



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1995

Honorable Allen Ray Moody
Edwards County Attorney
P.O. Box 707
Rocksprings, Texas 78880

Letter Opinion No. 95-018

Re: Procedure for setting annual salaries
of elected county officers (ID# 29262)

Dear Mr. Moody:

You explain that on September 12, 1994, the Edwards County Commissioners Court (the "commissioners court") met to approve the county's budget for the 1995 fiscal year, October 1, 1994, through September 30, 1995,¹ which included increases in the salary and expenses of elected county officers. You state that there was no publication of the proposed increases, as required by section 152.013 of the Local Government Code. See Local Gov't Code § 152.013(b). You ask how the county can remedy the failure to give notice.

In Attorney General Opinion MW-516, this office considered a similar situation arising under the predecessor statute to section 152.013 of the Local Government Code. In that case, a county commissioners court had approved a budget providing salary increases for county officers, despite the fact that notice required by the predecessor statute was not published until after the budget was approved. This office stated:

In our opinion, the adoption of the budget by the commissioners court . . . was ineffective to increase the salaries of county officials above the salaries set for them in 1980. A special notice is required by [the statute] if salaries are to be raised.

Attorney General Opinion MW-516 (1982) at 2; see also Attorney General Opinion JM-27 (1983) (in the absence of proper notice of salary increases for county officers, salary increase was invalid); Letter Opinion No. 94-4 (1994) (same). *But cf. Neptune v. Renfro*, 586 S.W.2d 596 (Tex. Civ. App.—Austin 1979, no writ) (taxpayer suit addressing notice requirement following salary grievance committee's recommendation to increase county officer's salary).

¹You do not ask and we do not address whether the budget, other than the salary increase component, was enacted pursuant to law. See, e.g., Local Gov't Code §§ 111.003 (requiring certain counties to prepare a budget during the 7th or 10th month of the fiscal year), .007(b) (requiring certain counties to set a hearing for a date "after the 15th day of the month next following the month in which the budget was prepared in accordance with [section 111.003], but before the date on which taxes are levied by the court").

In sum, the elected county officer salary increases adopted by the commissioners court on September 12, 1994, are null and void.² The remainder of the budget, assuming that it was adopted in conformity with statutory requirements, remains in effect. *See supra* note 1. Section 152.013 on its face clearly limits county commissioners courts to increasing elected county officers' salaries and expenses "at a regular meeting of the court during the regular budget hearing and adoption proceedings." Local Gov't Code § 152.013(a). This office has repeatedly concluded that the import of section 152.013 is to preclude a county commissioners court from considering and adopting the salaries of elected county officers at any time other than the regular, annual budget hearing and adoption proceedings. *See, e.g.*, Attorney General Opinions JM-839 (1988); JM-326 (1985); H-11 (1973). Because section 152.013 does not permit a county commissioners court to change salaries at any other time, there is no legal mechanism for the commissioners court to cure the lack of notice. As a result, county officers' salaries and expenses must remain at last year's level until the next budget cycle.³

S U M M A R Y

Given the failure to provide notice of the proposed salary increases prior to the adoption of the county budget for the 1995 fiscal year as required by section 152.013 of the Local Government Code, Edwards County elected officers are not entitled to the salary increase. With this exception, the remainder of the county budget, assuming that it was adopted in conformity with statutory requirements, remains in effect

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

²Our prior opinions conclude that when the salary increases are null and void due to failure to comply with section 152.013(b), the prior salaries automatically remain in effect. *See* Attorney General Opinion MW-516, at 2. Thus, in answer to your question about Attorney General Opinion JM-326, there is no need for the commissioners court to reinstate the former salaries.

³You ask about the continued validity of Attorney General Opinions O-123 and O-327, both issued in 1939. The former opinion does not appear to have any bearing on your request. The latter opinion did not involve an elected county officer and is thus distinguishable.

We also note that given our above conclusion, we believe it is unnecessary for us to consider whether it was permissible for the commissioners court to hold a meeting on Columbus Day to revisit the county budget. Any meeting to revisit the budget in an attempt to cure the notice defect would be improper, regardless of which day it was held.