



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2021

Ms. Jennifer D. Robison, CPA
Brown County Auditor
200 South Broadway
Brownwood, Texas 76801

Opinion No. KP-0361

Re: Whether article III, section 53 of the Texas Constitution prohibits a one-time bonus for the administrative staff of the county's justices of the peace (RQ-0380-KP)

Dear Ms. Robison:

You ask whether article III, section 53 of the Texas Constitution prohibits the payment of a one-time bonus for the administrative staff of the county's justices of the peace.¹ According to documents submitted with your letter, the four justices of the peace for Brown County proposed "a special, one-time \$1,000 payment to each of the three clerks" who serve the justice courts, to be paid out of the justice court technology fund. Attachment (Justice of the Peace statement) at 2. In their approval request to the commissioners court, the justices of the peace stated that the coronavirus pandemic caused an increased workload for the clerks due to the need for rescheduling of proceedings and "expand[ing] their knowledge base to accommodate video hearings and telephonic appearances of participants." Attachment (Justice of the Peace statement) at 1. The justices added that the clerks had "gone above and beyond, to maintain the schedules for all four courts" and that the clerks also worked some Saturdays on their own initiative to keep up with the workload. *Id.* You question whether article III, section 53 of the Texas Constitution prohibits this payment. Request Letter at 1. Whether a particular payment is constitutional under article III, section 53 involves factual determinations and cannot be resolved as a matter of law in an attorney general opinion, but we can provide general advice on article III, section 53. *See* Tex. Att'y Gen. Op. No. KP-0315 (2020) at 2.

Article III, section 53 of the Texas Constitution, in relevant part, prohibits the Legislature from authorizing a county "to grant . . . any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered." TEX. CONST. art. III, § 53. The provision is intended to prevent counties "from freely giving away public moneys for services previously rendered or for which no valid legal authorization existed and for which the public

¹*See* Letter from Ms. Jennifer D. Robison, Brown Cnty. Auditor, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Sept. 14, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0380KP.pdf> ("Request Letter"), and Attachments (on file with the Op. Comm.) ("Attachments").

would receive no return.” *Lee v. El Paso Cnty.*, 965 S.W.2d 668, 673 (Tex. App.—El Paso 1998, pet. denied). The provision does not necessarily prohibit “any compensation” for services provided but instead concerns “granting extra compensation.” *City of Denton v. Rushing*, 521 S.W.3d 88, 96 (Tex. App.—Fort Worth 2017) (emphasis omitted), *rev’d on other grounds*, 570 S.W.3d 708, 709 (Tex. 2019). The distinction, as a court explained, is that payment for services outside the work contracted for “is not . . . extra compensation because the City [has] not already paid” for those services. *Id.* at 97; *see also* Tex. Att’y Gen. Op. No. KP-0315 (2020) at 2 (explaining that the prohibition potentially arises when performance is already required by an existing employment arrangement). Thus, whether the one-time bonus at issue triggers analysis under this constitutional prohibition depends on whether the services rendered come within the scope of the original employment contract or arrangement such that the payment constitutes “extra compensation.”

To the extent the bonus constitutes extra compensation, article III, section 53 prohibits the county from granting it to a public servant “after service has been rendered.” TEX. CONST. art. III, § 53. As this office previously concluded, “an increase in benefits approved after the work has been performed may not be applied retroactively to work that has already been performed.” Tex. Att’y Gen. Op. No. JC-0123 (1999) at 2; *see also* Tex. Att’y Gen. Op. No. JC-0376 (concluding that a one-time salary bonus to court personnel for work already done would violate article III, section 53 but that a prospective increase in compensation or benefits would not). The commissioners court could, however, approve a bonus plan that ties compensation to performance for services rendered after the approval of the plan.² *See* Tex. Att’y Gen. Op. No. GA-0368 (2005) at 2.

²You ask only about the constitutionality of granting a one-time bonus payment as requested by the justices of the peace and not about their proposal to utilize funds from the justice court technology fund pursuant to recent legislative amendments. *See* Request Letter at 1; Attachment (Justice of the Peace statement) at 1 (referencing Senate Bill 1840, but not Senate Bill 346, from the 86th legislative session). “[I]f amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.” TEX. GOV’T CODE § 311.025(b). “[T]he date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.” *Id.* § 311.025(d).

S U M M A R Y

To the extent one-time bonuses constitute extra compensation for certain work performed by justice court clerks, article III, section 53 of the Texas Constitution prohibits the payment of the bonuses retroactively. A prospective bonus approved prior to the rendering of services would not run afoul of article III, section 53.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee