



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Honorable Delma Rios
Kleberg County Attorney
P.O. Box 1411
Kingsville, Texas 78364

Letter Opinion No. 95-038

Re: Whether, under Local Government Code section 152.031, the district judge who appoints the county auditor may include in the county auditor's salary a set car allowance (ID# 31172)

Dear Ms. Rios:

You ask whether section 152.031 of the Local Government Code authorizes a district judge to include in the county auditor's salary what you describe as a "set" car allowance. You explain that the judge of the 105th District Court included a car allowance of \$3,000.00 in the auditor's annual salary for the October 1994 through September 1996 term of office. We assume the judge of the 105th District Court appoints the Kleberg County auditor. *See* Local Gov't Code § 84.002(a) (requiring district judges to appoint county auditor in county with population over 10,000).

Chapter 152 of the Local Government Code pertains to the amount of compensation, expenses, and allowances county officers and employees receive. Subchapter B, which includes sections 152.011 through 152.018, relates to the amount of compensation, expenses, and allowances generally applicable to county officers and employees. County auditors and their assistants are excepted from subchapter B, *see id.* § 152.017(4); instead, subchapter C, which includes sections 152.031 through 152.035, provides for the compensation and expenses of county auditors and their assistants.

Section 152.031(a) of the Local Government Code, about which you specifically ask, provides in part as follows:

At a hearing held in accordance with Section 152.905, the district judges appointing the county auditor shall set, by a majority vote, the auditor's annual salary as compensation for services and the auditor's travel expenses and other allowances. . . .

The amount of compensation and allowances a county auditor receives may not exceed the amount of all compensation and allowances received by the highest paid elected officer whose salary and allowances are set by the commissioners court, other than the judge of a county court at law. *Id.* § 152.032(a). The district judge must certify the order setting the auditor's salary to the commissioners court. *Id.* § 152.031(a), (b).

Local Government Code section 152.035 specifically relates to reimbursement of a county auditor's travel expenses:

(a) The commissioners court of a county may reimburse the county auditor for expenses incurred in traveling to and from the county seat in the auditor's personal automobile to perform official duties and to attend conferences and seminars relating to the performance of official duties. However, the commissioners court may not reimburse the auditor for expenses incurred in traveling between the auditor's personal residence and county office or for expenses incurred in any other travel of a personal nature.

.....

(c) The commissioners court by order shall set the reimbursement at a reasonable rate.

You believe your question requires us to construe the phrase "other allowances" for purposes of section 152.031(a). You also suggest that sections 152.031 and 152.035 conflict because section 152.031 authorizes a district judge to set a county auditor's travel expenses and other allowances while section 152.035, as you interpret it, requires a commissioners court to set the reimbursement of the auditor's travel expenses at a reasonable rate. We will begin to analyze your question by examining the history of section 152.031(a), its statutory predecessor, V.T.C.S. article 1645, sections 1 and 2 (repealed by Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49, 1987 Tex. Gen. Laws 707, 1307), and related statutes.

Prior to 1989, sections 152.031 and 152.032 of the Local Government Code and their statutory predecessors simply required the district judges of a county to "set . . . the annual salary of the auditor" in an amount no greater than the amount the county allowed or paid the county tax assessor-collector. *See also* V.T.C.S. arts. 1645, 1646, *repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49, 1987 Tex. Gen. Laws 707, 1307. Section 152.035 or its statutory predecessor has, since the legislature enacted the statutory predecessor in 1967, *see* Act of May 17, 1967, 60th Leg., R.S., ch. 361, § 1, 1967 Tex. Gen. Laws 852, 852-53, authorized a county commissioners court to reimburse the county auditor for travel expenses.

In 1989 the legislature amended section 152.031(a) to require the district judges who appoint the county auditor to "set . . . the auditor's annual salary as compensation for services and the auditor's travel expenses and other allowances." *See* Act of Feb. 21, 1989, 71st Leg., R.S., ch. 1, § 11(c), 1989 Tex. Gen. Laws 1, 13. In 1987 the legislature similarly had amended V.T.C.S. article 1645, subsequent to the codification and repeal of article 1645.¹ *See* Act of April 27, 1987, 70th Leg., R.S., ch. 57, §§ 1, 2,

¹The 1987 amendment to article 1645 required a county with a population of at least ten thousand inhabitants to pay "from the County General Fund an annual salary as compensation for services, travel expenses, and other allowances." The amount of the county auditor's salary, which was to

1987 Tex. Gen. Laws 153, 153-54 (amending article 1645, §§ 1, 2); Act of April 30, 1987, 70th Leg., R.S., ch. 149, § 1, 1987 Tex. Gen. Laws 707, 928 (codifying § 152.031); *see also* Gov't Code § 311.031(c) (providing that repeal of statute by code does not affect amendment to the statute by same legislature that enacted code). The 1989 amendment nonsubstantively codified the 1987 amendment to article 1645. *See* Act of Feb. 21, 1989, 71st Leg., R.S., ch. 1, § 11(c), 1989 Tex. Gen. Laws 1, 13. We must interpret a nonsubstantive codification in the same manner the former statute was interpreted. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 654-55 (Tex. 1989) (stating that, when conflict exists between former statute and nonsubstantive revision, former statute controls); Attorney General Opinion JM-1230 (1990) at 8 (quoting *Johnson*, 774 S.W.2d at 654-55).

As introduced, the bill that proposed the 1987 amendment required the district judges to set the auditor's annual salary "as compensation for services, and office expenses, travel expenses, and other allowances."² This language mirrors the language now found in section 152.011 of the Local Government Code, which the legislature has not substantially modified since it enacted the statutory predecessor to Local Government Code section 152.011, V.T.C.S. article 3912k, section 1 in 1971. *See* Act of May 29, 1971, 62d Leg., R.S., ch. 622, § 1, 1971 Tex. Gen. Laws 2019, 2019. Section 152.011 requires the commissioners court generally to "set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds."³

While this office has not had occasion to construe section 152.031(a) or V.T.C.S. article 1645 since the 1987 amendment, the attorney general has interpreted the parallel language in section 152.011 and its statutory predecessor, V.T.C.S. article 3912k, section 1. In Attorney General Opinion H-1251 this office indicated that the phrases "office expense" and "travel expense" suggest that the phrase "all other allowances" encompasses only money the officer expends in performing his or her own duties. Attorney General Opinion H-1251 (1978) at 2. Attorney General Opinion H-1250 opined that "office expense . . . and all other allowances" includes within its scope only items reasonably

(footnote continued)

be fixed by the district judges who appointed the county auditor, was not to exceed "an amount equal to the compensation and allowances received from all sources by the highest paid elected county officer, other than a judge of a statutory county court, whose salary and allowances are set by the Commissioners Court." Act of April 27, 1987, 70th Leg., R.S., ch. 57, § 1, 1987 Tex. Gen. Laws 153, 153-54.

²The enacted bill omits the requirement that the district judges set the auditor's office expenses. *See* Local Gov't Code § 152.031(a).

³County auditors are excepted from section 152.011. *Id.* § 152.017(4). By requiring district judges, rather than the county commissioners court, to set the salary of the county auditor, the auditor maintains independence from the commissioners court. *See* House Research Organization, Bill Analysis, S.B. 355, 70th Leg. (1987). The county auditor examines the county commissioners' use of public funds. *Id.*

necessary for the performance of the officer's duties. Attorney General Opinion H-1250 (1978) at 2. In Attorney General Opinion MW-438 this office stated that the phrase "compensation . . . and all other allowances" comprehends sick leave benefits, Attorney General Opinion MW-438 (1982) at 2; *see also* Attorney General Opinions H-860 (1976) at 1, H-797 (1976) at 1; vacation entitlement, *see also* Attorney General Opinion MW-136 (1980) at 2; and entitlement to holidays.

Attorney General Opinion JM-148 (1984) considered a question similar to yours, but in relation to V.T.C.S. article 3912k, section 1. That opinion responded to a question from the Gregg County auditor inquiring as to whether article 3912k, section 1 permitted a county to provide its county officials with gasoline and routine automotive supplies for their personal automobiles. Attorney General Opinion JM-148 (1984) at 2. The attorney general concluded that the county may provide such in-kind allowances for personal vehicles used in county business instead of providing ordinary mileage. *Id.* The attorney general emphasized, however, that "[t]he county officer may receive only the amount of gasoline or pro rata part of automotive supplies actually used in county business." *Id.*

Attorney General Opinion JM-148 approved in-kind allowances instead of reimbursement for mileage even though article 3912k, section 1 listed "travel expenses" as one component of the amount a county officer may receive from the county. The opinion appears implicitly to construe "travel expenses" or "any other allowance" to include the possibility of such in-kind allowances. Significantly, the opinion does not limit a commissioners court to paying travel expenses only by reimbursing an officer in cash for his or her travel expenditures.

Accordingly, we construe section 152.031(a) to authorize a district judge to include in a county auditor's annual salary any kind of payment, in-kind or monetary, designed to reimburse the auditor for the money he or she expends on travel in an official capacity. We therefore conclude that, as a matter of law, section 152.031(a) does not preclude a district judge from including a car allowance in the auditor's annual salary. You describe the car allowance as "set," but we are uncertain whether the county auditor receives one-twelfth of the car allowance each month without having to confirm that he or she has expended that amount traveling on official business, or whether the car allowance is the total amount that the auditor may claim over the course of the year for amounts the county auditor has expended while traveling on official business. We caution that the amount of the allowance must be tied to the amount the auditor actually expends on official county business. Indeed, we believe the county auditor may be required to document and perhaps provide an affidavit verifying the amount he or she has expended on travel in connection with official business.⁴

⁴Attorney General Opinion JM-148 (1984), after approving a county's provision of gasoline and routine automotive supplies to county officials as recompense for travel expenses paid by the officials, suggested that the county auditor "may require documentation and affidavits which will establish to his satisfaction that the expenses result from county business." Attorney General Opinion JM-148 (1984) at

The presence of section 152.035, pertaining to reimbursement of an auditor's travel expenses by a county commissioners court, does not affect our conclusion, although we note chapter 152, subchapter B, relating to the compensation of county officers other than the county auditor, does not contain a counterpart to section 152.035. Section 152.035 authorizes, but does not require, a county commissioners court to reimburse its county auditor for travel expenses incurred in the performance of the auditor's official business. Section 152.035(c), which you suggest obligates a county commissioners court to reimburse its county auditor for travel expenses, applies only to a commissioners court that chooses to reimburse its county auditor for travel expenses pursuant to subsection (a). Moreover, section 152.035 does not pertain to the district judges setting the salary of the county auditor; it pertains only to the commissioners court, which may reimburse the county auditor his or her travel expenses as a supplement to the salary and any travel allowance set by the district judges. Of course, the total amount of travel allowance the county auditor receives from the district judges and the county commissioners court may not exceed his or her actual travel expenses.

S U M M A R Y

Section 152.031(a) of the Local Government Code, which requires the district judges who appoint the county auditor to set "the auditor's annual salary as compensation for services and the auditor's travel expenses and other allowances," authorizes the district judges to include in the auditor's annual salary any kind of payment, including a car allowance, designed to reimburse the auditor for the money he or she expends on travel in an official capacity. The amount of the allowance must be tied to the amount the auditor actually expends on official county business, however.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

(footnote continued)

2. We do not consider in this opinion who may require such documentation of a county auditor who seeks to justify travel expenses, including a car allowance.