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FILE # ML-42703-02
I.D. # 42703

July 8, 2002

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CERTIFIED MAIL: 7000 0520 0024 6294 0762

JUL 15 2002

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0576-JC

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION
2893

Re: Request for Texas Attorney General Opinion

Dear General Cornyn:

On behalf of the Denton County Commissioners Court, we respectfully request a formal written opinion from your office in order to determine which, if any, Denton County statutory county court judges are entitled to additional annual compensation under Texas Government Code § 25.0632(c).

Judge David Garcia, the local administrative statutory county court judge for Denton County, has asserted that the Denton County statutory county court judges are currently being under compensated on the basis of the language of Texas Government Code § 25.0632(c) which addresses the annual compensation of the Denton County statutory county court judges and the Denton County probate court judge. Judge Garcia is seeking additional annual compensation in the amount of \$1,026 which represents the sum currently being paid to four of the six current Denton County district court judges who held office on August 31, 1995. This additional annual sum of \$1,026 is known as State Benefit Replacement Pay ("BRP"). The two current Denton County district court judges who took office after August 31, 1995, do not receive BRP. Judge Garcia's assertion is that Denton County's seven statutory county court judges are entitled to an additional \$1,026 annually, which would make the annual compensation of Denton County's seven statutory county court judges equal to the total annual compensation currently received by four Denton County district court judges who receive BRP. In reviewing this issue, our analysis focuses on the applicable statute and the rules of statutory interpretation contained in the Code Construction Act located in the Texas Government Code §§ 311.001 through 311.032.

The issues submitted for your consideration are whether the Texas Legislature intended for all the Denton County statutory county court judges to receive compensation for BRP and, if so, if it also intended for the Denton County statutory county court judges to receive more annual compensation than Denton County district court judges who do not qualify for BRP.

Denton County has a specific statute governing the annual compensation of its statutory county court judges and statutory probate judge. Texas Government Code § 25.0632(c) provides that “[t]he judge of each statutory county court and statutory probate court shall be paid annual compensation equal to the annual compensation, including all supplements, paid from any public source to a district judge in the county.” Based on this language, Judge Garcia suggests that the Denton County statutory county court judges are entitled to receive compensation equal to that currently being paid to the highest paid Denton County district court judges. The question is complicated by the fact that the Denton County district court judges receive two different amounts of annual compensation depending on whether or not they held their current office on August 31, 1995. Which district judge’s salary will be used to determine the salary of the Denton County statutory court judges?

In 1995, the Texas Legislature reorganized the structure of the Denton County court-at-law system by creating County Criminal Court No. 1 of Denton County, changing County Criminal Court No. 2 of Denton County from a County Court at Law, and by creating a statutory probate court for Denton County. These measures were initiated in response to the rapid population growth of Denton County which necessitated the need for an expanded court system to administer justice in Denton County. The current language of § 25.0632(c) became law on August 28, 1995. The 1995 legislation addressed annual compensation for the judges of each statutory county court and statutory probate court in Denton County by providing that each “shall be paid annual compensation equal to the annual compensation, including all supplements, paid from any public source to a district judge in the county.” The language of the statute prior to the 1995 amendments provided that “[t]he judge of each county court at law shall be paid an annual salary of at least \$41,285 but not more than 95 percent of the salary, including supplements, paid a district judge in the county.”

The question of whether the Texas Legislature intended for Denton County statutory county court judges to receive more annual compensation than Denton County district court judges who do not receive BRP, began on August 28, 1995, when Texas Government Code § 25.0632(c) took effect. At that time, there were only three statutory county courts in Denton County and there were no Denton County district court judges who were receiving BRP, since BRP did not become law until September 1, 1995. There is nothing in the statute to suggest that the legislature intended for a Denton County statutory county court judge to be paid more than a Denton County district court judge, yet that would be the result if all seven current Denton County statutory county court judges receive additional annual compensation of \$1,026 and two current Denton County district court judges do not. On August 31, 1995, Denton County had three statutory county courts and a statutory probate court, compared with seven in existence as of May 1, 2002. If some, or all, of the Denton County statutory county court judges are entitled to an additional \$1,026 in annual compensation to equal the BRP amount paid to those qualifying district court judges, how far back in time will Denton County have to pay these sums to the

Denton County statutory county court judges? Denton County currently has four district court judges who receive BRP and two who do not. On January 1, 2003, when a new district court judge will be sworn into office, three Denton County district court judges will receive BRP and three will not. As of May 1, 2002, Denton County has seven statutory county courts and one statutory probate court. Judge Garcia's assertion would mean that the seven statutory county court judges will receive more annual compensation in 2003 than three of the district court judges.

The payment of compensation, including "all supplements" [emphasis added] from "any public source" [emphasis added] indicates that the total compensation to be paid to statutory county court judges in Denton County may include an amount equal to the BRP amount of \$1,026. The meaning of the phrase "all supplements" from "any public source" contained in Texas Government Code § 25.0632(c) could be construed to mean that the Denton County statutory county court judges and the statutory probate court judge should receive the same annual compensation as "a" district judge who receives "all supplements" available from "any public source." The meaning of the phrase "a" district court judge is problematic in that it raises the key question of whether some, or all, of the Denton County statutory county court judges are entitled to the same compensation as a Denton County district court judge who receives BRP, or one who does not. The question also arises as to whether the Denton County statutory county court judges who did not hold office on August 31, 1995, are entitled to the \$1,026 supplement paid to the Denton County district court judges who receive BRP. Although BRP is only paid to those district judges who held office on August 31, 1995, should an extra \$1,026 be paid to all seven of the current Denton County statutory court judges, or only to those who held office on August 31, 1995? These facts present a question of first impression in the State of Texas because the bill has scant legislative history, it had no recorded debate, it is unique to Denton County, and it has no reported case law interpreting the statute to guide us in resolving this issue.

The rules of statutory construction found in the Code Construction Act in Texas Government Code §§ 311.001 through 311.032 provide some guidance in addressing the issues. The Code Construction Act provides that in enacting a statute, it is presumed that a just and reasonable result is intended. Tex. Gov't Code § 311.021(3). The salary disparity between the Denton County district court judges who receive BRP and those who do not was likely unforeseen at the time that the Denton County statute [§ 25.0632(c) Tex. Gov't Code] was enacted and, therefore, it would produce an unjust result to compensate Denton County statutory county court judges in a greater amount than that currently received by the Denton County district court judges who assumed office after August 31, 1995. If the legislative intent of the law was for Denton County statutory county court judges to receive pay equal to that of Denton County district court judges, it is unlikely that the legislature intended for Denton County statutory county court judges to be paid more than Denton County district court judges. If Denton County statutory county court judges are entitled to additional annual compensation of \$1,026, we submit that only those Denton County statutory county court judges who were on the bench as of August 31, 1995, would be entitled to this additional sum. This would mean that the Denton County statutory county court judges who assumed office after August 31, 1995, would be compensated the same as Denton County district court judge who took office after August 31, 1995.

Because of the unjust result which would arise from paying more compensation to Denton County statutory county court judges than the Denton County district court judges who do not receive BRP and because reasonable minds may differ on the meaning and applicability of the Denton County statute, we have requested a written opinion from the Texas Attorney General on behalf of the Denton County Commissioners Court regarding this issue.

Please contact our office if we can provide further information to assist you in preparing an opinion on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Isaacks", with a long horizontal flourish extending to the right.

BRUCE ISAACKS

Criminal District Attorney
Denton County, Texas