation of all three functions." *Id.* at 26. It is a power that can be invoked only through filing a plenary suit. *El Paso Commissioners Court*, 281 S.W.3d at 27. Thus, the district court may not invoke its own jurisdiction in order to supervise the commissioners court as doing so "would place the Texas judiciary, an independent branch of government, on the perilous road to potentially second-guessing every executive or administrative decision of a county commissioners court." *Id.*

In short, the supervisory power of the district court over the commissioners court is a fairly narrow power that must be exercised as part of a lawsuit rather than *sua sponte*. The

commissioners court's order is entitled to a presumption of regularity and may be overcome only if it was outside the commissioners court's jurisdiction or represents a clear abuse of discretion.

Inherent Power of the District Court

Texas courts have inherent powers that they can use to aid in the exercise of their jurisdiction, in the administration of justice, and in the preservation of their independence and integrity. *El Paso Commissioners Court*, 281 S.W.3d at 27. This can include the provision of personnel to assist the court in its judicial function. *Henry v. Cox*, 520 S.W.3d 28, 36 (Tex. 2017); *Vondy v. Commissioners Court of Uvalde County*, 620 S.W.2d 104, 109-10 (Tex. 1981).

As is the case with the district court's supervisory authority, though, its inherent power is subject to limitation. The orders of the commissioners court are entitled to respect and may be reviewed by the district court only on a showing of abuse of discretion or a lack of jurisdiction. *Henry*, 520 S.W.3d at 37-38. When a district court invokes its inherent authority to supersede a budget decision, it is "held to a high standard and [must] assume the burden of showing that the funds sought to be compelled are essential for the holding of court, the efficient administration of justice, or the performance of its constitutional and statutory duties." *District Judges of 188th Judicial Dist. v. County Judge*, 657 S.W.2d 908, 910 {Tex. App.-Texarkana 1983, writ ref'd n.r.e.) (orig. proceeding) (emphasis added.)}

That decision may not be made in an ex parte, summary manner, but must be "established by the fact finding process [as] there is a need to clearly demonstrate to the public that the judiciary is acting fairly and without bias in matters of court funding, and because any departure from the separation of powers mandated by the constitution is so drastic, such a step should be taken only on the basis of a detached and objective finding of essentiality." *Id.*, see also, *Matter of El Paso County Courthouse*, 765 S.W.2d 876,880 {Tex. App.- El Paso 1989, no writ) (reversing summary order of district judges compelling action by commissioners court because the order was issued without prior notice and a hearing.)) Finally, in exercising either its inherent or supervisory power, the district court "may not usurp legislative authority by substituting its policy judgment for that of the commissioners court acting as a legislative body." *Id.*, at 37. In particular, it may not require that a specific salary be paid to a particular employee, since "fiscal-policy decisions, including staffing are a quintessentially legislative prerogative." *Id.*, at 38. At most, the district court can determine if a salary range set by the commissioners court is unreasonable, but only the commissioners court may reset the range. *Id.*, at 37. Thus, the district judges lack authority to unilaterally order the commissioners court to approve a specific salary or increased salary.

ASSISTANT COURT COORDINATOR

As indicated above, district judges lack authority to unilaterally order the commissioners court to pay the court administrator a specific salary. There are no statutes authorizing district judges to mandate the specific salary of an assistant court coordinator; therefore,

that setting of such salary falls within the commissioners court's discretionary budgetary authority.

There appears to be no statute specifically relating to the creation or compensation of an assistant court coordinator position. However, §74.103 authorizes district courts to "appoint appropriate staff and support personnel according to the needs in each county," but contains no language authorizing the district judges to set the salary for such personnel. An assistant court coordinator is encompassed within the "staff and support personnel" that may be appointed by district courts under §74.103. Further, §74.103 seems to be controlling as it is applicable specifically to district courts as opposed to the more general provisions of §151.001, which sets forth a procedure for a district, county or precinct officer to apply to the commissioners court for the authority to appoint deputies, assistants, or clerks and which places the authority to approve appointment of personnel with the commissioners court.

CONCLUSION

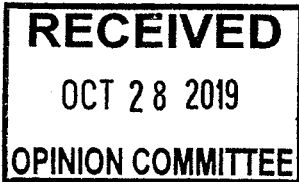
In the absence of any statutory authority for the district judges to set the salary of support personnel, the setting of salaries for such personnel rests with the commissioners court pursuant to its legislative budget authority. As indicated above, the district court judges do not have the authority to set or increase a salary to a specific level. If a district judge believes that the salary set by the commissioners court is objectively unreasonable, the district judge or other interested party can bring an action to set aside the commissioners court's salary determination, but the court cannot order the commissioners court to set a specific salary. In reviewing the commissioners court's salary determination, the court may only consider whether the commissioners court abused its discretion in setting the budgeted salary.

Thank you for your consideration of this request. Please feel free to contact my office should you need any additional information or details regarding this request.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ana Markowski Smith', written in a cursive style.

Ana Markowski Smith
Val Verde County Attorney



Val Verde County



Matthew S. Weingardt, CPA
County Auditor

901 Bedell Ave., Ste. A
Del Rio, TX 78840

Phone: 830-774-7584
Fax: 830-775-9198

RQ-0312-KP
FILE# ML-48640-19
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October 28, 2019

Via E-mail
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Opinion.Committee@oag.texas.gov

RE: District Court Coordinators Compensation

Dear General Paxton,

I respectfully ask for you to offer your interpretation and opinion pursuant to Texas Government Code Chapter 74.104, 75.401 and AG Opinion KP-0052 on behalf of the 63rd and 83rd District Judges, who ask this letter request and attachments be consolidated with the request made under RQ-0312-KP or a separate opinion be made.

1. The judges determine reasonable compensation within the salary range set by commissioners court. If commissioners court fails to set a salary range for district court coordinators, what defines the range for reasonable compensation for the judges to act within?
2. If commissioners court is currently compensating other court coordinators at a higher amount than the district court coordinators, would that amount equate to the top of the salary range and would an amount at or slightly below that salary range be considered reasonable?
3. If neither commissioners court nor the judges get full authority to set salaries and collaboration is unsuccessful or not permitted, who is ultimately determining reasonable compensation?
4. Is salary compensation of assistant court coordinators included in Chapter 74 subchapter E?

Background

Generally, commissioners court has the authority to set the compensation for most county employees *Local Government Code 152.011*. However, there may be a limited exception to the rule when setting the compensation for court coordinators. *Texas Government Code Sec. 74.104*, requires the judges to determine reasonable compensation for court coordinators, subject to approval of the commissioners court. *Texas Government Code Sec. 75.401* states that reasonable compensation is determined by the judge served and in the salary range as set by commissioner court. *Attorney General Opinion KP-0052* states that neither the commissioners court nor the judges have final authority to set the salaries.

It is unclear whether commissioners court has authority only to approve or reject the determination of reasonable compensation as set by the judges or if commissioners court can set an entirely different salary range for district court coordinators. Reasonable compensation for district court coordinators is defined by the 63rd and 83rd District Judges as within the range of the base salary and no higher than what is currently being paid to any other court coordinators in the county that commissioners court has already approved. During and after the current budget planning cycle (see items 1-5 below) the district judges requested their court coordinators be compensated at a level closer to other court coordinators within the county, but this request was not fulfilled and no other salary amount was proposed or recommended by commissioners court.

- 1) On August 21, 2019 the Judge for the 83rd District Court asked commissioners court to adjust the court coordinators and assistant court coordinators salary be set at no more than what was being paid to other similarly situated employees. Said request was denied. (See attached agenda 21AUG19 item 6 labeled 2019-2020 Budget Workshop).

- 2) On September 19, 2019, a collaboration meeting letter was sent to all commissioners and the Val Verde County Judge, signed by the District Judges for the 63rd and 83rd District Courts. Attached to said letter was Attorney General Opinion KP-0052. The letter asks that the collaboration meeting be held in executive session in accordance with *Texas Government Code 551.074* (See attached Talking Points for Collaboration Meeting Letter). A date for said collaboration of October 2, 2019, was suggested.

- 3) On October 2, 2019 both District Court Judges for the 63rd and 83rd Judicial District Courts that serve Val Verde County appeared before Commissioners Court at their regularly scheduled meeting asking for the salaries of their court coordinators be adjusted (See attached 02OCT19 agenda items 21, 22 and 24). Collaboration was requested pursuant to Attorney General Opinion KP-0052, no executive session was allowed.
- 4) On October 2, 2019 the district court judges made their presentations requesting their court coordinators salary be set at a rate deemed reasonable by the district judges and at or slightly below other current court coordinators.
- 5) On October 2, 2019 after unsuccessful collaboration on the district courts compensation the requests were tabled. Commissioners court and the district judges both agreed they would collectively ask for an Attorney General opinion on the matter (see attached minutes item 21).
- 6) On October 23, 2019 the Val Verde County Attorney filed letter (RQ-0312-KP) requesting an Attorney General opinion regarding the court coordinator compensation issue without collaboration, consensus or harmony as previously agreed by the court and judges.

Also during budget planning, commissioners court removed the base salary for district court coordinators leaving no range (top or bottom) for district judges to set reasonable compensation. Before this removal, the district court coordinators and other court coordinators had the same base salary amount. This would imply that all court coordinators were grouped together after an internal salary study was done by Val Verde County personnel with no input from the district judges.

In the prior year, commissioners court had raised all of their foremen to the same level of the highest compensated foremen, regardless of experience, employment history with the county, or the breadth of responsibilities, implying that no premium should be set for those factors. Presently situated district court coordinators cannot be compensated on performance, merit or longevity based upon commissioners court lack of a comprehensive employment pay scale.

Due to the factors above, compensation for district court coordinators could be left as an arbitrary decision of commissioners court on a year to year basis allowing commissioners court to effectively control the quality of personnel in the district courts. Failure to reasonably fund district courts personnel

jeopardizes, endangers and could potentially prohibit the courts ability to perform its mission, required duties and deny the courts from truly being a coequal branch of our constitutional form of government. The district judges feel they attempted in good faith to collaborate on court coordinators compensation, only to have the base salary removed.

Known Legal Authorities

Pursuant to AG Op. No KP 0052

The Texas Attorney General has opined that the statute requires the District Judge and Commissioners Court to establish district court coordinators' compensation by collaboration, giving neither final authority to set the salary.

Pursuant to Texas Government Code 74.104

- (a) The judges shall determine reasonable compensation for the court coordinators, subject to approval of the commissioners court.
- (b) Upon approval by the commissioners court of the position and compensation, the commissioners court of the county shall provide the necessary funding through the countys budget process. County funds may be supplemented in whole or part through public or private grants.

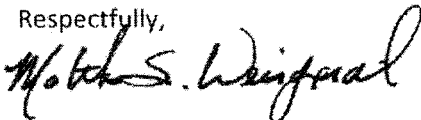
Pursuant to Texas Government Code 75.401

- (d) A court administrator is entitled to reasonable compensation, as determined by the judges served and in the salary range for the position, as set by the commissioners court in the annual budget.

Once more, the 63rd and 83rd Judicial District Judges respectfully ask this letter request and attachments be consolidated with the request made under RQ-0312-KP or a separate opinion be made.

Please advise if you require any additional information or clarification from my office in order to properly evaluate this request and issue or consolidate your opinion. Thank you for your time and attention to this matter.

Respectfully,



Matthew S. Weingardt, CPA
Val Verde County Auditor