



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 19, 1996

The Honorable Guy James Gray
Criminal District Attorney
Jasper County Courthouse
P.O. Box 1329
Jasper, Texas 75951

Letter Opinion No. 96-007

Re: Whether Jasper County may provide longevity
pay to county employees (ID# 36648)

Dear Mr. Gray:

You inform us that Jasper County implemented a longevity pay policy in January 1990. Under the policy, county employees are granted longevity pay calculated at two dollars per month after the first twelve months of employment and based on years of service to the county, including service completed before the county adopted this policy. You ask whether longevity pay constitutes retroactive pay prohibited under article III, section 53 of the Texas Constitution, which prohibits the legislature, a county, or a municipality from granting "any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered." Before we address your question, however, we must determine whether Jasper County has authority to provide its employees longevity pay.

A county commissioners court may exercise only those powers specifically conferred upon it by the state constitution and statutes, and the powers reasonably implied from express grants of authority, but it has broad discretion to implement its authority. *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948); *Anderson County v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941); *Zimmelman v. Harris County*, 819 S.W.2d 178, 183 (Tex. App.--Houston [1st Dist.] 1991, no writ). Section 152.011 of the Local Government Code authorizes a commissioners court to "set the amount of compensation . . . and all other allowances for county and precinct officers and employees who are paid wholly from county funds." The term "compensation" generally denotes "remuneration for services rendered." BLACK'S LAW DICTIONARY 256 (5th ed. 1979); accord WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 268 (1990); Attorney General Opinion M-1094 (1972) at 2. The term "compensation" encompasses more than just salary; compensation also may include benefits. See Letter Opinion No. 94-72 (1994) at 2.

The statutory predecessor of section 152.011 of the Local Government Code has been held to authorize the commissioners court to provide compensation to county employees in various forms, including service pins, Attorney General Opinion No. H-336 (1974), sick leave, Attorney General Opinions H-1142 (1978), H-860 (1976), vacation, Attorney General Opinion MW-136 (1980), and paid holidays, Attorney General Opinion

MW-438 (1982). Longevity pay, an incremental increase in salary based on length of service, *see International Ass'n of Fire Fighters v. City of Baytown*, 837 S.W.2d 783, 787 (Tex. App.--Houston [1st Dist.] 1992, writ denied); *City of Plano v. Acker*, 601 S.W.2d 68, 72 (Tex. Civ. App.--Dallas 1980, writ ref'd n.r.e.), has been held to be a part of compensation. *See City of Greenville v. Emerson*, 740 S.W.2d 10, 13 (Tex. App.--Dallas 1987, no writ) (construing Tex. Const. art. III, § 53); *City of Plano*, 601 S.W.2d at 72 (construing statutory predecessor of Local Gov't Code § 143.041(c)(1)). We believe that the commissioners court, pursuant to the broad authority to set compensation under section 152.011 of the Local Government Code, may provide longevity pay to county employees.¹

We note that section 152.906 of the Local Government Code, adopted in 1991 in House Bill 1290, Act of May 19, 1991, 72d Leg., R.S., ch. 773, § 1, 1991 Tex. Gen. Laws 2760, 2760, expressly authorizes counties with a population of 190,000 or more to provide longevity pay to county employees. Section 152.906 states as follows:

In a county with a population of 190,000 or more, the commissioners court may provide for each county employee or classification of county employee, including, but not limited to, deputy constables, longevity pay, in addition to regular compensation, of \$5 a month, or any other amount determined by the commissioners court, for each year of service in the county, up to and including 30 years.

This provision might be read as evidence that the legislature thought that section 152.011 did not authorize the commissioners court to provide longevity pay as a form of compensation. Even if it is read in this way, it would not affect the authority of Jasper County to implement a longevity pay policy in 1990, because a legislature may not construe a former law so as to give such construction a retroactive effect. *Snyder v. Compton*, 28 S.W. 1061, 1062 (Tex. 1894); *Morris v. Calvert*, 329 S.W.2d 117, 122 (Tex. Civ. App.--Austin 1959, writ ref'd n.r.e.).

The bill analysis that accompanied section 152.906 stated that its purpose was to allow counties to provide longevity pay to deputy constables and other county employees "not already eligible." House Comm. on County Affairs, Bill Analysis, H.B. 1290, 72d Leg., R.S. 1 (1991); *see* Local Gov't Code § 152.074 (county with population of 150,000

¹The bill enacting the predecessor of Local Government Code section 152.011 repealed any local, special, or general law prescribing compensation or expenses "for any official or employee covered by this Act." Act of May 29, 1971, 62d Leg., R.S., ch. 622, § 8, 1971 Tex. Gen. Laws 2019, 2021. It thus repealed statutes that had provided for longevity pay for county employees under specific circumstances, and the attorney general opinions that construed the pre-1971 statutes do not address the current state of the law. *See* Attorney General Opinions O-3369 (1941), O-1923 (1940).

or more shall provide longevity pay for sheriff's deputies). Representative Martin, who authored House Bill 1290, indicated in a public hearing on the bill that it was designed to equalize Galveston County with Harris County. At that time, Harris County provided longevity pay for employees other than commissioned deputies, and the commissioners court of Galveston County evidently believed it could not provide longevity pay for employees other than commissioned deputies, as required by section 152.074.

Section 152.906 was adopted to make certain that counties the size of Galveston County could pay longevity pay to deputy sheriffs and other county employees. We have found no indication in the language or legislative history of this statute that the legislature intended to repeal any authority under other law for counties to provide longevity pay for their employees. The two statutes overlap in their the subject matter, although their provisions are not identical. Section 152.011 authorizes the commissioners court to set the compensation for all "county and precinct officers and employees," while section 152.906 applies only to deputy sheriffs and other county employees in counties of 190,000 or more. Old and new statutes that are not positively repugnant will be construed to give effect to both. *Standard v. Sadler*, 383 S.W.2d 391, 395 (Tex. 1964). We believe that section 152.011 and section 152.906 can be construed together to give effect to both. Section 152.906 provides that longevity pay may be given for each year of service by sheriff's deputies and other county employees in counties of 190,000 or more of "up to and including 30 years," but it does not otherwise restrict a commissioners court's general authority under section 152.011 to decide whether, and under what circumstances, it will give longevity pay.

We turn to your question regarding article III, section 53 of the Texas Constitution, which prohibits the county from granting extra compensation to an officer or employee after service has been rendered. You wish to know whether the county has violated this provision by basing the longevity pay rate on an individual's service with the county, including service performed before the county decided to give longevity pay. The answer to your question is found in *City of San Antonio v. Baird*, 209 S.W.2d 224 (Tex. Civ. App.—San Antonio 1948, writ ref'd), a case construing article III, sections 44 and 53 of the Texas Constitution.

In *City of San Antonio*, the court addressed a statute establishing minimum wages for members of police and fire departments. *Id.* The statute provided a minimum wage of two hundred dollars a month for each member of the fire department and police department in cities of a certain size, and the additional sum of ten dollars a month for each five years of service in the department. *Id.* The service qualifying members of the police and fire departments for a higher rate of pay could include service in the department before the effective date of the act. *Id.* at 225. The court considered whether this aspect of the statute made it retroactive, in violation of article I, section 16 of the constitution, or unconstitutional under article III, section 53, and article III, section 44, which prohibit the legislature from granting extra compensation "to any officer, agent, [or] servant," after the public service has been performed, and decided that there was no violation of these

constitutional provisions. *Id.* In fixing the minimum wage, the legislature could consider the length of service rendered before the effective date of the statute, and provide that the more experienced employees receive a higher rate of pay. *Id.* The statute only increased salaries prospectively, and did not affect salary payments for work performed before its effective date. *See generally* Attorney General Opinion DM-129 (1992) at 3 (sick leave pool used to increase employees' sick leave benefits prospectively does not violate article III, section 53 of Texas Constitution).

Accordingly, article III, section 53 of the Texas Constitution does not prohibit Jasper County from implementing a prospective longevity pay policy where the amount of longevity pay is based on the employee's total service, including service before the policy was adopted.

S U M M A R Y

Section 152.011 of the Local Government Code authorizes the Commissioners Court of Jasper County to provide longevity pay to county employees. Article III, section 53 of the Texas Constitution does not prohibit Jasper County from implementing a prospective longevity pay policy that bases the amount of longevity pay on the employee's total service, including service before the policy was adopted.

Very truly yours,



Susan Garrison
Assistant Attorney General
Opinion Committee