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No. 2467 P. 2



Sidney "Buck" LaQuey
GRIMES COUNTY AUDITOR

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OPINION COMMITTEE

RQ-0642-GA

October 22, 2007

FILE # ML-45414-87
I.D. # 45414

Attn: Intergovernmental Relations
The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Opinion Pursuant to Texas Government Code §402.042

Dear General Abbott:

On behalf of the Commissioners' Court of Grimes County, Texas and the Grimes County Attorney's Office, I forward you this Amended Request for Opinion, which is substantially the same as the Request for Opinion forwarded to you from my office on or about October 18, 2007. After forwarding the Request, it was discovered that due to a last minute conversion in formatting such Request contained several formatting errors. This Amended Request is to be considered in lieu of the last as the correct formatting contained herein will likely reduce any confusion of the issues presented which may have been caused by the previous formatting errors. I respectfully request an opinion from the Attorney General regarding questions listed below.

1. Is the Commissioners' Court required to notify all elected officials including County Commissioners in writing prior to the annual budget hearing of a proposed salary reduction from that proposed in the budget filed by the County Judge?

The proposed budget for Grimes County, Texas prepared by the County Judge in accordance with Local Government Code ("LGC" herein) §111.003 was filed with the County Clerk pursuant to LGC §111.006 on August 29, 2007. The Grimes County Commissioners' Court held a public hearing pursuant to LGC §111.007 on September 17, 2007 wherein public participation was invited regarding the budget which had been previously proposed by the County Judge. The Commissioners' Court agenda on September 17th, which contained the public hearing, also contained the following item, "Consider and take action on amendment to proposed budget." Upon the calling of such item and a discussion thereof and in the interest of balancing the budget, a Commissioner proposed a salary reduction for each Commissioner of approximately \$7,000. The Motion was seconded by another Commissioner. The moving Commissioners voted for the decrease while the non-moving Commissioners voted against the decrease. As there was a tie of two votes for the reduction and two votes against the reduction, the County Judge voted. The County Judge

Page 2 of 5

voted for the reduction reasoning that while the implementation of the Unit Road System some years prior had reduced the Commissioners' duties, their salaries had never been reduced. Obviously, there was no written or oral notice given to any Commissioner prior to the meeting that the salary of each Commissioner would be reduced. The budget was subsequently adopted pursuant to LGC §111.008. The budget was filed with the County Clerk pursuant to LGC § 111.009 on September 25, 2007.

LGC §152.013 requires the Commissioners Court to set the salary, expenses, and other allowances of elected county and precinct officers at a regular meeting of the court during the regular budget hearing and adoption process. TEX. LOC. GOV'T CODE ANN. §152.013 (Vernon 2005). The Attorney General's Office has previously found that the salary of a County Commissioner can be lowered, but pursuant to LGC §152.013, the Court is without authority to lower the salary until the regular annual budget hearing. Tex. Att'y Gen. Op. No. JM-1019 (1989) at 4. However, in an effort to resolve confusion brought about by earlier opinions, the Attorney General has concluded that the Commissioners' Court must notify each elected official of his or her proposed salary and expenses after having received the proposed budget from the County Judge, but sufficiently before the Court's approval of the proposed salary and expenses in order that an aggrieved officer can receive a determination from the salary grievance committee before adoption of the budget. Tex. Att'y Gen. Op. No. GA-0051 (2003) at 9-10.

The real issue in the instant matter concerns the Commissioners' Court's ability to notify elected officers of possible changes to their salaries, expenses, or allowances if the Court is unable to set them before the notice to each is required. It is not a stretch to envision a scenario wherein two Commissioners are in favor of reducing the salary of an officer, two Commissioners are in favor of increasing the salary of an officer, and the County Judge is opposed to either as he or she wants the salary left alone. In that scenario, who sends what notice to the officer? There has not been a vote on the proposed salary as that cannot be set until the public hearing so it appears that someone, who is not identified, on behalf of the Commissioners' Court, is to send a notice to the officer that his or her pay might be set at a higher amount, might be set at a lower amount, or might remain the same. And, by the way, someone will have to see to it that a notice is published in case the increased amount is approved. If the remedy for failing to follow this "procedure" is that the salary for last year is left in place, it seems that the County Judge in the scenario above may get his or her way.

It appears that the Attorney General's interpretation of these statutes results in the following chronology:

- a. The County Judge prepares and files a proposed budget during the 7th or 10th month of the fiscal year (LGC §111.003);
- b. The Commissioners' Court conducts an open meeting with at least 72 hours notice, pursuant to the Open Meetings Act, wherein they discuss the Judge's proposed budget and possible salaries, expenses, and allowances but do not *set* such as that can only be done at the "regular meeting of the Court during the regular budget hearing and adoption proceedings" (LGC §152.013);

Page 3 of 5

- c. The Commissioners' Court then sends written notice to each elected official of the amounts at which his or her salary and expenses *might* be set during the "regular budget hearing and adoption proceedings"(LGC §152.013);
- d. The Commissioners' Court publishes notice of any expected increases in salaries, expenses, or allowances of elected officers more than ten days before the meeting described in paragraph e. below (LGC §152.013);
- e. The Commissioners' Court holds a public hearing sometime after the fifteenth day of the month following the filing of the budget proposed by the County Judge and after the expiration of ten days from the time of the published notice required by §152.013 if any increases are to be approved and possibly after the expiration of the fifteen-day period for notice to officers regarding proposed salaries and for the holding of a hearing before the salary grievance committee as contemplated by LGC §152.016 (LGC §111.007);
- f. The Commissioners' Court sets the salaries, expenses, and allowances at the public hearing at the amount previously noticed to the official or the amount recommended by the salary grievance committee, or at last year's amount as a change to anything other than that noticed and, in the case of an increase, an amount published, may be void or invalid (LGC §152.013);
- g. The Commissioners' Court adopts the budget at the conclusion of the hearing (LGC §111.008);
- h. The Commissioners' Court files the approved budget with the County Clerk (LGC §111.009);
- i. The Commissioners' Court levies taxes (LGC §111.010);
- j. The Commissioners' Court can then, absent an emergency, spend only in strict compliance with the budget unless seeking a transfer of an amount budgeted for one item to another budgeted item. (LGC §111.010).

LGC §111.008(b) suggests that the Commissioners' Court at the annual budget hearing can make any changes to the proposed budget that it considers warranted by law and required by the interest of the taxpayers. TEX. LOC. GOV'T CODE ANN. §111.008(b) (Vernon 2005). It would appear that such is not applicable to salaries, expenses, and allowances of elected officers including Commissioners.

2. If so, must the Commissioners' Court give written notice to all elected officials including County Commissioners of their proposed salaries and expenses more than fifteen days before adopting the budget thereby granting any potentially aggrieved officer the maximum amount of time permitted by law in which to request a hearing and granting the salary grievance committee the maximum amount of time permitted by law in which to hold a hearing?

If the Attorney General takes the position that written notice is required to elected officials prior to the adoption of the budget at the annual budget hearing and if, pursuant to LGC §152.016, an aggrieved officer has five days after the date of receipt of written notice of the officer's proposed salary and expenses to request a hearing before the salary grievance committee and if the salary

Page 4 of 5

grievance committee has ten days from the receipt of the request from the officer to hold the hearing, it appears that the Commissioners' Court must notify elected officers of their proposed salaries, expenses, and allowances at least fifteen days before the annual budget hearing in order to grant the aggrieved officer and the salary grievance committee the maximum amount of time permitted each for acting. See TEX. LOC. GOV'T CODE ANN. §152.016 (Vernon 2005). In fact, if the notice is mailed to the elected official, who then waits until the fifth day after his receipt of such to request a hearing before the salary grievance committee, which then waits until the tenth day after the receipt of the request to hold a hearing, it may be that the Commissioners' Court must notify elected officers of their proposed salaries, expenses, and allowances more than fifteen days before the budget hearing in order to grant the aggrieved officer and the salary grievance committee the maximum amount of time permitted each for acting.

3. If the Commissioners' Court fails to give each elected officer including each County Commissioner written notice of the Commissioner's proposed salary and expenses prior to the annual budget meeting after which the budget is adopted, may the Court then pay the officer the reduced amount?

The requestor has been unable to find any authority which sets forth the remedy for failing to give an elected officer sufficient written notice of a proposed salary in order for the officer to request a hearing before the salary grievance committee. Although later modified on a different issue, Tex. Att'y Gen. Op. No. DM-405 addresses whether a salary grievance committee may even consider a request for a hearing after the beginning of a succeeding fiscal year. Tex. Att'y Gen. Op. No. DM-405 (1996). DM-405 suggests that the salary grievance committee's actions to alter an adopted budget after the beginning of the fiscal year applicable to the budget were void. *Id* at 9. Grimes County's fiscal year is from October 1– September 30. As this request is made after October 1st, the aggrieved Commissioners are not now able to request a salary grievance committee hearing.

Although addressing a different issue, Tex. Atty' Gen. Op. No. GA-0162 may be enlightening. Tex. Att'y Gen. Op. No. GA-0162 (2004). That opinion suggests that should a Commissioners' Court approve a salary increase without the required, published notice pursuant to LGC §152.013(b), the approval is invalid. *Id* at 5. Citing another opinion, GA-0162 suggests that because a Commissioners' Court may not adopt salaries at a meeting outside of the "regular, annual budget hearing and adoption proceedings," a Commissioners' Court that failed to publish proper notice has "no legal mechanism" by which to remedy an error after the budget has been finally adopted. *Id* at 4-5. GA-0162 suggests that in such a case the officer's salary must remain at last year's level until the next budget cycle. *Id* at 5.

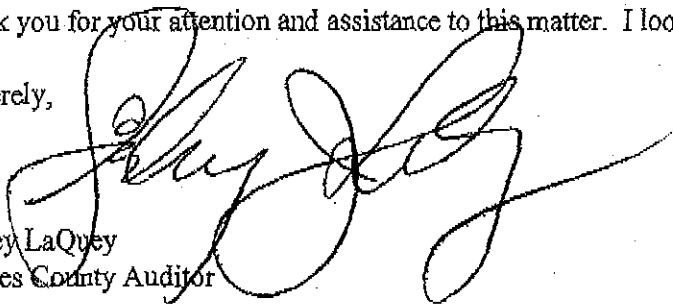
If, in the instant matter, the officer's salary must remain at last year's level, the recently approved budget must be amended as it did not incorporate or contemplate a salary for the Commissioners that remained at the previous year's level. One might question, whether such amendment constitutes "a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention" as required in LGC §111.010. TEX. LOC. GOV'T CODE. ANN. §111.010 (Vernon 2005). If the

Page 5 of 5

proposed budget amendment required to pay the Commissioners based on the last year's salary level meets that definition, it appears that the salary setting procedure outlined in the Local Government Code requires more than reasonably diligent thought and attention. Given the Attorney General's difficulty in construing relevant statutes as indicated by JC-0471, DM-405, and GA-0051 which modifies the first two, it is not difficult to understand a local government's struggle to implement such correctly. See Tex. Att'y Gen. Op. Nos. JC-0471 (2002); DM-405 (1996); and GA-0051 (2003).

Thank you for your attention and assistance to this matter. I look forward to hearing from you.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Sidney LaQuey', is written over the typed name and title.

Sidney LaQuey
Grimes County Auditor

cc: Jon C. Fultz
Grimes County Attorney