



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 12, 1996

The Honorable Michael G. Mask
County Attorney
Jack County Courthouse, Third Floor
Jacksboro, Texas 76458

Letter Opinion No. 96-067

Re: Proper procedure for selecting public members of salary grievance committee when no grand jury convened in county during past year (ID# 38659)

Dear Mr. Mask:

Local Government Code section 152.015(b) requires a county commissioners court annually to select the public members of the county's salary grievance committee from the names of all persons who served on a grand jury in the county during the preceding year. Article XVI, section 17 of the Texas Constitution requires an officer to hold office until a successor is duly qualified. You ask what happens in a county that cannot select new public members because no grand juries were convened in the county during the previous year. We conclude that article XVI, section 17 of the constitution requires the present public members to hold over until successors can be chosen in accordance with the statute.

We will begin by examining the function of the salary grievance committee. In each county, the commissioners court has sole authority to set the salary, benefits, and office and travel expenses of a county or precinct officer or employee paid wholly from county funds.¹ Any officer who wishes to appeal the salary or personal expenses the commissioners court has proposed for his or her position may request a hearing before the county's salary grievance committee.² The salary grievance committee is composed of the county judge, who is a nonvoting member, and nine voting members.³ The nine voting members may consist of a mix of county or district officers and public members or solely of public members.⁴

Whether the number of public members be nine or less than nine, they are selected annually by the county judge at a meeting of the commissioners court held on the second Monday of January.⁵ The county judge is to randomly draw the names from the list of

¹Local Gov't Code § 152.011.

²*Id.* § 152.016(a).

³*Id.* § 152.014(a), (b).

⁴*Id.* § 152.014(a).

⁵*Id.* § 152.015(a).

names "of each person who served on a grand jury in the county during the preceding calendar year."⁶ A public member serves until the following January, when the county judge draws the name of a successor.⁷ In the event a public member vacates the position, the county judge is to draw a name from the list of grand jurors in the preceding year that the county judge selected from in January.⁸

You state that in 1995 Jack County convened no grand jury. Consequently, the county has no list of grand jurors from which to select new public members to the salary grievance committee. You inquire whether the county judge may draw names from a list of those qualified "as if to serve on District Court petit jury" or whether the three public members who were correctly selected for last year hold over until next January. If we determine that neither of these alternatives is available, you ask what procedure your county should follow.

Preliminarily, we note that a county commissioners court may exercise only those powers that the state constitution and statutes confer upon it, either explicitly or implicitly.⁹ We do not believe, therefore, that a county may devise a procedure for selecting public members to the salary grievance committee that is not provided in the statute. On the other hand, article XVI, section 17 of the Texas Constitution requires a county officer to remain in office until the officer's successor is duly qualified.¹⁰

By its terms, article XVI, section 17 of the constitution applies only to an officer; we must, therefore, determine whether a member of a salary grievance committee is an officer for purposes of article XVI, section 17. Under the usual test, we consider whether the individual exercises a "sovereign function of the government largely independent of the control of others."¹¹ If the salary grievance committee unanimously votes to recommend to the county commissioners court that it increase the complaining officer's salary or expenses, the commissioners court must include the increase in the budget.¹² Based upon this power unilaterally to effect an amendment to the county budget, we conclude that a salary grievance committee exercises a sovereign function largely independent of the con-

⁶*Id.* § 152.015(b).

⁷*Id.* § 152.015(c).

⁸*Id.* § 152.015(d).

⁹Attorney General Opinion V-1162 (1951) at 2 (and sources cited therein); see Attorney General Opinion MW-473 (1982) at 1 (and sources cited therein).

¹⁰See *Walker v. Hopping*, 226 S.W. 146, 148 (Tex. Civ. App.--Amarillo 1921, no writ).

¹¹See *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955) (quoting *Dunbar v. Brazoria County*, 224 S.W.2d 738, 740-41 (Tex. Civ. App.--Galveston 1949, writ ref'd)); Letter Opinion 95-039 (1995) at 4 (applying *Aldine* test in article XVI, section 17 context).

¹²Local Gov't Code § 152.016(c).

trol of others. A member of the committee is, therefore, an officer, and under article XVI, section 17, a member holds over in office until a successor is duly qualified. In the event that a successor to a public member of a salary grievance committee cannot be selected because no grand juries were convened in that county during the previous year, the present public member must continue to perform the duties of the office until a successor can be selected in accordance with Local Government Code section 152.015(b).

We believe this result is consistent with Local Government Code section 152.015. Subsection (b) requires a public member to serve on the salary grievance committee until a successor is appointed the following January. If no successor is appointed the following January, the public member holds over until a successor is appointed.

Finally, we caution that under article XVI, section 17, an officer cannot stop performing his or her official duties arbitrarily. Even if the officer submits a letter of resignation, he or she must continue to perform the duties of office until a successor is duly qualified.¹³ In the event a vacancy among the public members of a salary grievance committee occurs, however, we believe Local Government Code section 152.015(d) requires that the vacancy be filled by randomly selecting from the list of grand jurors that served in 1994, that is, the last year in which a grand jury convened in Jack County.

S U M M A R Y

A member of a county's salary grievance committee is an officer for purposes of Texas Constitution article XVI, section 17 and therefore holds office until a successor is duly qualified. In the event that a successor to a public member of a salary grievance committee cannot be selected because no grand juries were convened in that county during the previous year, the present public members must continue to perform the duties of the office until successors can be selected in accordance with Local Government Code section 152.015(b).

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹³See *Plains Common Consol. Sch. Dist. No. 1 v. Hayhurst*, 122 S.W.2d 322, 326-27 (Tex. Civ. App.--Amarillo 1938, no writ).