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By Opinion Committee at 2:11 pm, Feb 17, 2022

MEMORANDUM

To: Office of the Attorney General, Opinion Committee
From: Dee Hobbs, County Attorney
Williamson County Attorney's Office
Date: February 15, 2022
Subject: Request for Texas Attorney General Opinion

RQ-0447-KP
FILE# ML-49082-KP
I.D.# 49082

I. Introduction

On **January 16, 2022** the Williamson County received a request pursuant to the Request for an Attorney General Opinion, of Section 402 of the Texas Government Code, from **Cristian Rosas-Grillet** (hereinafter, “the requestor”) seeking assistance in seeking an Attorney General Opinion on behalf of the City of Hutto, regarding whether “salary” for purposes of article XVI, section 40, in the Texas Constitution is different from “compensation” in Hutto City Charter, Section 3.04, Compensation.

Pursuant to Section 402.042(c), Texas Government Code, this brief is submitted to seek a ruling regarding the applicability of the below provision(s).

II. Applicability of Article XVI, Section 40(b) of the Texas Constitution

Under Article XVI, Section 40(b) of the Texas Constitution, individuals who receive compensation from state funds may not receive a “salary” for serving as members of the City Council.¹

As amended earlier this year, the Hutto City Charter provides, City Council members shall receive as compensation the sum of four hundred dollars (\$400.00) for attendance at each regular City Council meeting; provided, however, that no City Council member shall receive compensation for more than two (2) meetings in any one month.² Councilmembers also receive reimbursement for expenses incurred in the performance of their official duties upon approval by the City Council.³

¹ TEX. CONST. art. XVI, § 40(b).

² Hutto City Charter, § 3.04 (2021). (a) The Mayor shall receive as compensation the sum of five hundred dollars (\$500.00) for attendance at each regular City Council meeting; provided, however, that the Mayor shall not receive compensation for more than two (2) meetings in any one month. b)

A city council member accepted an employment position with a state college system and received compensation from state funds. “Compensation” has been defined as “[r]emuneration *and other benefits* for services rendered.”⁴ On the other hand, “salary” has been defined as “agreed compensation for services—esp. professional or semiprofessional services—usually paid at regular intervals on a yearly basis, as distinguished from an hourly basis.”⁵ In Tex. Att’y Gen. Op. No. GA-0130, your office advised the word “‘compensation’ includes benefits, such as insurance, provided to officers and employees.”⁶ Therefore, generally, the term compensation is broader than salary.

In Tex. Att’y Gen. Op. No. GA-0530, in response to the question of “whether the governing bodies of home-rule municipalities may draft and enact their own ordinances setting policies for what is or is not reimbursable as actual expenses [to a council member],” your office noted whether a particular expense is reimbursable and not salary for purposes of article XVI, section 40(b)(1) is a question of fact that cannot be resolved in the attorney general opinion process.⁷

In addition, your office recognized the ability of a home-rule municipality to adopt reasonable ordinances delimiting expenses for which the municipality may reimburse city council members, and, at the time, except for article III, Section 52(a) of the Texas Constitution, your office was not aware of any other statute or constitutional provision that would restrict a home-rule municipality’s authority to adopt ordinances setting policies for what is or is not reimbursable as actual expenses as well as setting maximum amounts reimbursable per member without violating any state statute or the Texas Constitution.⁸

In deference to municipals’ authority to interpret their charters and ordinances, your office has indicated it does not ordinarily construe city charters and ordinances.⁹ In this instance, the compensation city council members receive under the Hutto City Charter is not provided for on an annual basis and is not a fixed amount; the amount depends on the number of regular city council meetings attended. The compensation is limited to two meetings per month and does not include remuneration for called meetings or remuneration related to performance of other official duties as a city council member.

III. Conclusion

For the foregoing reasons, the City of Hutto respectfully requests the Texas Attorney General, Opinions Division, issue an opinion on whether “compensation” received under Section 3.04 of the Hutto City Charter is a “salary” in the Texas Constitution. If so, may the Hutto City Council, as a home-rule municipality, construe by ordinance the compensation amount in its charter to be the actual minimum necessary amount for the performance of the duties of public office related to regular council meeting attendance?

City Council members shall receive as compensation the sum of four hundred dollars (\$400.00) for attendance at each regular City Council meeting; provided, however, that no City Council member shall receive compensation for more than two (2) meetings in any one month. c) The Mayor and City Council members shall be entitled to all necessary expenses incurred in the performance of their official council duties upon approval by the City Council.).

³ See *id.*

⁴ *Compensation*, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added).

⁵ *Salary*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁶ Tex. Att’y Gen. Op. No. GA-0130 (2003) at 2 (citing *Friedman v. Am. Sur. Co.*, 15 1 S.W.2d 570,578 (Tex. 1941)).

⁷ Tex. Att’y Gen. Op. No. GA-0530 (2007) at 6.

⁸ See *id.* at 7.

⁹ See Tex. Att’y Gen. Op. Nos. GA-0130 (2003) at 3, GA-0068 (2002) at 2 n.2, KP-0026 (2015) at 1.

If you have any questions concerning this request, please feel free to call Dorothy Palumbo, City Attorney of the City of Hutto. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Dee Hobbs". The signature is written in a cursive style and is positioned above a solid horizontal line.

Dee Hobbs
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