



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 11, 1993

Honorable John Vance
Dallas County District Attorney
Frank Crowley Courts Building
Dallas, Texas 75207-4313

Letter Opinion No. 93-19

Re: Whether the minimum annual salary of statutory county judges established by section 25.0005 of the Government Code includes contributions under the Federal Insurance Contributions Act (ID# 17784, ID# 18531)

Dear Mr. Vance:

You have requested our opinion as to whether the minimum annual salary of statutory county court judges established by section 25.0005 of the Government Code includes FICA contributions. Subsection (a) of section 25.0005 provides:

A statutory county court judge, other than a statutory county court judge who engages in the private practice of law or a judge in whose court fees and costs under Section 51.702 are not collected, shall be paid a total annual salary set by the commissioners court at an amount that is at least equal to the amount that is \$1,000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total annual salary includes contributions and supplements, paid by the state or a county, other than contributions received as compensation under Section 74.051.¹ [Emphasis added.]

This provision was enacted in 1991. Acts 1991, 72d Leg., ch. 746, § 4, at 2621.

Since 1977, the state has paid a portion of the employee's share of the employee's required contribution to the Federal Insurance Contributions Act, title 26 of the United States Code § 3101, *et seq.* (hereafter "FICA"). Since the original enactment of this

¹Section 74.051 relates to supplementary payments for presiding judges.

provision, the state-paid portion has been limited to 5.85 percent of the first \$16,500 of earnings, the total amount of which equals \$965.25. V.T.C.S. art. 695h § 5(a).²

Section 4 of article 695h provides, in pertinent part:

The payment of contributions by the State under the program may not be considered compensation under any law of this State.

In Attorney General Opinion JM-322 (1985), this office held that the quoted provision of section 4, *supra*, "specifically excludes social security contributions paid by the state under section 5(b), article 695h, V.T.C.S., from the salary of a district judge." Accordingly, such "contributions should not be used in compiling the salary basis of a district judge to determine the salaries of the judges of county court nos. 1 and 2, and probate court."

Thus, the two provisions appear to be in irreconcilable conflict: Subsection (a) of section 25.0005 of the Government Code declares that the judge's "total annual salary includes contributions and supplements, paid by the state or a county," except for that compensation paid under section 74.051 of the Government Code, which is not relevant to our inquiry here. On the other hand, section 4 of article 695h, as construed by Attorney General Opinion JM-322, specifically excludes from "compensation" the payment by the state or county of any portion of the employee's contribution to FICA.

Section 4 of article 695h was last amended in 1987. Acts 1987, 70th Leg., ch. 4, § 3 at, 20. Subsection (a) of section 25.0005, by contrast, was first enacted in 1991. Acts 1991, 72d Leg., ch. 746, § 4, at 2620. Although it is the case that statutory provisions *in pari materia* should, if possible, be harmonized, and effect given to both, it is also the case that when two provisions are in irreconcilable conflict, the enactment which is latest in time prevails. Subsection (a) of section 311.025 of the Government Code which is part of the Code Construction Act, provides that, "if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails." Although article 695h is not part of any code, and thus not technically subject to the Code Construction Act, "this provision does express the legislature's view that the date of enactment is the significant date." Attorney General Opinion MW-139 (1980); see 1A SUTHERLAND, STATUTORY CONSTRUCTION, § 23.17 at 378 (4th ed. 1985). It is thus our opinion that the portion of the compensation of a district judge or statutory county judge which represents the state's or the county's payment of part of the judge's FICA contribution is included within the "contribution" or "supplement" referred to in subsection

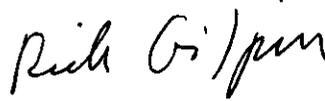
²In 1977, this amount was equal to the *entire* payment of the employee's contribution to FICA: the tax was imposed only on 5.85 percent of the first \$16,500 of earnings. At present, a tax rate of 6.2 percent is imposed on the first \$57,600 of earnings, and an additional amount of 1.45 percent is imposed on the first \$135,000 of earnings to fund the Medicare program. Thus, an employee earning \$60,000 per annum would be obligated to FICA in an amount equal to \$4,875.17, only \$965.25 of which would be paid by the state.

(a) of section 25.0005 of the Government Code. Accordingly, the judge's "minimum annual salary" embraces the FICA contributions at issue here.

S U M M A R Y

The minimum annual salary of statutory county court judge referred to in subsection (a) of section 25.0005 of the Government Code includes that portion of the judge's FICA contribution which is paid by the state or county.

Yours very truly,

A handwritten signature in black ink that reads "Rick Gilpin". The signature is written in a cursive, slightly slanted style.

Rick Gilpin
Deputy Chief
Opinion Committee