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To Whom It May Concern:

I am the county attorney for Stephens County, Texas. I have been requested by the Stephens County Commissioner's Court to request an Attorney General Opinion as it may apply to actions passed by the Stephens County Commissioner's Court and the Texas Government Code Section 151.

Background

In 2020, partially due to Covid and severe budget constraints, Stephens County Commissioner's Court, with the agreement of the then elected officials, created a courthouse "Employee Pool" to preserve salaries and improve efficiency. As such the following was implemented by the Commissioner's Court:

- 1) Salaries were then funded entirely through the Commissioner's Court budget and not the individual elected office holder's budget.
- 2) Employees would be cross-trained to work in all of the other elected officials' offices to provide flexibility across all departments.
- 3) The Commissioner's Court believed this structure allowed the County to avoid across the board salary cuts.
- 4) Hiring was still initiated by the elected official when a vacancy would happen; however, the elected official would have to bring their top three (3) candidates to the Commissioner's Court for it to interview and vet each candidate.

- 5) The elected official was allowed to recommend their preferred candidate to the Commissioner's Court for its approval.
- 6) The Court would not dictate who is hired or override the official's selection; however, the Court required the candidates to be interviewed by said Court prior to the hiring of any individual.
- 7) The Court, when possible, would provide transition time for the current staff to train said replacement employee.
- 8) The Court, under this procedure, would review and approve such new employee for bonding requirement and legal eligibility itself.

According to the Court, this process has worked effectively for five (5) years and said Court believes that this system complies with Texas law and especially Tex.Loc.Gov't Code Section 151.001-151.004. It is the Court's position that the elected official still is allowed to choose who is hired, but the Court requires the interview process to take place with three (3) applicants prior to the elected official hiring someone.

The Court retains the authority and control of each elected official's budget and salary approval for every office and new employee. The Court states that this "Employee Pool" approach respects both the elected official and the Court to ensure the proposed new hire employee salary is funded and compliant.

The Court further believes it has avoided violation of Art. V, Sec. 18(b) of the Texas Constitution which protects the independence of elected offices. The Court believes this "Employee Pool" model balances transparency, fiscal responsibility, and constitutional separation of powers and is within the authority of the Court.

Further, under this "Employee Pool" model, given the fact that all employees are under the Court's control as members of this "Employee Pool" rather than each elected official, the Court has instigated a "finger print" time clock for all employees in the courthouse, elected officials excepted of course. Employees are to only be paid for every minute they are actually present at the courthouse. Vacation and sick time must be approved by HR and not the elected official. If a person's absence is not approved or if they run out of time during the year, the person will no longer be paid. However, there is now a "sick time" pool that is the sick time of other employees that is donated into this pool and if the employee requests sick time from this pool and if it is allowed by the Committee overseeing such pool, then they could in theory use that "sick pool" time. The Court has given authority to the County Treasurer to be head of HR to impose discipline and terminate members of the "Employee Pool" who repeatedly violate the time clock, vacation and sick time policy as well as other issues within the County Policy Manual.

Additionally, even though each employee is in the County "Employee Pool" and that each said employee's work time is electronically registered with the County Treasurer, elected officials are required to approve each member of their staff's weekly electronic time card. Failure to do so and the employee shall not be paid for that week by the Treasurer.

The Court has given HR the authority to “overrule” an elected official’s decision to authorize a member of that elected official’s staff for vacation time and/or sick time.

Questions

- 1) Does the Commissioner’s Court have the authority to create such an “Employee Pool” as set forth above?
- 2) Does the “Employee Pool” as described above comply with Tex.Loc.Gov’t Code Section 151.001-151.004?
- 3) Does this “Employee Pool” model as set forth above violate any Texas law?
- 4) Can the Commissioner’s Court require an elected official to bring their top three (3) applicants for a staff member opening to the Commissioner’s Court for interviews?
- 5) If the elected official refuses to bring applicants to the Court for interviews, is there anything the Court can do? (i.e. Terminate a position, refuse to pay the person the elected official chooses, reduce the pay for that position, etc.)
- 6) Does an elected official have to publicly advertise for a job opening in their office or can they simply advertise on their own private Facebook page?
- 7) Is an elected employee required to advertise a job opening in their office publicly in the newspaper, on the local radio, on the County Website or other public media site?
- 8) Can the Commissioner’s Court, HR, or the County Treasurer take any measures to influence the hiring of any member of an elected official’s staff?
- 9) If the elected official wants to hire a person for a staff opening, that is qualified under the law, that the Commissioner’s Court did not like as an applicant, is there anything the Court can do to the new hire or the elected official?
- 10) Can the Commissioner’s Court provide the power to HR to discipline or terminate an employee that works in the office of an elected official because every employee is in the “Employee Pool”?
- 11) Can the Commissioner’s Court reduce an elected official’s number of staff or reduce the pay for a member of an elected official’s staff prior to the new budget year taking effect?
- 12) Has the “Employee Pool” or the actions of the Court set forth above violate Art. V, Sec. 18(b) of the Texas Constitution in any way?
- 13) Because of this “Employee Pool”, can the Court require all non-elected employees in the courthouse to use an electronic finger print time clock?
- 14) Because of this “Employee Pool”, can the Treasurer deduct pay from an employee if, according to the time clock, the employee worked less than a full 40-hour week?
- 15) Because of this “Employee Pool”, does the elected official or HR approve vacation and sick time for the elected official’s staff?
- 16) Because of this “Employee Pool”, If the elected official approves a staff member for vacation time and/or sick time or even administrative leave time to attend to a personal event, can HR override the elected official’s decision?
- 17) Because of this “Employee Pool”, can the Court give power to the Treasurer/Head of HR, to discipline or terminate employees who are on an elected official’s staff?
- 18) Because of this “Employee Pool”, can the Court, the Treasurer, or HR require the elected official to electronically or manually approve each staff member’s weekly electronic time card?
- 19) Can the Treasurer refuse to pay an employee if the elected official fails to or refuses to approve the electronic time card that is sent directly to the Treasurer?

20) Can Commissioner's Court set up a "Sick Pool" that restricts amount that can be given and amount that an employee may receive?

Statutes Related to Questions

1) Texas Local Government Code 151

Sec. 151.001. OFFICER APPLIES TO COMMISSIONERS COURT FOR AUTHORITY TO APPOINT EMPLOYEES.

(a) A district, county, or precinct officer who requires the services of deputies, assistants, or clerks in the performance of the officer's duties shall apply to the commissioners court of the county in which the officer serves for the authority to appoint the employees. If the county has a population of more than 190,000, the officer shall apply for the authority to appoint any other kinds of employees.

(b) The application must be sworn and must state:

- (1) the number of employees required;
- (2) the title of the positions to be filled; and
- (3) the amounts to be paid the employees.

(c) If the application is made in a county with a population of more than 190,000, it must also describe the duties to be performed by the employees.

(d) The application must be accompanied by a statement of the probable receipts from fees, commissions, and compensation to be collected by the office during the fiscal year and the probable disbursements, including salaries and expenses, of the office.

(e) This section does not apply to a district attorney or criminal district attorney in a county with a population of more than 190,000.

Sec. 151.002. COMMISSIONERS COURT ADOPTS ORDER AUTHORIZING APPOINTMENT OF EMPLOYEES. After the receipt of an application under this subchapter, the commissioners court by order shall determine the number of employees that may be appointed and shall authorize their appointment.

Sec. 151.003. OFFICERS MAKE APPOINTMENTS. After the entry of the commissioners court's order, the officer applying for the employees may appoint them.

Sec. 151.004. COMMISSIONERS COURT MAY NOT INFLUENCE APPOINTMENT. The commissioners court or a member of the court may not attempt to influence the appointment of any person to an employee position authorized by the court under this subchapter.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 151.901. EMPLOYMENT OF SECRETARIAL PERSONNEL. The commissioners court of a county may enter an order to employ and provide compensation for secretarial personnel for a district, county, or precinct officer if the court determines that the financial condition of the county and the staff needs of the officer justify doing so.

Sec. 151.903. PERSONNEL AND PAYROLL RECORDS IN COUNTY WITH POPULATION OF 500,000 OR MORE.

(a) In a county with a population of 500,000 or more, the officer employing a person shall, in addition to other requirements of law, file a personnel record about the person if the person is paid in whole or in part from funds of the county or of a flood control district located entirely in the county and the person is employed as:

(1) a deputy, an assistant, or any other employee of the county, or of the flood control district, who works under the commissioners court or its appointee; or

(2) a deputy or an assistant appointed under Subchapter A by a county or district officer.

(b) The personnel record shall be filed when the person is employed and must contain the following information: date of employment, rate of compensation, nature of employment, business or personal history, education, race, sex, age, place and date of birth, previous experience, and any other information essential to the keeping of proper personnel records.

(c) Each county officer or department head under whom the persons described by Subsection (a) are employed shall file a signed and sworn payroll at the close of the month, or more often if authorized or required by law. The payroll must state the name of each employee and show the employee's dates and hours of work, rate of compensation, and amount due for the current pay period. In the case of engineers and employees in the field engaged in road, flood control, or construction work, a signed report must accompany the payroll stating the nature, dates, and location of the work performed and containing any other information that may be needed for statistical or accounting purposes.

(d) The county auditor shall prescribe the forms and systems, including a system of personnel and equipment records, necessary to carry out this section. The county auditor may enforce any rules adopted under this section. If a person fails to file records or furnish essential information as required under this section, the county auditor or the county treasurer may withhold the payment of salaries until the records are filed or information is furnished as required. In addition, the county auditor may assemble statistics and make recommendations that may be included in the county auditor's annual report required by law.

(e) A form adopted under this section is subject to the approval of the county auditor.

(f) In a county with a chief personnel officer, the commissioners court may designate the chief personnel officer or the county auditor to approve personnel forms.

2) Art. V, Sec. 18(b) of the Texas Constitution

DIVISION OF COUNTIES INTO PRECINCTS; JUSTICES OF THE PEACE AND CONSTABLES;
COUNTY COMMISSIONERS AND COUNTY COMMISSIONERS COURT.

(b) Each county shall, in the manner provided for justice of the peace and constable precincts, be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

Possible Relevant Case Law

- 1) Vondy v. Commissioners Court of Uvalde County, 620 S.W.2d 104
- 2) Renken v. Harris County, 808 S.W.2d 222

Possible Texas Attorney General's Opinions

- 1) Tex. Att'y Gen. Op. JM-581
- 2) Tex. Att'y Gen. Op. JM-45
- 3) Tex. Att'y Gen. Op. GA-0503
- 4) Tex. Att'y Gen. Op. KP-0052
- 5) Tex. Att'y Gen. Op. KP-0160
- 6) Tex. Att'y Gen. Op. GA-0857
- 7) Tex. Att'y Gen. Op. GA-0929
- 8) Tex. Att'y Gen. Op. JC-0239
- 9) Tex. Att'y Gen. Op. JC-0427
- 10) Tex. Att'y Gen. Op. 0471
- 11) Tex. Att'y Gen. Op. JM-1191

Thank you for your time and consideration. Should you have any questions, do not hesitate to contact my office.

Yours truly,

A handwritten signature in blue ink, appearing to read "Gary D. Trammel", is written over the typed name.

Gary D. Trammel
Stephens County Attorney